

lun., 6 abr. 16:39

Felipe López A.

para Oficina, mí, Javier ▾

Estimados y Estimadas,

Muchas gracias por el aviso. Adjunto información ahora en un solo archivo.

Favor, cualquier otro asunto, nos avisan.

Saludos cordiales.

Felipe López A.

 **Téngase presente y documentos Melón Planta La C...**



Felipe López A.

Gerente de Recursos Naturales y Medio Ambiente



Mat.: Se Tenga Presente Antecedentes del Molino N°22 de la Planta La Calera, de titularidad de Melón S.A.

Ant.: Res. Exe. N° 1/Rol D-022-2020, Formula Cargos que Indica a Melón S.A., de 06 de marzo de 2020.

Adj.: Documentos que indica.

Ref.: Expediente Rol D-022-2020.

Santiago, 3 de abril de 2020

Sra.

Fernanda Plaza Taucare

Fiscal Instructora de la División de Sanción y Cumplimiento

Superintendencia del Medio Ambiente

PRESENTE

Iván Marinado Felipos, cédula de identidad número 12.181.294-0, en representación de Melón S.A. (indistintamente “Melón”), RUT 76.109.779-2, ambos domiciliados para estos efectos en Avenida Isidora Goyenechea 2800, piso 13, comuna de Las Condes, viene en hacer presente a usted los siguientes antecedentes sobre el Molino de Cemento N° 22 de la Planta de Fabricación de Cemento de la comuna de la Calera de titularidad de Melón, en razón de la formulación de cargos efectuada a Melón S.A. en la Res. Exe. N° 1/Rol D-022-2020 de 6 de marzo de 2020 (en adelante la “Res. Exe. N° 1”), de esta Superintendencia del Medio Ambiente (en adelante la “SMA”):

I. ANTECEDENTES GENERALES

1. Antecedentes Relativos a las Fiscalizaciones y Requerimientos de Información

De manera preliminar, se hace presente que la Planta de Fabricación de Cemento ubicada en la comuna de La Calera (en adelante la “Planta La Calera”) ha sido fiscalizada por la SMA durante los años 2013, 2016, 2017, 2018 y 2019, requiriéndose adicionalmente en dichos periodos, informaciones complementarias, mediante varios ordinarios. 21 requerimientos de información se efectuaron en dichos años. Uno en el año 2013 y otros 20 en los últimos cuatro años.

Que dichas fiscalizaciones y requerimientos de información, principalmente, se basaron en la verificación del cumplimiento de las resoluciones de calificación ambiental asociadas

a los proyectos de coprocesamiento en el Horno de Clinker N°9, y al D.S. 29/2013 Norma de Emisión para Incineración, Coincineración y Coprocesamiento, tal como se expresa en la formulación de cargos.

Por otra parte, durante el año 2016, la Superintendencia de Electricidad y Combustible (en adelante "SEC") por requerimiento de la SMA, requirió a Melón información específica asociada al Molino de Cemento N° 22 (en adelante "Molino 22"). En dicho requerimiento se solicitó la siguiente información: *"2.1. Potencia instalada (KVA) actual de la planta cementera, determinada por la suma de las capacidades de los transformadores del establecimiento industrial. 2.2. Informar potencias por separado según tipo de energía eléctrica y combustible, se solicita que la potencia instalada que se informe considere la suma equivalente de los distintos tipos de energía y/o combustibles utilizados. 2.3. Potencia instalada (KVA) del Molino N°22; fecha de construcción y puesta en servicio del mismo junto a sus respectivos antecedentes de respaldo y autorizaciones correspondientes que se hayan tramitado ante la SEC. 2.4. Declaraciones con que cuenta para cada tipo de los individualizados previamente. 2.5. Mantenimiento efectuado los ultimo 24 meses a cada unidad informada"*.

Al respecto, mediante cartas de fecha 26 de octubre 2016 y 20 de enero del año 2017, Melón dio respuesta al citado requerimiento de la SEC, indicando respecto al punto 2.3. que, el proyecto del Molino 22 comenzó su ejecución a principios del año 1996, cuando fue aprobada su compra por el Directorio de la sociedad dueña de Melón a dicha época (Blue Circle), aprobación que fue acompañada a la mencionada respuesta. También, se indicó que el Molino 22 inició su etapa de construcción en marzo de 1997, incluyendo también el contrato entre el proveedor encargado del montaje del Molino 22.

Dado lo señalado anteriormente, resulta evidente que, tanto en las fiscalizaciones como en los requerimientos de información de la SMA, se encontraban dirigidos a otras materias fiscalizables (RCA's asociadas al Horno de Clinker N°9), y que, únicamente, mediante un requerimiento de la SEC, nos fue solicitada información relativa al inicio de construcción y operación del Molino 22. Así las cosas, la SMA nunca nos ha requerido de manera directa, información alguna respecto de los permisos obtenidos en relación al proyecto del Molino 22, ni tampoco de las fases de este proyecto, en particular del inicio de su ejecución.

A su vez, como se explica más adelante, se levanta como cargo (calificado como grave) la supuesta elusión de ingreso al Sistema de Evaluación de Impacto Ambiental (SEIA), sin que Melón haya tenido la oportunidad de haber presentado información y documentación relativa a este punto, que, insistimos, nunca ha sido solicitada específicamente por la SMA, y sólo indirectamente por la SEC. Es más, la información asociada al expediente, tampoco da cuenta si la SMA ha requerido esta información y documentación al SEA u otro organismo competente respecto del punto en cuestión.

Por otra parte, en lo relativo al fundamento del cargo, que se basa en que no se ha podido respaldar fehacientemente por Melón la fecha del inicio de la construcción del Molino 22, hacemos presente que la información fue entregada y respaldada ante la SEC, sin que hayamos tenido nuevos requerimientos complementarios que nos hicieran pensar que dicha información era insuficiente (lo cual en todo caso no compartimos). A la vez,

tampoco la SMA, al recibir esta información por parte de la SEC, nos solicitó información adicional o aclaratoria respecto de la entregada por Melón.

En suma, era imposible para Melón intuir la necesidad de dar mayor prueba respecto a la materia en cuestión, lo cual en definitiva nos deja en una posición difícil, al momento de decidir los cursos de acción a seguir.

Teniendo en cuenta lo anteriormente expuesto, se nos notifica de la Res. Exe. N° 1, de la SMA, la cual formuló 7 cargos (6 de los cuáles no tienen ninguna vinculación con el ya citado cargo N°1, en cuanto a las materias e instrumentos fiscalizados) respecto de la Planta La Calera. Sin perjuicio de la discusión que pudiera surgir respecto de algunos de ellos, la formulación del Cargo N°1, en consideración a lo que se señalará más adelante y a lo indicado precedentemente, no configura la infracción que se nos imputa.

Por otra parte, desde la perspectiva operacional, Planta La Calera ha tenido en su historia de más de 100 años, 22 Molinos operados en distintas épocas y etapas de la dicha planta, de los cuáles en las últimas dos décadas se han mantenido en operación los llamados molinos de cemento, "N° 21" (de inicio de la década de los 80') y "N°22" (de finales de los 90'), siendo ellos parte del "corazón" del negocio de Melón, por lo que este cargo, además de lo ya señalado en cuanto a su imprevisibilidad, afecta de manera crítica la operación de la Planta La Calera (50% de su producción).

Por otra parte, la formulación de este cargo atenta contra la transparencia y la buena fe con la que ha actuado Melón, dado que el Molino 22 ha sido mencionado en distintas instancias e instrumentos presentados ante diferentes autoridades y actores de interés, como, por ejemplo, en las sucesivas evaluaciones ambientales de que ha sido objeto la Planta La Calera.

Cabe resaltar que la inversión que implicó la instalación del Molino 22 permitió eliminar otros 3¹ molinos de bolas más pequeños, dado los avances tecnológicos de la época, lo cual significó una mejora en términos de eficiencia energética y ambiental para la Planta La Calera, requiriéndose una suma cercana a los 31,5 millones de dólares de inversión.

Finalmente, es necesario destacar, que la SMA imputa el cargo solo considerando los antecedentes aportados a la SEC, no solicitando, pudiendo hacerlo, en atención a los principios de coordinación, eficacia y eficiencia que debe regir entre los organismos públicos, información al SEA, organismo técnico en evaluación ambiental de proyectos. Por otra parte, tal como se ha señalado, tampoco solicitó directamente a Melón antecedentes en este sentido, caso en el cual el titular habría podido acompañar oportunamente los antecedentes relativos al inicio de ejecución del proyecto del Molino 22., evitando con ello la formulación del mencionado cargo.

¹ Se hace presente que los Molinos 14 y 15 dejaron de funcionar el mismo año en que entró en operación el Molino 22. Por su parte, el Molino 10 paralizó el año 1999, para luego operar nuevamente entre los años 2000 a 2003 con una mínima producción (en promedio 0,3 % de la producción de la planta en el total de dichos 4 años).

Dado todo lo anteriormente expuesto y lo relevante que es para Melón el Molino 22, a continuación se entregan antecedentes para que esta SMA los tenga presente, respecto de la formulación de cargos relacionado con dicho equipo.

2. Antecedentes sobre la Formulación de Cargos

Con fecha 6 de marzo de 2020, Melón S.A. fue notificado de la Res. Exe. N° 1, por medio de la cual se le formularon cargos relacionados con la actividad en la Planta La Calera.

Específicamente, el cargo N°1 dice relación con una supuesta infracción al artículo 35 b) de la LO-SMA por "*Funcionamiento de Molino de Bolas N° 22 desde 1998, al margen de evaluación ambiental, teniendo por sí solo una potencia instalada de al menos 5.250 KVA*". Esta infracción fue calificada como Grave, en virtud del artículo 36, numeral 2, Letra D de la LO-SMA.

La SMA fundamenta este cargo en los considerandos 17 a 33 de la Res. Exe. N° 1, en razón de lo siguiente:

- a) Que el Molino de Bolas N° 22 tiene una potencia instalada de 5.250 KVA por sí solo y que el predio en el cual se ubica La Planta La Calera tiene una superficie superior a 20 hectáreas, por lo cual el Molino debió someterse al SEIA, en virtud de la letra k.1 en relación con la letra h.2 ambas del artículo 3 del D.S. 40/2012, que Establece el Reglamento del Sistema de Evaluación de Impacto Ambiental (en adelante el "RSEIA").
- b) Que el Molino 22 no se encontraría regulado en las RCA respectivas.
- c) Que de acuerdo a lo informado por la SEC por medio de ORD. N° 0131/ACC:1454400 de fecha 3 de febrero de 2017, la puesta en marcha y comisionamiento del Molino 22 tuvo lugar en octubre de 1998. Además, que no se habría acompañado por parte del titular documentos que acreditaran de forma fehaciente la construcción del Molino en el transcurso de marzo de 1997 (**tales como órdenes de compra, facturas, guías de despacho, cronograma de trabajo, entre otros**).
- d) Que se podría constatar de los antecedentes aportados por la Empresa, que habría existido un EIA de un proyecto denominado "Instalación de un Nuevo Molino de Bolas de 125 TON/H", que no habría sido evaluado ambientalmente (dicho EIA tendría fecha diciembre del año 1996).

Respecto a estos fundamentos de la Res. Exe N° 1, a continuación, expondremos una serie de antecedentes, adicionales a los considerados por la SMA, que permitirán acreditar que en el presente caso no se configuran los elementos de la elusión de ingreso al SEIA, imputada en el Cargo N°1.

II. ANTECEDENTES ESPECÍFICOS RELATIVOS LA HISTORIA DE EJECUCIÓN DEL MOLINO 22

A continuación, pasamos a exponer una serie de antecedentes, que dan cuenta de cuál es la historia de ejecución del ya citado Molino 22 y que, por lo tanto, luego del análisis legal correspondiente en el siguiente acápite, será posible concluir que este proyecto no requiere someterse al SEIA dado que el inicio de su ejecución es previa a la fecha de entrada en vigencia de dicho sistema.

Existen una serie de documentos que dan cuenta de esta situación: i) Memorias Anuales de la compañía; ii) Informes Mensuales de Ejecución (los cuales comienzan a realizarse a partir de junio del año 1996, dando cuenta del estado de avance del proyecto del Molino 22 y de las acciones tendientes a su desarrollo. La mayoría de estos informes se encuentran en inglés); iii) Memos o documentos internos referidos al desarrollo del proyecto; iv) Documento de aprobación del Proyecto (“Capital Expenditure Authorisation Request”); v) Documentos Contractuales referidos al proyecto; y otros. Ellos permiten hacerse cargo de la preocupación manifestada por la propia SMA en la formulación de cargos, en cuanto a la falta de antecedentes que permitan acreditar la ejecución del proyecto con anterioridad al 3 de abril de 1997.

Debemos hacer presente que los Informes Mensuales, varios de los cuales se citarán más adelante, se han constituido en la principal fuente de información referida al desarrollo del proyecto, sin embargo, tienen la dificultad de estar, la mayoría de ellos, escritos en inglés y, por lo tanto, en algunos casos la correlación con el español no es exacta, dado que fueron redactados por personas que no conocen nuestra lengua apropiadamente, ni tampoco nuestro sistema legal. No obstante ello, han permitido contar con detalles sobre las distintas actividades desarrolladas para la ejecución del proyecto.

1. Decisión de inversión, actos tendientes a llevar adelante la inversión y gestiones ante autoridades se realizan durante los años 1995 y 1996

Debemos hacer presente que la decisión de llevar adelante la inversión del Molino 22, se toma por la compañía en el año 1995, lo cual queda de manifiesto en la Memoria Anual de la Compañía del año 1996, donde en la parte referida a memoria y balance general del año 1995, el Sr. Presidente del Directorio, don Jorge Carey señala de modo textual lo siguiente:²

“En la División Cemento es importante destacar que el plan de desarrollo de tres etapas, anunciado en 1995, se ha ido implantando conforme a lo previsto. De esta forma, durante el ejercicio se inició la construcción del terminal para cemento y clinker en el Puerto de Ventanas y se dio comienzo a la segunda etapa con el llamado a licitación para la construcción y montaje de un nuevo molino de cemento...”

Adicionalmente, con fecha 18 de abril de 1996 se aprobó la decisión de invertir en el proyecto por un monto de 31,5 millones de dólares, mediante el documento denominado

² Se adjunta en Anexo 1, la parte respectiva de la Memoria del año 1996, donde aparece la presentación del presidente del Directorio.

“Capital Expenditure Authorisation Request”³, que fue suscrito entre otros, por el CEO de la compañía, don Richard Cheney

En relación a ellos, en Memorándum Interno de 19 de agosto del año 1996, el Sr. Morris Green, informa a don Richard Cheney que se han seleccionado seis participantes para la licitación que se desarrollará respecto del diseño y construcción del molino, dando cuenta de cuales eran⁴. En relación a ello el Memorándum Interno de fecha 16 de diciembre de 1996, intercambiado entre las mismas personas, señala que las empresas finalistas Polysius y FLS entregarían en Londres su propuesta técnica final para ese mismo día 16, y la propuesta financiera para el 23 de diciembre del mismo año. Asimismo, da cuenta que a fines de ese mes tendrán una orden de compra o una propuesta de ingeniería para asegurar que no perderán tiempo con el proyecto⁵. Finalmente, en enero de 2017, se alcanza un acuerdo con Polysius para ser el proveedor del nuevo Molino 22⁶.

Paralelamente a las acciones anteriores, en el Memorándum Interno de fecha 17 de junio del año 1996, del Sr. Morris Green dirigiéndose al CEO de la Compañía, don Richard Cheney⁷, este le informa que se reunió con personal de la CONAMA durante el mes de mayo de ese año y que la empresa de ingeniería CADE – IDEPE habría comenzado a trabajar en el EIA del Molino el 20 de mayo del año 1996⁸. Dicho estudio de impacto ambiental habría sido recibido por la empresa en diciembre de ese año, y enviado a CONAMA para su visto bueno, para luego ser remitida a la Dirección de Obras de la Municipalidad⁹. El mismo documento da cuenta de una denominada “Aprobación en Principio” que habría sido otorgada por la Dirección de Obras del municipio.¹⁰

2. Durante 1997 se comienza a ejecutar actos contractuales y materiales del proyecto

El 14 de febrero de 1997 don Pedro Pablo Gutiérrez abogado de Carey & Cia, envía a don Paul Clark de Cemento Melón una carta, el cual da cuenta que los comentarios a los contratos han sido incorporados y también de los requisitos que deben cumplir quienes los suscribirán¹¹.

³ Se adjunta en Anexo 2 copia del documento Capital Expenditure Authorisation Request.

⁴ Se adjunta en Anexo 3, Memorándum de fecha 19 de agosto del año 1996.

⁵ Se adjunta Anexo N°3, Memorándum de fecha 16 de diciembre de 1996.

⁶ Se adjunta Anexo N°3, Memorándum de fecha 23 de enero de 1997.,

⁷ Se adjunta Anexo N°3 Memorándum Interno de fecha 17 de junio del año 1996.

⁸ Debemos hacer presente que dicha empresa realizó una serie de EIA durante la etapa del sistema voluntario de evaluación ambiental, tales como la Central Térmica Nueva Renca, el proyecto de Distribución de Gas Metrogas.

⁹ Se adjunta en Anexo 3 Memorándum Interno de fecha 23 de enero del año 1997, enviado A Don Richard Cheney, por el mismo sr. M. Green.

¹⁰ Dicho documento no señala en que consistiría la llamada aprobación en principio, pero se supone que pudo ser un permiso para obras menores o instalación de faenas u otro permiso similar de los emanados de la Dirección de Obras Municipales, no se ha podido obtener dicho permiso.

¹¹ Ver Anexo N°4 que contiene Carta de Validación de Condiciones de Contrato.

A continuación en dicha carta se adjuntan los contratos de Diseño, Manufactura y Suministros suscritos entre Cemento Melón y las empresas que ganaron la licitación, y el contrato que establece la responsabilidad solidaria entre los distintos miembros del consorcio. Ambos contratos fueron suscritos por don Richard Cheney el día 10 de marzo de 1997 y entre esa fecha y el 24 de marzo del mismo año fue suscrito por los otros participantes del consorcio¹².

En paralelo a ello, en el Informe Mensual del mes marzo de 1997 (que consta en Memorandum Interno de 21 de abril de ese año), el Sr Paul Clark, **da cuenta que las primeras obras materiales de ejecución del proyecto en terreno se efectuaron en el mes de marzo**. En efecto, señala que parte del acopio de carbón que se encontraba en la zona donde se construirá el Molino 22, había sido removido para permitir la realización de los estudios de suelo necesarios para el desarrollo de la ingeniería del proyecto.¹³ El mismo documento, señala que se habían obtenido cotizaciones y ordenes de trabajo para pequeñas labores que debían realizarse en el área de la construcción.

A continuación, el Informe Mensual de abril de 1997 (que consta en Memorandum Interno de 15 de mayo de 1997), señala que se continúa con las labores de remoción de la pila de carbón para así limpiar el sitio de construcción.¹⁴ Asimismo, señala que los otros trabajos que se deben desarrollar en la zona del proyecto, no se pueden desarrollar hasta que la remoción de la pila de carbón no haya sido concluida. Esta declaración, confirma que esta es la primera acción de ejecución material del proyecto, la cual se inició en el mes de marzo de 1997 y corresponde a las obras preliminares del proyecto.

Así las cosas, a contar de marzo de 1997 se inició la primera obra material del proyecto, esto es la remoción de la pila de carbón que se ubicaba exactamente en la zona donde se construiría el futuro molino. Junto con ello, también en el mes de marzo de 1997 se suscribieron los contratos necesarios para el diseño y construcción del molino, y se hicieron los primeros pagos, lo que da cuenta también del inicio del proyecto.

Por último, en el Informe Mensual de julio, que consta en Memorandum Interno de fecha 21 de agosto de 1997¹⁵, se da cuenta que el permiso de construcción fue emitido por la Dirección de Obras el 4 de agosto de 1997. Sin embargo, como se ha mencionado, la ejecución del proyecto ya se había iniciado en marzo de ese año en razón del permiso denominado "Aprobación en Principio".

3. El proyecto termina su construcción en el mes de octubre del año 1998 y actualmente reemplaza a 3 molinos preexistentes

Después de un año y medio de construcción, en octubre de 1998, y tal como da cuenta la información acompañada por Melón a la SEC, Cemento Melón comenzó la puesta en

¹² Ver Anexo N°5, que contiene los contratos de compra y construcción del Molino 22.

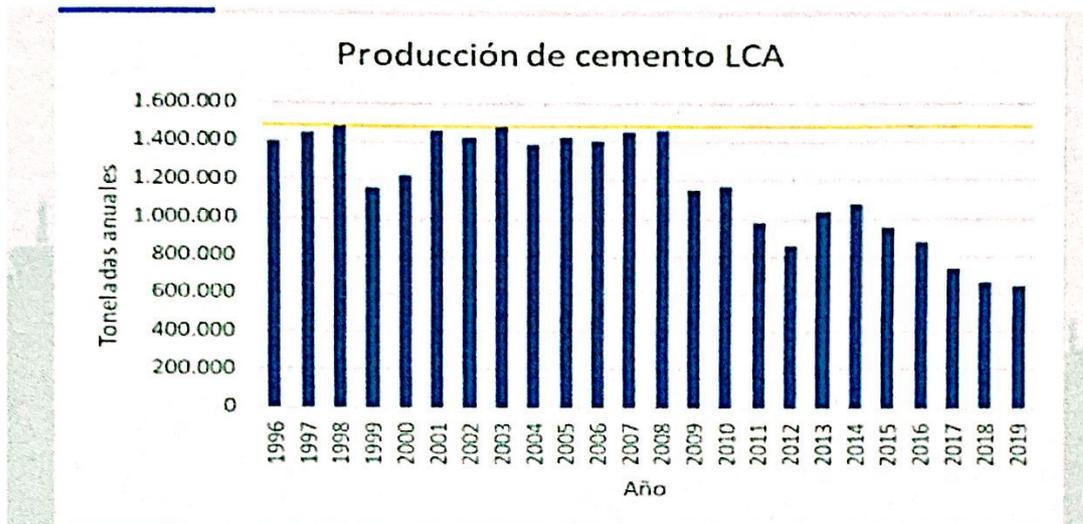
¹³ Se adjunta en Anexo N°3, Memorandum Interno de fecha 21 de abril de 1997.

¹⁴ Se adjunta en Anexo N°3, Memorandum Interno de fecha 15 de mayo 1997.

¹⁵ Se adjunta en Anexo N°3, Memorandum Interno de fecha 21 de agosto de 1997

marcha del llamado Molino 22¹⁶. Este nuevo molino reemplazó a 3 molinos pre-existentes (en el periodo de tiempo señalado anteriormente), por ende, esto no importó un aumento en la producción de la Planta La Calera, sino que la mantención de esta con mejores tecnologías y mayor eficiencia energética y ambiental.

El siguiente gráfico da cuenta de la evolución de la producción de la planta La Calera entre los años 1996 a 2019:



Por otra parte, como se indicó previamente, si comparamos los consumos eléctricos de los 3 antiguos molinos existentes en la Planta La Calera, con el nuevo queda claro que el consumo eléctrico no aumentó.

4. El Molino 22 ha funcionado permanente durante todo ese tiempo, y ha sido citado en diversas evaluaciones ambientales, sin que la autoridad haya cuestionado jamás si debía haber ingresado al SEIA

Por otra parte, el Molino 22 ha sido descrito o mencionado como situación base o previa en diversos proyectos de la Planta La Calera, que han sido sometidos a evaluación ambiental. Lo anterior, da cuenta que mi representada ha actuado sin ocultamiento respecto de la existencia de este molino en forma previa al SEIA y, en todos estos años, las autoridades que han evaluado los proyectos y las autoridades que han fiscalizado a mi representada, jamás han cuestionado que dicho molino debía someterse al SEIA.

Sin perjuicio que, la sanción asociada a la elusión del SEIA sólo aparece con posterioridad a la reforma legislativa introducida en el año 2010, -vigente desde diciembre

¹⁶ Se adjunta en Anexo 3, Memorandum Internos de fecha 12 de noviembre de 1998 que da cuenta de lo indicado.

de 2012-, la obligación legal de someterse al SEIA se genera en abril del año 1997 y, en dicha época, cuando las actividades no estaban evaluadas se discutía sobre ello en las evaluaciones ambientales posteriores, incluyéndoselas normalmente en ellas. Pues bien, nada de eso ocurrió en los numerosos procedimientos de evaluaciones ambientales a los que se sometió posteriormente mi representada, en varios de las cuales se dio cuenta de la existencia de dicho molino y jamás se solicitó incorporarlo en dichos procedimientos.

Al respecto, véase los siguientes procedimientos de evaluación:

- Proyecto Utilización de combustible alternativo en horno 8 de la fábrica Cemento Melón en La Calera", cuyo EIA fue calificado favorablemente en lo ambiental por medio de Resolución Exenta N° 19, del 18 de enero de 1999 de la COREMA de la Región de Valparaíso: En el EIA de dicho proyecto se hace referencia al EIA del Molino 22 en la línea de base de Hidrogeología y Ruido. También en sus Anexos, en lo que dice relación con el sistema de operación de la planta. Debemos hacer presente que según la información contenida en el expediente del sistema electrónico en el SEIA, este proyecto fue sometido a evaluación ambiental, en diciembre de 1997, durante la construcción del molino 22, y ninguna autoridad reparó o cuestionó el hecho que dicho molino debió someterse al SEIA. Es más, se reconoció dicho Molino como situación base para la evaluación de impactos.
- Proyecto "Utilización de Neumáticos como Combustible Alternativo en el Horno N° 9 de la Planta La Calera de Cemento Melón", cuyo EIA fue calificado favorablemente en lo ambiental mediante Resolución Exenta N° 179/2002 de la COREMA de la Región de Valparaíso: En el EIA se menciona al Molino 22 al describir el proceso de molienda (Capítulo 2 "Descripción de Proyecto", considerando 2.3.4 "Molienda de Cemento" y en la figura 2.3.4-1, diagrama de bloques del proceso de fabricación de cemento) y también en la Línea de Base de Hidrogeología y Suelo. Además, en la RCA 179/2002, se describe brevemente como situación base la operación de molienda.
- Proyecto "Uso de Carbón de Petróleo en los Hornos 8 y 9 de la Planta Industrial La Calera de Empresas Melón S.A", cuyo EIA fue calificado favorablemente en lo ambiental, mediante Resolución Exenta N° 48/2004 de la Dirección Ejecutiva de la CONAMA de la Región de Valparaíso, que se pronuncia sobre recurso de reclamación interpuesto en contra de la resolución que calificó desfavorablemente el proyecto (Resolución Exenta N° 54/2003 de la COREMA Región de Valparaíso): Se menciona el Molino 22 en el EIA (Capítulo 2 "Descripción de Proyecto", considerando 2.4.3 "Molienda de Cemento" y en la figura 2.4.3-1, diagrama de bloques del proceso de fabricación de cemento) al describir el proceso y luego también en la RCA 54/2003.
- Proyecto Optimización en el Coprocesamiento Planta la Calera, cuyo EIA fue calificado favorablemente en lo ambiental por medio de Res. Exe. N° 191/2005 de la COREMA de la Región de Valparaíso: El considerando 4.2 de la

RCA 191/2005 se refiere a la Descripción General de las Instalaciones y Procesos Actuales en la Planta La Calera y entre ellos el Cons. 4.2.1 señala: *“La caliza es dosificada químicamente junto a otros constituyentes menores, a dos molinos de bolas, para su secado y molienda, con lo que se produce una mezcla que se denomina crudo, bien pulverizada y de composición uniforme, que luego se alimenta a ambos Hornos (...) Posteriormente este material es secado y molido en dos molinos de bolas, generando el subproducto denominado crudo. Luego, el almacenamiento del crudo se realiza en doce silos, cuya capacidad total es de 8.000 (ton)”*.

De este modo, en las distintas evaluaciones ambientales que fue objeto la Planta Calera entre los años 1997 y 2005, se presentó a la autoridad ambiental como situación existente la operación del Molino N° 22, cuestión que nunca fue discutida por dicha autoridad ni por ninguna otra.

En este punto, es especialmente relevante los criterios de eficacia y coordinación que deben emanar de la administración del Estado, porque cuando todos los Servicios Públicos con competencia ambiental, entre ellos los que debían fiscalizar el cumplimiento de la normativa ambiental, tenían pleno conocimiento de la existencia y luego de la operación de este molino desde el año 1997, incluso durante su fase de construcción, y jamás cuestionaron que este fuera posterior a la entrada en vigencia del SEIA. No es posible entender que, luego de más de 20 años en que de modo transparente se ha dado cuenta de la existencia de este Molino 22 - e incluso en un EIA coetáneo a su construcción- una nueva autoridad cuestione la existencia de dicha obra.

III. ANTECEDENTES DE DERECHO

1. Acerca de la Entrada en Vigencia del SEIA

La Ley 19.300 fue publicada el día 9 de marzo de 1994, y establecía en su artículo 8 que los proyectos o actividades individualizados en el artículo 10 debían someterse al SEIA, **de manera previa a su ejecución o modificación.**

La vigencia de la obligación precedentemente indicada, se encontraba sujeta a la entrada en vigencia del Sistema de Evaluación de Impacto Ambiental, el cual según lo dispuso el artículo 1° transitorio¹⁷ de la Ley 19.300, sólo entró en vigencia al momento de la publicación en el Diario Oficial del D.S. N° 30/1997 del MINSEGPRES (en adelante indistintamente como el “RSEIA” o el “RSEIA original”), que fue efectuada **el día 3 de abril de 1997**. De tal manera que, la obligación de ingresar al SEIA sólo se hizo exigible a partir de dicha fecha.

En consecuencia, sólo se encuentran obligados a ingresar al SEIA aquellos **proyectos que hayan iniciado su ejecución o modificación, de manera posterior al 3 de abril de**

¹⁷ “Artículo 1° Transitorio.- El sistema de evaluación de impacto ambiental que regula el Párrafo 2° del Título II de esta ley, entrará en vigencia una vez publicado en el Diario Oficial el reglamento a que se refiere el artículo 13”.

1997, fecha de entrada en vigencia del SEIA. A *contrario sensu*, no requieren ingreso obligatorio al SEIA, aquellos proyectos que hayan iniciado su ejecución de manera previa a la entrada en vigencia del SEIA, esto es, con anterioridad al 3 de abril de 1997.

Ahora bien, no obstante lo anterior, ni la ley ni el RSEIA de aquella época, definieron qué debía entenderse por “proyectos o actividades existentes”, ni menos otorgaron una definición de “ejecución” de proyecto o actividad.

Ratificaba lo anterior, que el mismo RSEIA establecía que las fases de EIA eran: i) Levantamiento de información; ii) Construcción; iii) Operación; y iv) Cierre. En efecto, el artículo 12 letra c.2. del mismo decreto, señalaba que los EIAs debían contener: “*La descripción de la etapa de levantamiento de información de terreno, señalando las acciones y obras necesarias para la recolección de datos, en caso de ser procedente*” (lo destacado es nuestro). Es decir, también consideraban como parte de la ejecución de un proyecto o actividad, la realización acciones o medidas sin carácter material.¹⁸

Por lo tanto, las disposiciones vigentes a contar del mes de abril de 1997, establecían como **inicio de ejecución de un proyecto o actividad, la realización acciones o medidas relacionadas con la fase de levantamiento de información y no necesariamente con el inicio de la fase de construcción o con la ejecución de obras materiales en dicha fase.**

Considerando lo anterior, en esa época, se interpretaron dichas disposiciones, en el sentido que un proyecto había iniciado su ejecución, cuando existían acciones para llevarlo a cabo, incluso antes de la construcción, tales como, la realización de estudios o actividades tendientes al desarrollo de los proyectos. De esta manera, si dichos estudios o actividades se ejecutaban a contar del mes de abril de 1997 significaba que el proyecto debía someterse al SEA. Por el contrario, si ellos comenzaban con anterioridad a dicha fecha, aunque las obras materiales comenzaran después, se entendió que el proyecto no debía ingresar al SEIA por ser preexistente al mismo.

En este sentido, si bien la mención a la etapa de levantamiento de información se eliminó en las versiones posteriores del reglamento, sirvió en su momento para zanjar las discusiones respecto de la entrada en vigencia, y exigibilidad del D.S. N° 30/1997 del MINSEGPRES (RSEIA Original). Ya estando el sistema en régimen, no se estimó necesaria mantenerla¹⁹.

Por otra parte, cabe hacer presente que dicha interpretación se condice con los criterios actuales establecidos por el SEA para entender el inicio de ejecución de un proyecto o actividad que cuenta con RCA, al aplicar las normas de caducidad de proyectos anteriores

¹⁸ Solo con posterioridad, con la entrada en vigencia del D.S. 95/2001 del MINSEGPRES, que modificó el texto original del RSEIA, incorporó en el art. 2 letra b) una definición de “ejecución” de proyecto o actividad como: “*realización de obras, acciones o medidas contenidas en un proyecto o actividad, y la adopción de medidas tendientes a materializar una o más de sus fases de construcción, aplicación u operación, y cierre y/o abandono” (lo destacado es nuestro). Es decir, se entendía como ejecución de un proyecto o actividad no solo la realización de obras materiales, si no también acciones o medidas que no tengan dicho carácter.*

¹⁹ No obstante ello, no pueden imputarse infracciones sobre la base de regulaciones posteriores a la fecha en que se produjeron los hechos.

al nuevo RSEIA. En dicho criterio, se considera como inicio de ejecución de proyecto, las gestiones y medidas realizadas por el titular, y no necesariamente la realización de obras materiales²⁰.

A partir de lo expuesto en los párrafos anteriores, según se pasará a explicar en los números siguientes, el Proyecto del Molino 22 corresponde a un Proyecto preexistente a la entrada en vigencia del SEIA, por lo que no tenía la obligación de someterse al mismo.

2. El proyecto del Molino 22 no debió someterse al SEIA por ser preexistente

Tal y como se expuso en los Hechos de esta presentación, el inicio del proyecto Molino 22 comenzó hace 24 años, considerando todas las acciones previas a su construcción y operación. Es decir, teniendo en cuenta que en la época en que se comenzó con la ejecución del proyecto Molino 22 no estaba vigente el RSEIA y, por lo tanto, tampoco el procedimiento del SEIA, por lo cual Melón no tenía la obligación de someter el proyecto del Molino 22 a evaluación ambiental.

En efecto, cuando entró en vigencia el Reglamento y el SEIA, Melón ya había:

- **Tomado la decisión de invertir en el Molino en 1995**
- **Aprobado la inversión en 1996**
- **Encargado la elaboración del EIA 1996**
- **Efectuado las gestiones con la DOM para la aprobación de las obras preliminares 1996**
- **Iniciada la Licitación y se habían recepcionados las ofertas para la elaboración del proyecto de ingeniería y su construcción en 1996**
- **Adjudicado y suscrito el contrato para la construcción del proyecto en el primer trimestre de 1997**
- **Iniciado la primera obra material, relacionada con la preparación terreno, mediante el retiro de carbón de la cancha en donde se construiría el Molino (dichas obras se iniciaron en marzo de 1997)**

Recordemos que estos equipos son complejos, se requiere ingeniería y construcción especializada. Por ello sus costos son elevados (a esa época fueron del orden de US\$31,5 millones), y su construcción normalmente dura unos 18 meses. De esta manera, si pensamos que el Molino comenzó a operar en octubre del año 1998, es claro que su construcción material debió comenzar en el mes marzo de 1997, y sus etapas de estudios de terreno, comunicaciones a las autoridades de la época, etc., necesariamente fueron previas a dicha época, configurándose entonces el inicio de ejecución con mucha anterioridad a la entrada en vigencia del SEIA.

Ratifica lo anterior que, entre los fundamentos del cargo se encuentre la existencia de un EIA del Molino del año 1996 que habría sido entregado por Melón a la SEC. En efecto,

²⁰ Ord. N°142034/2014 de fecha 21 de noviembre de 2014 de la Dirección Ejecutiva del SEA que contiene el Instructivo sobre "Caducidad de la Resolución de Calificación Ambiental" por medio del cual se uniforman los criterios existentes respecto a la caducidad de una RCA.

la existencia de dicho documento (que según se indica sería de diciembre de 1996), viene a ratificar lo señalado por Melón en cuanto a que el inicio de ejecución del Molino es previo a la entrada en vigencia del SEIA. La existencia de dicho EIA da cuenta de las gestiones y acciones que se realizaron en dicha época con la CONAMA, a las cuales se refiere el Memo Interno de fecha 17 de junio del año 1996, del sr. Morris Green dirigido al CEO de la Compañía, don Richard Cheney.

De esta manera, los documentos citados, y que se acompañan a esta presentación, permiten acreditar las constantes y transparentes gestiones realizadas por Melón ante las autoridades de la época (CONAMA y de la Dirección de Obras de la Municipalidad de La Calera) respecto del proyecto y de las acciones a desarrollar.

Por lo tanto, dado que el proyecto del Molino 22 ya había comenzado su ejecución, no solo por medio de acciones y medidas, sino también por medio de la ejecución de obras materiales, no correspondía en aquella época que ingresara obligatoriamente al SEIA.

3. Tiempo transcurrido desde el inicio de operación del Molino

La formulación de cargos en contra de Melón no resulta razonable, considerando el tiempo transcurrido desde el comienzo de ejecución del proyecto y, además, desde su operación. En efecto, han transcurrido 24 años desde los primeros estudios y gestiones desarrolladas con la autoridad y 23 años desde el inicio de las obras materiales de construcción y la firma de sus contratos de ejecución²¹.

Este último punto no deja de ser importante, porque sólo a partir de la reforma del año 2010, la Ley 19.300 incorporó que dentro de la descripción de la línea base de un proyecto deberían considerarse las RCA de proyectos existente, y no aprobados. Pues bien debemos hacer presente que la evaluación del año 1997, referida al uso de combustibles alternativos en el entonces existente Horno 8, mi representada citó el EIA del Molino que a esa fecha se encontraba en construcción, al describir la Línea de Base de Ruido y de Hidrología. De este modo, se asumió en esa evaluación como situación base la existencia del señalado Molino 22, lo cual no fue cuestionado por la autoridad. Si el proyecto no hubiere sido preexistente a la obligación de someterse al SEIA, la autoridad no habría podido reconocer dicha situación y debería haberlo incluido como adicional en la evaluación, cuestión que no hizo, sino que reconoció la calidad de preexistente.

Por otra parte, la SMA indica en la formulación de cargos que Melón no ha logrado acreditar con documentos fehaciente tales como: facturas, órdenes de compra, etc., que el proyecto se haya iniciado con anterioridad a la entrada en vigencia del SEIA, cuestión que nunca se ha indicado a Melón previamente. Por otra parte, en dicha argumentación, la SMA no toma en consideración que no existe obligación legal de guardar por tantos años

²¹ Además, en todos estos años, la propiedad de Melón ha cambiado en tres oportunidades. Siendo en la década del noventa, su dueño la empresa inglesa Blue Circle, luego la francesa Lafarge y actualmente el grupo peruano Breca.

documentación como la que se requiere para acreditar los hechos, por lo cual, no parece razonable que se exijan en esta oportunidad. Ello significaría que todas las actividades económicas se vieran en la necesidad de guardar infinitamente la documentación que dé cuenta de la ejecución y desarrollo de sus actividades.

No obstante lo anterior, mi representada en estos días ha logrado encontrar información adicional a la ya presentada a la SEC. Por lo anterior, en este escrito damos cuenta de la información acompañada y de la nueva referida anteriormente, las cuales en nuestra opinión permiten acreditar de modo inobjetable que el proyecto de mi representada inició su ejecución con anterioridad a la entrada en vigencia del SEIA.

4. Falta de Vinculación del Cargo N° 1 en Relación a los Demás Cargos

El Cargo N° 1 por una supuesta elusión de ingreso al SEIA del Molino 22, no presenta una sustancial vinculación con los demás cargos formulados, los cuales, principalmente, se relacionan con la operación misma del Horno N°9 de Clinker, sin que ninguno de ellos, en específico, diga relación con el Molino 22 y su operación.

De igual forma, los requerimientos de información asociados a las fiscalizaciones no se relacionan de manera directa con el Cargo N°1 y, tal como se señaló, la SMA no solicitó en ninguna oportunidad antecedentes relativos al Molino 22, ni menos a la fecha de inicio de dicho proyecto, únicamente mediante requerimiento de la SEC se solicitó información, cuya insuficiencia (a juicio de la Autoridad) no fue informada a Melón.

En resumen, respecto del Cargo N° 1 relacionado con una supuesta elusión de ingreso al SEIA del proyecto del Molino 22 de la Planta La Calera de Melón, solicitamos a usted tener presente lo siguiente:

1. Que el Cargo N° 1 formulado a Melón por la SMA, correspondiente a una supuesta elusión de ingreso al SEIA del Molino 22 de la Planta La Calera, no tiene justificación, **en tanto no se configura dicha infracción.**
2. Como dan cuenta los antecedentes expuestos, el proyecto del **Molino 22 comenzó su ejecución con anterioridad a la entrada en vigencia del SEIA**, por lo tanto, Melón no se encontraba obligado a someterlo a dicho sistema. Por lo demás, el Molino 22 correspondió a un reemplazo de equipos, por cuanto vino a reemplazar a otros 3 molinos que operaban a dicha época en la Planta. **En consecuencia, no existiría la elusión imputada a Melón en el Cargo N°1.**
3. Entender algo distinto, sería **afectar el principio de confianza legítima que deben tener los regulados respecto de los actos de la administración del Estado.** Melón, ha sometido a evaluación ambiental 5 proyectos relacionados con la Planta La Calera. Las autoridades con competencia ambiental, en ninguna de dichas evaluaciones ambientales han formulado observaciones respecto de la necesidad de someter a dicho procedimiento el Molino 22. Incluso, en algunas de estas evaluaciones, se ha declarado como situación base de las mismas la operación del

Molino 22. Adicionalmente, el Molino 22 y específicamente su EIA, fue presentado como situación base para la evaluación ambiental de un proyecto presentado por mi representada en diciembre del año 1997, sin que su pre-existencia al SEIA fuere cuestionada.

4. Adicionalmente, tanto las fiscalizaciones como los requerimientos de información adicionales de la SMA a la Planta Calera, se encontraban dirigidos a otras materias fiscalizables y no al Molino 22 y su supuesta elusión de ingreso al SEIA. Únicamente, mediante un requerimiento de la SEC, fue solicitada información relativa al inicio de operación y construcción del Molino 22, con lo cual la información contenida en la formulación de cargos, es incompleta.
5. Además, **dada la gravedad de la imputación, y la falta de conexión sustancial con los demás cargos imputados en el presente proceso sanción, mi representada se ve obligada a presentar descargos antes que un Programa de Cumplimiento (PdC)**, dado que pone en tela de juicio la legalidad de instalaciones que jamás cuestionadas. En los hechos limita profundamente la posibilidad de presentar PdC.
6. En la misma línea, el hecho que la SMA no haya efectuado requerimientos directos, ni que la SEC haya indicado la presunta insuficiencia de los documentos acompañados, **genera que Melón no haya tenido la oportunidad de complementar la mencionada información.**

Sin otro particular, saluda atentamente a usted,



Iván Marinado Felipos
p.p. Melón S.A.

Adj.: Para efectos de un adecuado análisis de los hechos, se acompañan a esta presentación los siguientes documentos:

1. Anexo N°1: Se adjunta, extracto de la Memoria del año 1996, donde aparece la presentación del presidente del Directorio, señor Jorge Carey. En dicho documento se expresa en su parte pertinente, que se da “comienzo a la segunda etapa con el llamado a licitación para la construcción y montaje de un nuevo molino de cemento”, haciendo referencia al actual Molino 22. .
2. Anexo N°2: Se adjunta copia del documento Capital Expenditure Authorisation Request. Mediante este documento del año 1996, se aprueba la decisión de invertir en el proyecto del Molino 22, por un monto de 31,5 millones de dólares.
3. Anexo N°3: Se adjunta documento consolidado que contiene los siguientes Memorándum Internos:
 - Memorándum Interno de fecha 17 de junio del año 1996. Este memo, da cuenta que sr. Morris Green dirigiéndose al CEO de la Compañía, don Richard Cheney, le informa que se reunió con personal de CONAMA durante el mes de mayo de ese año y que la empresa de ingeniería CADE – IDEPE habría comenzado a trabajar en el EIA del Molino 22, el 20 de mayo del año 1996. Además, señala

- una visita del jefe de obra de la I. Municipalidad de La Calera a la Planta el día 11 de junio del mismo año.
- Memorándum Interno de fecha 19 de agosto del año 1996. Mediante el cual, el sr. Morris Green, informa al Sr. Richard Cheney que se han seleccionado seis participantes para la licitación que se desarrollará respecto del diseño y construcción del molino, dando cuenta de cuales eran. Hacemos que el sr. Richard Cheney era el Gerente General de la época y el sr. Morris Green, era el Gerente de Operaciones de Planta La Calera. En dicho Memo, además se da cuenta de los primeros acercamiento con el jefe de obra de la I. Municipalidad de La Calera, en relación con la obtención del permiso de construcción (“Aprobación en Principio”).
 - Memorándum Interno de fecha 16 de diciembre de 1996. Este Memorándum da cuenta que las empresas Polysius y FLS de Londres entregarían su propuesta técnica final para ese mismo día 16 de diciembre, y la propuesta financiera para el 23 de diciembre.
 - Memorándum Interno de fecha 23 de enero de 1997. Este Memorándum da cuenta que el estudio de impacto ambiental elaborado por CADE – IDEPE habría sido recibido por la empresa en diciembre de 1996, y enviada a CONAMA para su visto bueno a fines de ese mismo mes, para luego ser remitida a la Dirección de Obras de la I. Municipalidad de La Calera. Además, se informa que finalmente el proyecto será asignado a la empresa Polysius.
 - Memorándum Interno de fecha 21 de abril de 1997. Este Memorándum da cuenta que de la primera obra material, consistente en el retiro de la cancha de carbón para hacer los estudios de suelo.
 - Memorándum Interno de fecha 15 de mayo de 1997. Este Memorándum da cuenta de la continuación de los trabajos asociados al retiro de la cancha de carbón y además del término del estudio de suelo por parte de Comin (contratista local).
 - Memorándum Interno de fecha 21 de agosto de 1997 que da cuenta de la fecha de emisión del permiso de construcción.
 - Memorándum Interno de fecha 12 de noviembre de 1998, que da cuenta de la puesta en marcha del Molino 22 con fecha 20 de octubre de 1998.
4. Anexo N°4: Carta de Validación de Condiciones de Contrato de fecha 14 de febrero de 1997 de don Pedro Pablo Gutiérrez abogado de Carey & Cia, que envía a don Paul Clark de Cemento Melón.
5. Anexo N°5: Contratos de Compra y Construcción, consistentes en:
- Master Agreement
 - Local Contract
 - Supply Contract





ANEXO 1

Anexo 1 – Extracto de Memoria Anual 1996

MEMORIA Y BALANCE GENERAL 1996

En la División Cemento es importante destacar que el plan de desarrollo de tres etapas, anunciado en 1995, se ha ido implantando conforme a lo previsto. De esta forma, durante el ejercicio se inició la construcción del terminal para cemento y clinker en el Puerto de Ventanas y se dio comienzo a la segunda etapa con el llamado a licitación para la construcción y montaje de un nuevo molino de cemento. Estas inversiones, que estarán operativas a mediados del presente año y en junio de 1998, respectivamente, aumentarán la capacidad de producción a aproximadamente 2.5 millones de toneladas, lo que nos permitirá respaldar nuestro liderazgo en el país con un esquema operativo-comercial de mucha flexibilidad, capaz de competir muy eficazmente y enfrentar la fuerte y creciente competencia interna y externa. La tercera etapa de este plan de desarrollo contempla la instalación de una nueva fábrica de cemento en los inicios del siglo XXI para lo cual, durante el transcurso de 1997, se decidirá sobre su localización.

Estamos convencidos de que el plan descrito es la estrategia de desarrollo correcta, por cuanto permitirá un alto grado de utilización de la nueva planta de cemento cuando entre en funcionamiento, la que será financiada con una estructura basada en recursos propios. De esta forma, no pondremos a nuestros accionistas en una posición de riesgo innecesaria en un mercado cada vez más

Debo destacar también que, durante el presente ejercicio, se materializó el proceso de fusión de los activos industriales entre nuestra filial Emasil S.A. y Bomasa S.A., dándose origen a Bomasil S.A. Para nuestra filial, los principales beneficios obtenidos apuntan a incorporar mayor tecnología a los procesos productivos, un aumento de los volúmenes de producción y una estructura de costos más reducida, lo que le permite enfrentar eficazmente el mercado de tableros en los que participa. Así, los resultados obtenidos en 1995 se revertirán puesto que la nueva sociedad rápidamente ha equilibrado su situación financiera.

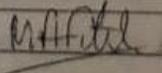
Los resultados financieros logrados permitieron repartir durante el ejercicio de 1996 \$ 11.403 millones como dividendos provisorios y propondremos a ustedes, en la próxima junta ordinaria, pagar un dividendo provisional ascendente a \$ 4.000 millones.

Una vez más deseo resaltar el alto nivel de las relaciones laborales en cada una de nuestras empresas, lo que ha permitido concentrar los esfuerzos en obtener los resultados descritos. Existe un pleno reconocimiento de la administración que sólo con un personal bien motivado, y cada vez más capacitado, es posible enfrentar satisfactoriamente los desafíos del futuro.

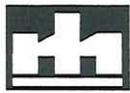

Jorge Carey T.

ANEXO 2

Anexo 2 – Capital Expenditure Authorisation Request (Original)

| CAPITAL EXPENDITURE AUTHORISATION REQUEST: SUMMARY | | | | | CEAR 1 | | | |
|--|----------------------|---|----------------------------------|-----------------------------------|------------------------------|--|---------|---------|
| OPERATING GROUP | BUSINESS UNIT/COY | LOCATION/DEPARTMENT | CAPITAL PLAN | REVENUE PLAN | CAP. PLAN REF. | | | |
| CEMENTO MELON | CEMENT DIVISION | LA CALERA | US\$ 25.0 m | | | | | |
| PROJECT TITLE | | | CAP. REQUESTED | REVENUE EXP. | CAP. AUTH N° | | | |
| INSTALLATION OF A NEW CEMENT MILL AT LA CALERA | | | US\$ 31.5 m | | | | | |
| DESCRIPTION OF PROJECT AND SUMMARY OF BENEFITS | | | | | | | | |
| <p>The proposal covers the installation of a new 4200 Kw Cement Mill in La Calera to allow Melon to meet the increasing demand for cement in the Chilean market. The mill would be fed initially with imported clinker and the installation represents the next step in Melon's phased capacity expansion plans, to be followed at the appropriate time by additional clinker and milling capacity.</p> <p>The benefits attributable to the project are that the mill in Calera gives a better economic return than either imports of pozzolanic cement or a mill installed in another location. In addition, putting the mill at Calera will reduce the plant's dependency on Mill 21 and the 3 fifty year old mills and allow for greater flexibility in cement production.</p> <p>The project was included for authorisation in the 1996 Capital Budget with expenditure over the 3 year period covered by the plan. The authorisation is being advanced by some 6 months due to the higher than forecast levels of demand.</p> | | | | | | | | |
| FINANCIAL APPRAISAL | | | Probability % | DFC Real Rate of Return % | Discounted Payback Prd - Yrs | NPV @ % US\$ m | | |
| Note: All the returns stated must be real i.e. calculated at constant year 0 prices. | | | | | | | | |
| Base Case i.e. Best Estimate | | | N/A | | | | | |
| Versus pozzolanic cement imports | | | | 34.2% | 3.4 | 10.3 | | |
| Sensitivity 1: Description | | | | | | | | |
| Versus a new mill in Las Casas | | | | 105.1% | 1.4 | 7.9 | | |
| Sensitivity 2: Description | | | | | | | | |
| Capital Cost + 10% | | | | 29.3% | 3.6 | 8.3 | | |
| Sensitivity 3: Description | | | | | | | | |
| Imported clinker costs + US\$ 5 per tonne | | | | 31.2% | 3.5 | 8.4 | | |
| EFFECT ON BUSINESS UNIT'S C F R O I | | | YEAR 0 | YEAR 1 | YEAR 2 | YEAR 3 | | |
| (Base case, excluding goodwill, for projects which are material to the business - see procedure) | | | % | % | % | % | | |
| | | | Without this project | | | | | |
| | | | With this project | | | | | |
| COMPARISON WITH CURRENT CAPITAL PLAN | | | Capital Expenditure Phasing '000 | | | | | |
| | Date of Commencement | Date of Operation | Total Capital US\$ '000 | Prior Yr | Current Yr | 1997 | 1998 | Sub Yrs |
| Plan - This Project | N/A | N/A | 25,000 | | 100 | 11,500 | 11,500 | 1,900 |
| - Other Funding | | | | | | | | |
| (Give details above) | | | | | | | | |
| This Request | N/A | N/A | 31,500 | | 7,900 | 23,600 | | |
| Cumulative (bulk Grant Only) | | | | | | | | |
| LEVEL OF APPROVAL | | Signature | Date | TECHNICAL CONCURRENCE | | Signature | Date | |
| Location/Departmental Manager | | | | B.C. Technical C/ITD/Property | | | | |
| BU/CoY General Manager | |  | 18/2/96 | Environmental | | | | |
| Director | | | | BU/CoY - Senior Financial Officer | | | | |
| Chief Executive | | | | O.G. Chief Financial Officer | |  | 18/4/96 | |
| Group Managing Director | | | | Taxation Department | | | | |
| BCI Exec/Board (CoY Sec) | | | | Corporate Review | | | | |
| | | | | Finance Director | | | | |

ANEXO 3



**Cemento
Melón**

Fecha : 17 de junio de 1996 N° 01/96
A : Mr. R. Cheney
De : M.Green
CC. : JMM,RAA,MAF,AS,BS,Idel R, M.HISLOP.
Ref. : **Gerencia Ampliación - May monthly report** - including the first half of June.

1) **RAW MATERIALS SUPPLY STUDY.**

- See G.Hughes's May monthly report.(copy attached)
 - **Selected points of interest.**
 - **Ceci 3.**
 - An "option to purchase" contract for the Ceci 3 mining rights was signed with the owners (Mssrs. Botto and Bossard) on 24 May.
 - Following discussions between G.H and Geotec Boyles and between G.H and Sr. Botto, the initial stages of the drilling campaign were agreed and G-T Boyles started drilling at Ceci 3 on 10 June. A second rig is expected to be in operation by about 24 June assuming solutions are found to access and water supply problems. All possible alternatives to get the second rig into operation A.S.A.P. will be examined by G.H.
 - **Patagua.**
 - It is planned to start drilling at Patagua by about end-June/early July, again utilizing two drillrigs at the same time.
- Prices from other drilling companies are being checked for comparison with G-T Boyles charges.

Geoworks.

- H. Echaurren agreed to reduce his charges (for his own services) and a contract should be signed by 14 June.

- Geological consultancy rates (I.S.'s memo of 29/4/96 to R.C):-

SRK (Santiago) quoted US\$5000/month minimum for an experienced geologist, to which must be added expenses (travelling, accomodation in V region, etc.). H.E's new rates are US\$6200/month, but this includes providing his own transportation, accomodation (in V region) and office (incl. certain admin. backup) facilities.

US\$6200/m = US\$310/day = US\$39/hour, which compares with US\$72/hr for a section mgr. at Ravena (and US\$36/hr. for a site geologist). ?

Geoworks total charges (H.E plus his geological team and back-up) amount to US\$950/day (US\$310+640 resp.) which is US\$16/metre drilled - on basis of 2 drillrigs in operation per site, with a service factor of 75% on a nominal 40m/day drilling per rig. Operations on 2 sites at the same time, each with 2 drillrigs (at a nominal 40m/day/rig), would reduce unit rates to appreciably less than US\$16/metre drilled - compared with rates quoted by I.S. between US\$18 - 21/m.

It is the responsibility of C.Melon's managers to ensure (directly and/or indirectly, ie through the Geoworks team) that this nominal drilling rate of 40m/day/rig at 75% service factor is attained and that H.E and Geoworks (and G-T Boyles) are kept loaded with drilling/geological work to the maximum that they can sustain.

- Other companies offering geological consultancy services will be asked to quote for specific work and their rates, etc, compared to Geoworks.
- It is hoped that by mid-June current negotiations with H.E will result in a reduction in the rates charged for his geological team and backup.

Quilimari.

- A note was sent to Sr. P.P. Gutierrez (Carey and Cia) at mid-month (May) explaining the background and current situation at Quilimari and with the contract negotiations (for an "option to purchase" their mining rights).
- RE/MG met with Quilimari's owner, Sr. H.Ibarra, on 24 May to inform him that C.Melon did not intend to ratify the previously signed contract, ie. the contract was null and void and he was at liberty to try to sell his mining rights to any other party.

- C.Melon now needs to take the maximum tonnage of limestone from Quilimari so as to recuperate the US\$175000 advance from Sr. Ibarra A.S.A.P. (The "mechanism" for recovery of this money is that C.Melon will only pay 50% of the agreed limestone price, and 100% of the freight, until the advance has been fully repaid).
- J.Cabello (H. Ibarra's geological consultant) made contact on 3 June to say that H.I and himself had restarted discussions with Bio-Bio and that some Mexicans and Peruvians had expressed interest in Quilimari. Neither he nor H.I (previously) expressed concern that C.Melon had withdrawn.
- If/when their efforts to find another interested party fail to materialize, we will try to reopen discussions on an "option" (but on a different basis and on reduced terms).

- **Rocio.** - Geotecnica study (road routes out of Rocio).

- Following meetings with Geotecnica's engineers in early/mid May, the study started on 13 May - with a formal finish date 12 weeks later (although they will make every effort to complete it in 10 weeks). The cost is UF2998.
- Between 16-29 May, Geotecnica supplied basic information on numerous potential road routes between Rocio and Angostura, this being an essential element in the draft "Vizcachas presentation" prepared for R.C.
- In early June, Geotecnica engineers met with MR-GH-MG to discuss progress and to confirm certain facts/information relevant to the project.

- **Vizcachas** (Rino-Catedral)

- Negotiations to purchase their mining rights will be resumed on R.C's return to Chile in mid-June.
- A draft "presentation" document was circulated on 4 June (following the issue the previous week of a partially completed version).

The preparation of this document was asked for during a meeting with DL RC et al on 9 May.

- **Raw materials supply** to an updated Calera works (clinker only).
 - At the same 9 May meeting, clarification of the raw materials supply situation (basically from sources North of Calera) was requested - on basis of supplying the Calera works (with a proposed additional kiln installation of 400000 tpy capacity) for a further 25-30 years.
 - The 27 May report confirmed that (without much margin for error - in terms of grade and reserves tonnage) the expanded Calera factory could be kept supplied but at a high average US\$/t limestone price landed at factory.
 - GH and MR contributed the "reserves" and cost information, etc, as they did for the "Vizcachas" presentation.
- **Raw materials study** - revised forecast estimates
 - A revised programme, with costings, was circulated on 14 June (copy attached).
- **"Greater Ceci 3" area.**
 - Discussions were initiated on 12 June with Sr. Gustavo Andrade Cortes (co-owner with Sr. Alejandro Lucas Vicencias) regarding a possible "option" to purchase the mining rights to "Nipas", "Condor" and "Gaviotas". These 3 claims almost surround "Ceci 3" (with C.Melon's "Arco Iris", bought from these same two people about a year ago, and "Gris", owned by our Arco Iris quarry contractor, flanking the rest of the "Ceci 3" pertenencia) and all together this appears to be an area worth exploring in some detail. Our drilling/geological programme will cover this whole zone.
 - As a first step, Sr. Andrade gave permission for Geoworks/G.H to start surface sampling and mapping (on their 3 areas of mining rights) next week. Within 2 or 3 weeks we should know if those areas really are worth taking an "option" on. If so, we could offer Sr. Andrade and his partner, say, US\$100-125000 for an option, with the final price to be based in the range of US\$0.05-0.10 per tonne of extractable limestone*. 5 cent/t would be the minimum payable and 10c/t the maximum - depending on the average grade of the limestone encountered. The original US\$100-125000 would be set against the final price if C.Melon opted to buy the mining rights and would be forfeited if C.Melon declined to buy them. The results of all our geological work would be made available to Sr. Andrade.

* Using say nominal recovery rates of 50% for mineable limestone and 75% for quarryable. The range 5-10 c/t suggested is equal to 2.5-5 c/t of geological reserves (if mined).

- As soon as that option agreement was signed, Sr. Andrade would allow us to drill into "Condor" - which would be useful, because the second drill rig to be made operational at Ceci 3 (by about 24 June) will be in a convenient position to drill into "Condor" also (with minimum new road to construct and very little difference in platform positions).
- If/when we sign an option agreement with Sr. Andrade, the remaining option negotiation that C.Melon needs to enter into is with Sr. H.Jorquera, the owner of "Gris". The final stage would be the possible purchase of all the land covering the area of the mining rights, ie. Ceci 3, Nipas, Condor, Gaviotas, Arco Iris and Gris, and all owned by Mssrs. Andrade and Lucas Vicencias.

Other Areas.

- Following a meeting with the owners in late May, and weather permitting, GH will visit "Venus" (behind Rocio) before winter sets in.
- G.H will visit El Teniente to continue discussions with their geologists regarding "Las Leñas".
- G.H will finish and circulate the "final" Juncal report.
- Pucalan : The owners wish us to drill their deposit. We think it would be a waste of time and money and are trying to put them off (diplomatically).
- The Vallenar and Serena areas ("Alaska") are being evaluated for placing potential mining claims.
- Our Copiapo deposits : Discussions are ongoing with North (a Canadian mining company) who are assisting us in the technical evaluation of our deposit.
- Tunga Sur : G.H to visit, with J.Bondi.
- Peru : G.H is due to visit Peru next week (3-4 days) with Andy Healey.
- Arco Iris : Some geological (surface) work was completed last week by Geoworks (about 2 weeks work).

Ian Shepherd's next visit.

- This has now been rescheduled for October.
- Mark Rookes (on U.K. leave between 14 June to 14 July) will meet with David Kay, I.S and N.Eastwood at Greenhithe for two days in early July.

- It appears that D. Kay may visit Chile in September.

Visit to Iquique area by I. Del Rio and M.G.

- Sr. Ricardo Aranguiz's deposits and factory were visited on 28 May and the deposit of Comercial Comacel (at Pisagua) visited on 29 May.
- Visit reports were circulated on 31 May and decisions taken (with MAF and RAA) not to proceed with either of these "opportunities".
- I del Rio has since been informed by Sr. Ricardo Aranguiz that he is now in discussions with Polpaico.

2) **VENTANAS TERMINAL PROJECT.**

- See C. Marriot's May monthly report.
- Clive Marriott visited UK for discussions with GECA and B.C.T engineers between 3-13 June.
- A progress meeting was held on 10 June with Mr. J.Phillips (GECA) and Mssrs. Dilhan and Imboden.
- The main points discussed were:-
 - The delay in GECA agreeing final contract details with Babcock-Puma (which we learnt the next day had finally been resolved, with BP due to start mobilizing/work this week and starting excavations for the dome foundations by day 11 of the programme).
 - Topography and layout : Agreement was reached on reference points.
 - Permisos : The many different permisos required were discussed and actions agreed.

There is a strong possibility that the Puchuncavi municipality's Jefe de Obras may demand an environmental impact study (which it seems can be carried-out in parallel with the construction work and should not cause any delay to the project. However, T. Leiva and R.Enos are studying the situation (with H. Dilhan).

- Access to the construction site : Clarification and agreement was reached. Provisional accesses will be used (but not the Eastern access) until the new road, parallel to the coast, has been completed - although H. Dilhan believes it will take about 4 months, to get the necessary permissions/clarifications, before construction work on that road can be started.

- M.Hislop asked (13 June) if C.Melon wished C.Marriott to accompany either Nigel Rees or Hugh Armitage plus the two GECA personnel on their visit to U.S.A to discuss the implications of the "change of company" (Dome Technology to Domtec International).

It was suggested that only the GECA engineers should visit Domtec Int initially, with maybe B.C/C.M personnel to visit later (independently).

- On 22 May it was decided to refer C.M's 8 May memo ("Ventanas - other than construction") to IBM/L.C - for consideration in their Logisticas project.

3) **MILL 22 PROJECT** : Draft tender enquiry documents.

- Detailed discussions have taken place with the plant mgr and his team and a joint response sent to David Baird and Murray Hislop on 10 June (see copy attached). It seems D.Baird is preparing a reply (but not yet received).

- The Calera municipality's Jefe de Obras visited the factory on 11 June and was given a presentation by C.Melon personnel and others* on 13 June - the objective being to receive the go-ahead from him A.S.A.P. for the project (construction) to proceed.

- The route of a new (or just uprated) Internacional road will be decided by month end it seems. A copy of the presentation given to BS/MG et al on 11 June by a local architect is attached.

The Calera municipality favour a route which might involve C.Melon in significant investment. The C.Melon response will need to consider "future relations" with the municipality in the case of us deciding either not to support the municipality or to oppose their preferred alternative.

- Contact was made with Conama personnel in early May and discussions continued throughout the month. Cade Idepe started work on the environmental impact study on 20 May.

- T. Leiva will be abroad between 17 July and 14 August. We will need to cover his "environmental" responsibilities during his absence.

* A computer company was employed to present an "Interactive" screened demonstration. That cost UF390.

4) **NEW FACTORY PROJECT.**

- J. Mora-Jensen (FLS) informed us (BS/MG) last week that although the contract to supply the Curico plant to Bio-Bio was signed "about a year ago, to date there had been little progress on the project".

He also stated that FLS were expecting to receive very soon an invitation to tender for a new factory for Polpaico. They are awaiting the tender enquiry document. (Obviously this is confidential information).

- Contact was made on 14 June with an agent re. a suitable plot of ground to be identified for a new C.Melon factory in the Angostura/San Francisco de Mostazal area. I del Rio assisted in putting together a "specification" for the ground.
- Good TV and press coverage (5 June) was given to C.Melon's expansion plans.

5) **LIME.**

No work was done on this subject during May/June.

6) **ORGANIZATIONAL.**

- The Gerencia de Ampliacion came into being on 29 April, when responsibilities for factory operation passed to Bob Sharman (Gerente Planta).

Office changes will take place during July probably. (Maybe in late June)

- M.G will be in U.K on leave between 22 June and 22 July. Meetings have been arranged with K.George/P.Overment for 26 June and with D.Baird (Greenhithe).

- Strategy and Vertical Integration:

The designated groups met to discuss these subjects on 31 May and 14 June and, as a result, a workshop has been arranged for 19 June.



M.Green

Fecha : 19 De Agosto 1996 N° 09/96
A : Mr. R.J. Cheney
De : M.Green
CC. : JMM, RAA, MAF, AS, BS, IdelR., M.HISLOP (GH MR, CM)
Ref. : GERENCIA AMPLIACION - JULY MONTHLY REPORT.

NB: There was no monthly report issued in June

1) **RAW MATERIALS SUPPLY STUDY.**

- See G.Hughes's July monthly report (copy attached).
- **Selected points of interest.**
- **Rocio** - Geotecnica study (roads out of Rocio).

We expect to receive Geotecnica's revised draft report (including additional road options not originally reported in their first draft) during the third week of August.

- **Raw materials study.**

M.Rookes and H.Echaurren will visit the Vallenar/Serena area in August, with the objective of identifying limestone deposits and hopefully placing mining claims as soon as possible. Details of first class limestone deposits owned by (metal) mining companies will also be noted.

With the help of Sergio Rivano, ex-geologist with Sernageomin (Servicio Nacional de Geología y Minería), all sites of potential interest (limestone deposits) between Vallenar to the south of Santiago will be investigated. S. Rivano will also assist us (possibly indirectly) in identifying deposits to the north of Vallenar.

- **Copiapó.**

North's preliminary technical evaluation/report should be received in mid-August.

- **Tunga Sur.**

G.H visited this deposit - which appeared a lot better, in terms of operation and reserves, than he had expected.

- **Peru.**

G.H submitted to Blue Circle a proposal of requirements to enable the Peruvian limestone reserves to be evaluated.

- **Ian Shepherd's next visit.**

- I.S will visit during w/c 23 September, primarily to view/discuss Coci 3 area, Vallenar/Serena/Copiapo area, Patagua, Rino/Catedral maybe, explorations in general - as well as Navio reserves, etc.

- **Visits to Greenhithe (L+MR)**

Both M.Rookes and M.Green met (separately) with I.Shepherd (and others in case of M.R) at Greenhithe during July.

2) **VENTANAS TERMINAL PROJECT.**

- See C. Marriott's July monthly report.
- Meetings were held with Fepasa (access through Enami's land at Ventanas) and Sr. O. Aitken (to discuss Geca's claims) on 30 July with C.M and R.Enos.

3) **MILL 22 PROJECT** (and clinker reception facilities, etc).

- D.Baird and J. Ediss visited Calera during very early July to assist and give guidance in the preparation of the tender enquiry document (using a B.C.T. draft as the basis). The final document was put together by month end (C.Marriott mainly) and given to the 6 chosen tenderers on 1st August. They have until 27 September to submit their offers, on a full turnkey basis.

The 6 tenders were:-

FLS, Polysius, Svedala, P.S.P, I.H.I and F.C.B. (the latter two companies later advised us that they would not enter a tender for the work).

- CadeIdepe are working on the environmental study and will meet with the Jefe de Obras (attached to Calera Municipality) in mid-August to discuss progress (together with TL and JL).
- M.Carrion (architect) submitted an offer to compile and present (to the Jefe de Obras) on behalf of C.Melon a submission requesting "Aprobacion en Principio" for this project. The intention is to negotiate an improved offer from M.C (additional content, with guaranteed success, for the same price - at worst) during August.
- On being recommended to do so (and accepting the necessity), it was decided to recruit a Project Manager specifically for this mill 22 project (thus allowing C.Marriott to concentrate exclusively on the Ventanas project).

B.Circle and local candidates are being evaluated.

4) **NEW FACTORY PROJECT.**

- 5 sites are due to be visited in the Angostura/San Francisco de Mostazal area on 6 August with Sr. M.Maturana (see copy of visit report attached).

5) **LIME.**

- See comment in the G.Hughes/M.Rookes monthly report attached.

6) **ORGANIZATIONAL.**

- M.Rookes took overseas leave between 14 June and 13 July and M.Green between 21 June and 22 July.

M. Green

M. Green



**Cemento
Melón S.A.**



1

Fecha : 16 December, 1996 N° 20/96
A : Mr. R.J. Cheney
De : M.Green
CC. : JMM, RAA, MAF, AS, BS, IdR, M.HISLOP. (GH, MR, CM, PC)
Ref. GERENCIA AMPLIACION - NOVEMBER MONTHLY REPORT

1) RAW MATERIALS SUPPLY STUDY.

- See G.Hughes/M.Rookes's November monthly report.
- Selected points of interest.
- Rocio - Geotecnica study (roads out of Rocio)

The main report and executive summary will both be issued before Christmas (see comments in the October monthly report).

Followings meetings with Geotecnica personnel during November, they were asked to prepare/present greater detail on the rail option.

M.R will investigate the situation (and potential) to route lorries down the "parallel" Cajon del Maipo road.

- Raw materials study (supply for a new factory).
- G.Hughes spent much of the month "in the field", in the area around La Serena most of the time (with S.Gawlick) but also at Copiapó (with H.Echaurren) and Vicuña and Ovalle (with F.Cortes).
- I.Shepherd visited (with G.H) the La Serena area for two days at mid-month and attended a review meeting on 18 Nov..
- Programme update (see last month's report)
- Patagua.

The geological report has been finished but will not be issued until after G.H's return from U.K in early January.

- Rocio (Exploration).

M.R will organize a programme of surface geological work (approx. 3 week's duration) to start about mid-December. H.Echaurren's geological team will carry-out the field work, which should be finished by early January.

- SAN JUAN ("Calle II/Pocito" - Argentina.)

A meeting with E.Gantz and the owner's geology consultant has been arranged for 19 December. The possibility of C.Melon buying all, or part, of the deposit will be discussed.

- La Serena (Los Alamos, La Marquesa , Arqueros, Leoncito, Palmira, etc. - ie. "Greater La Serena").

S.Gawlick spent most of the month investigating this greater La Serena area. A number of limestone deposits have been identified, varying in size from (potentially) 2-3 million tonnes to one at perhaps 40-50 million tonnes (although this latter deposit would not be easy/cheap to exploit). All the deposits found are already covered by mining rights (copper companies mostly).

S.G will continue the surface geology work in this area and is expected to finish the exercise by about mid-December. She will then spend about a week investigating a promising area about 100 kms north of La Serena.

The greater La Serena area will be evaluated (geologically and financially) as either a potential source to supply a new factory or as an alternative (or supplement) to Mina Navío (although it would be made-up of more than one deposit under exploitation).

- Copiapo and Vallenar.

H. Echaurren and his team have organized for two roads to be constructed (about 3.5 kms total) before year-end and to have enabled 300m total (minimum) of drillings to be carried-out at two positions in our Copiapo limestone deposit. The drillings should be completed before the first half of January.

- Ceci 3 option.

The geological report has been completed but will not be issued until G.H.'s return from U.K in early January. However, in his November monthly report he quotes only 330000t of 86% grade limestone or 2 million t of 75% grade stone being identified (these are in situ reserve estimates).

A meeting has been agreed with the owners of Ceci 3 (at their request) for 18 December.

- Las Leñas.

The proposed visit (to evaluate road/route options and costs principally) has been postponed until 16-17 December.

Discussions with Codelco have been arranged for early January, to investigate a possible purchase of (or joint venture to exploit) the deposit if we consider access to be feasible and relatively cheap.

- Venus.

Nothing to report. M.R to make contact with the owners, and to arrange a visit, during December.

- Copiapo (our metallic deposit)

No action taken during the month, although one of our neighbours there (Carolla copper mine) has given us much assistance in organizing the programme of road construction work mentioned above and they are currently drilling for copper very close to the western edge of our mining rights. Mantos Blancos are drilling a little to the south of our ground (from a Bio-Bio pertenencia).

- Rino/Catedral.

Nothing to report.

- Rocio - ground purchase.

The negotiations with Sr. von Plate are still ongoing.

- Geotecnica - permits/authorisations

This work continues.

- Silke Gawlick

S.G started work with G.H/M.R at mid-month on a 6 month secondment from Mina Navio.

- Quarry/mine conceptual designs.

The document prepared by M.R will be issued to (prospective) mining consultants during December and is the specification/scope of work against which we expect to receive 2-3 proposals to carry-out this study (to be finished by end March 1997).

2) VENTANAS TERMINAL PROJECT.

- See C. Marriott's monthly report.
- The accident (inside the dome) of 18 November has caused a delay to the project of about 8 days. Shotcreting (as compared to installing reinforcement bars) recommenced on 3 December.
- By 21 November it had become apparent that substantial work would be required to reinforce the jetty and that, besides the cost aspects, the Retamales analysis and report (still under preparation) would cause a delay to the project - which could well be important. As mentioned in C.M's report, it is this pipe conveyor installation (on the jetty) on which the critical path now hinges.
- By month end it was becoming apparent that the progress of the civil sub-contractors (Babcock-Puma) was slowing down - maybe caused by a "go-slow" tactic related to a dispute between B-P and GECA on payments.
- A major variation order (VO1 - one of 12 to date) for over US\$500000 was received in late November. This also requested a time extension (as although the GECA target date to finish the project is still 31 March 1997, Geca will be liable for liquidated damages of US\$1.45 million if the project finishes 10 weeks late).
- In the light of the four points mentioned immediately above (and the possible negative consequences of those), GECA were asked on 6 December to visit Ventanas "immediately" - to agree actions (and to ensure their implementation) to put the project "back on the rails". Meetings were agreed for 12-13-14 December with the project manager (G.Mills) and D.Bebb, the G.M of GECA's Handling Systems Division. Minutes of those meetings will be issued in due course.

3) MILL 22 PROJECT.

- See P. Clarke's monthly report.
- Following P.C's tender evaluation work with D. Baird and Greenhithe engineers (and meetings held with Polysius and F.L.S in London) it has been agreed that Polysius/FLS will submit their final technical offers by 16 Dec and their final commercial/price offers by 23 December.
- It may be possible by end December to either place a letter of intent or a work order for initial engineering to ensure we don't lose time on this project - with the contract itself being prepared by end-January. PC and O.Aitken (Carey y Cia) have already met to discuss a programme for preparing the draft contract.
- As also mentioned by PC, neither FLS nor Polysius will offer a full turnkey project.
- Following meetings with the acting Jefe Obra, the acting mayor, the (new) incoming mayor and the Jefe Obra's "representative" and the issue of two letters to the Jefe Obras (all during November), we should have received either the "aprobacion en principio" or a formal rejection by 3 December. As neither was received, C.Melon must lodge a notification of appeal within 15 working days of that date. However, messages from the new mayor and the Jefe Obras indicated that we will receive the "aprobacion en principio" before the date by which we would need to lodge an appeal.

4) NEW FACTORY PROJECT.

- Our agent is still attempting to come to an agreement with the owners of the ground at Angostura (Sr. Rubio and Don Max) on the terms of an option to purchase that ground.
- In mid-December another plot (a little further south) will be inspected to assess it's suitability as a factory site.
- Rail America (with Chilean partners) were successful in their bid to buy the state's northern rail network (announced on 28 Nov). We have arranged to meet them in December - to initiate talks on rail freight from the north of Chile to the central region.

5) LIME.

Bakovic and Balic's final report was received on 12 November.

- 6) GASANDES. - Access through our Las Casas land.

Nothing further to report.

- 7) OTHER MATTERS.

- The terms of a rental contract have been agreed with Fletcher Challenge (It has been confirmed that we have the legal right to sub-let the ground at our Rocio campsite).
- M.Hislop, P.Hawkesworth and H.Armitage visited the Vertanas site during November (I.Shepherd also visited).
- Gareth Hughes is due to return to work on 5 January (following U.K. leave).

M. Green

M. Green

MG/tvd.

Memorandum



GERENCIA

24 ENE 1997

ANTA

Fecha : jueves 23 de enero de 1997 N° : 18/97

A : Mr. R.J. Cheney

De : Morris Green

CC. : Sres. JMM,RAA,MAF,AS,BS,IdR,M.HISLOP (GH,MR,CM,PC)

REF. : GERENCIA AMPLIACION - DECEMBER MONTHLY REPORT.

1) RAW MATERIALS SUPPLY STUDY.

- See M.Rookes's December monthly report.
- Selected points of interest.
- Rocio - Geotecnica study (roads out of Rocio).

The executive summary and main report were received at Christmas, but as a result of discussions with Geotecnica some modifications were agreed and are to be included (before issuing the executive summary to all concerned). This summary will now be issued in mid-January, with copies (2) of the main report being kept on file in Ampliaciones.

For Geotecnica to complete this stage of the study, the onus is now on Cemento Melón to indicate "the preferred option" - so that Geotecnica can proceed to the conceptual engineering stage (of this preferred option only).

Due to doubts on the practicality of all the road options (and other possibilities that may become open to us), plus the fact that the rail option emerged as the best overall option economically (although of high initial capital cost), it is recommended that we advise Geotecnica to proceed to the conceptual engineering stage with the rail option.

- Raw materials study (supply for a new factory).

G. Hughes was on overseas leave during December.

- **Programme update** (see last month's report).

- **Patagua.**

No change.

- **Rocio (Exploration).**

The programme of surface geological work will now be started in early January.

Campsite repairs, etc, and general preparations were completed during December.

- **San Juan - Argentina.**

Catamutun offered the ground containing approx. 140 million tonnes of high grade (average >94-95% probably) limestone for sale at US\$22 million. Cemento Melon may enter a counter-offer (more than 10 times less) in January.

The Argentinian owners of the deposit have suggested a joint venture to produce very high grade lime (with part exported to Chile).

- **"Greater La Serena"**

Surface geological investigations were finished during December - with encouraging results (indicating perhaps about 100 million t of reserves, but not of very high grade). Alkali levels, etc, have yet to be checked. MR, HE and MG visited for an inspection of the area (with SG) before Christmas.

The mining rights situation is very complex, with nothing being owned by C.Melon. The area of the deposits could be connected relatively cheaply (about 7 km of new road) with Lambert - which has suitable "industrial land" available and is situated on the main N-S railway line.

The next stage is to carry-out a drilling programme - assuming we can negotiate access, etc.. Cobrex and Sr. Ramirez will be contacted in early January with a view to negotiating an option to purchase.

- **Copiapo and Vallena.**

MR, HE and MG visited Copiapo, for an inspection of the area of our mining rights (with a Geoworks geologist), before Christmas.

Two sections of road in our Copiapo deposit were prepared by month end and the first bore hole completed before Christmas. Drilling of the next bore hole will start on 3 January. First indications support the original view that we have a vast reserve of kiln feed limestone there, but very little high grade limestone (@ > 90% CaCO₃). Alkal and other analyses are awaited.

- **Ceci 3 option.**

The owners of Ceci 3 were told (informally) before Christmas that it looked very likely that Cemento Melon would not take up the option to buy their deposit.

They requested a meeting with G.Hughes (on his return in January) and an early, formal, decision from C.Melon of our intentions.

Notes prepared by G.Hughes following his meeting with the owners of Ceci 3 on 14 January are attached.

- **Las Leñas.**

Following a meeting with Codelco's Gustavo Sippa in early December a 3 day visit to Las Leñas (on horseback) was arranged before Christmas for M.R and M.G.

One area of the reserves examined probably contains about 50 million t, a good proportion of which would be high grade limestone, while other (fairly adjacent) outcrops might take the total to the 75-100 million t range.

G. Hughes will make the same trip in January, but will examine the deposit in greater detail. If he concurs with the initial view, and if we can reach an outline agreement with Codelco, the recommendation would be that we carry-out a drilling campaign.

The eventual construction of an access road looks quite feasible (although not easy). The main deposit lies between 3200 - 3500 m. altitude. 8 month a year operation would be possible perhaps.

See the attached document prepared by NR and G.H - "Las Leñas", dated 22 January.

- **Venus.**

Nothing to report.

- **Copiapo (our metallic deposit).**

MR has held preliminary discussions with Billiton Chile S.A re. Partera, Brujas, Condor and Quebrada.

- **Rino/Catedral**

Nothing to report.

- **Rocio - ground purchase.**

The purchase of 7 hectares of land, without water rights, from Sr. von Plate has been completed.

Discussions with Fundo Volcan are continuing.

- **Geotecnica - permits/authorisations.**

The final reports are expected to arrive in January (a draft version of most of the major report was received during December).

- **Quarry/mine conceptual designs.**

3 proposals have been received. The project will be awarded to one of the consultants about end-January.

2) VENTANAS TERMINAL PROJECT.

- See C.Marriott's monthly report (summary only this month).
- The dome (concrete construction) should be finished about mid-January (not including the head gear, etc).
- A number of meetings were held with GECA's David Bebb (Gen. Mgr. Materials Handling Division) and his team on 12-14 December and with O.Aitken (Carey and Cia) just before Christmas - to discuss project progress and probable timescale, the current situation and contractual issues. D. Bebb stated that back-up details to their claims/variations would be sent to C.Melon - prior to further meetings to discuss those specific matters proposed for January.
- There was no evidence to suggest that during his visit D.Bebb met with GECA's sub-contractors (and in particular with Babcock-Purina).
- By early January the most important aspects (i.e. problem areas) of the project were:
 - Outstanding claims and variations and looming liquidated damages (with the project forecast to finish 4 months later than the project finish date of 31 March 1997 - according to D. Bebb on 14 December).
 - The suspension of all site-work in early January as ordered by the Jefe de Obra, Pichuncaví - due to Serviu taking the view that the 1965 Plan Regulador took precedence over the Maritime Concession granted to Chilgener/P.V (contrary to P.V's advice to us).
 - Serious paint problems on the Dosco pipe conveyor structures.
 - Structural considerations (with additional cost and contractual implications) on the jetty re. it's ability to support the Dosco conveyor.

- D.Bebb, who has taken over as the project mgr. from G. Mills, started an avalanche of communications in early January - prior to our next set of meetings with him (organised for 24 and 27 January).

3) **MILL 22 PROJECT.**

- See P. Clarke's monthly report.
- P. Clarke returned from London (following discussions at Greenhills) on 6 Dec and initiated discussions with O. Aitken (on contractual matters) soon afterwards.
- Final technical and commercial offers were received from both Polysius and F.L.S by 26 December.
- Meetings with Polysius have been arranged for mid-January. D.Baird and B.Last (with O.Aitken) will assist us at those negotiations - which are expected to take about a week. The drawing up (and signing) of the two contracts and the side letter will take probably another three weeks, although, if general agreement has been reached beforehand, Polysius would accept a work order (US\$100000) on 27 January which, in effect, would be the date of commencement of the project (with mid-June 1998 then being the probable project finish date).
- If agreement on acceptable terms and conditions cannot be reached with Polysius in a reasonable timescale, negotiations will commence with F.L.S. later in January.
- The Jefe Obras (following meetings between C.Melon managers and the Calera mayor) issued the "aprobacion en principio" certificate, without unacceptable conditions being included, just before Christmas.
- At month end a draft form of contract (to bring onshore and offshore contracts "together") was received from O.Aitken.
- The final version of Cadeldepe's environmental impact study (mill 22) was received on 27 Dec and was submitted to Conama for vetting by month end (prior to being sent to the Jefe Obras).

4) **NEW FACTORY PROJECT.**

- No agreement had been concluded on the purchase of ground at Angostura by month-end. The owners show very little inclination to sell. Our agent is persevering.
- Another potential site was visited at mid-month (in the same general area but a little to the south of Angostura) and was found to be suitable for our needs. Unfortunately the owner refused to consider selling the ground.
- A meeting with Pirazzoli was arranged for early January to discuss rail freight prospects between Copiapo/Serena and Calera.

5) **LIME.**

Nothing to report.

6) **GASANDES.**

Nothing to report.

7) **OTHER MATTERS.**

- Fletcher Challenge - see M.Rookes's monthly report.

m. Green

Morris Green

MG/tvd.

NEW CEMENT MILL 22 - MARCH MONTHLY REPORT

TO :- JS,RJC,JMM,MAF,AS,BS,IdR,MG,M.HISLOP
FROM :- PAUL CLARKE
CC. :- ARCH.

DATE :-
21.04.97

CONTRACT DOCUMENTS

Contract documents were completed and signed on the 10th March 1997 following agreement of draft letters of credit and bonds. The Citicorp Trading Company agreement and the letters of credit were not completed by the end of the month and Polysius had not received their advance payment. Completion of these items had been expected in early April.

PROGRESS

Main Contract

General arrangement drawings are currently being prepared and are expected to be submitted during the second half of April. Detailed engineering is expected to be ready for submission by mid May.

Other issues

The presentation by FEPSA of their proposals for transport of clinker by rail from Ventanas to La Calera was postponed until the first week in April.

Discussions were held with the ITO on Ventanas to assist with the completion of the contract for the mill 22 ITO services.

Discussions were held with D. Baird to determine the nature of the assistance to be sought from Polysius concerning the upgrading of the Pozzalana transport system included in the additional works for the project.

Part of the coal stockpile currently in the area of the new mill was moved to allow access for the soils investigation required for the civil works designs.

Quotations were obtained and works orders prepared for the small contracts required to move or provide services within the site areas.

PROGRAMME

It is essential to complete the CITICORP arrangement and the letters of credit as soon as possible.

Movement of the coal is to begin next month to allow work on services to be completed before the contractor requires the site.

The ITO contract is to be put out to tender during April.

Development of the programme of additional works is to continue.

VISITS

D. Baird arrived on site on the 25th March at the request of Operations, however the opportunity was taken to seek his advice concerning conversations with Polysius regarding the Pozzalana system.

Paul Clarke

NEW CEMENT MILL 22 - MONTHLY REPORT FOR APRIL

| | |
|---|----------------|
| TO :- J. SOLAR | DATE :- |
| FROM :- PAUL CLARKE | 15 05.97 |
| CC. :- RJC, JMM, MAF, SD, EZ/CF, AS, BS, IdR, AH, PO | |

CONTRACT DOCUMENTS

All contract documents were signed and copies distributed to the various signatories.

The Citicorp Trading Company agreement was completed and signed on 15th April and the letters of credit were in place on 23rd April.

PROGRESS

Main Contracts

Advance payments were made on the 29th April. Polysius registered a claim on the 24th April for delay due to late payment of the advance payment. They stated that late payment of the advance prevented them from making advance payments to sub-suppliers and therefore prevented the placement of orders. As a consequence Polysius claim that they were unable to proceed with design work due to lack of information concerning plant to be provided by sub-suppliers. Polysius have requested a change in the contract dates which extends the date of completion by 59 days. Comment and possible proposals are attached to this report.

As a consequence of the claimed delay the Contract Programme has not yet been issued. Polysius have however issued a working programme on the 7th May which indicates completion on the original completion date.

On the 7th May Polysius reported that design work on the major process equipment to be supplied directly by Polysius had been completed.

The local contractor (COMIN) carried out his own soils investigation. A copy of his report has been provided and the report confirms the information given in the Tender document. Polysius reported that the civil design work is to be carried out in México. COMIN took the report to Mexico and design work began on the 7th April.

Other Issues

FEPASA presented their commercial offer for the transport of clinker by rail from Ventanas to La Calera and this is now being reviewed.

Removal of the coal stockpile is in progress to clear the site for construction.

Works orders were issued for the small contracts required to move or provide services within the site areas but work cannot commence on these orders until the coal stockpile has been removed.

The tender document for the Inspección Técnica de Obras was completed and issued to Cade-Idepe, Minnetal and Hervé Dilhan & Asociado on the 29th April. Tenders are to be returned on the 16th May.

Discussions were held with Cade-Idepe concerning their possible involvement in obtaining construction permits. Drawings need to be signed by an engineer registered in Chile prior to presentation to the Municipality

Tomás Leiva (Servicios Ambientales Fenix Ltda.) has been asked to arrange for the issue of the necessary permits from the Servicio de Salud and this work is in progress.

The contract to regularise outstanding permits for existing buildings and installations is also in progress.

PROGRAMME

Polysius provided a working programme on the 7th May. This programme included measures to mitigate their claimed delay referred to above. The programme is very "tight" with construction on site being programmed for a 13 month period. Approvals and requests for information will have to be promptly dealt with and to do so may require more meetings in México or Buenos Aires than originally envisaged.

VISITS

1st April - FEPASA visited the office to present their commercial offer

1st -3rd April - IEl engineers on site to gather information about existing installations

4th April - Stephens (Agencia de Aduanas) came to office to discuss customs clearance etc for plant deliveries

17th April - Sergio Alvarez visited Chuiquicamata to view a control system similar to that to be provided by IEl.

26th April - COMIN manager visited site to review site areas.

30th April -A Polysius delegation came to the Miraflores office to meet R. J. Cheney to offer thanks for being given the Mill 22 contract. The opportunity was also taken to discuss the claim for delay referred to above.

Paul Cheney

COMMENT CONCERNING THE POLYSIUS CLAIM FOR DELAY DUE TO LATE PAYMENT OF THE ADVANCE PAYMENT AND COPY OF OUR REPLY TO POLYSIUS.

Attached is the sequence of events relating to the issue of the Letters of Credit and comment on those events

The issue of the Letters of Credit was delayed both by Polysius and by Cemento Melon. The length of time attributable to Cemento Melon is approximately one month.

The principal concern of Polysius (and COMIN and IEI) is their exposure to Liquidated Damages for delay. Part of the action proposed to mitigate the claimed delay is to construct the upper part of the mill building in steel and COMIN have submitted details of additional costs for this change. However a preliminary evaluation using priced schedules in the contract documents suggests that steel construction is slightly cheaper than the original proposal.

To attempt to resolve the claim and remove Polysius's principal concern the following action is suggested :-

- Retain the original Completion Date of the 3rd August
- Defer the imposition of liquidated damages until four weeks after that Completion Date
- Offer a 'bonus' for "early" completion, before the original completion date of the 3rd of August, equal to the value of the liquidated damages for up to a maximum of four weeks.

This course of action is illustrated on the attached spread sheet and would result in an exposure to a maximum increase in cost of approximately \$ 360000 dependant upon exchange rates (UF - \$).

Benefits arising from having the mill in production can be offset against this exposure to additional cost. Attached are current figures for the production of cement using Cemento Melon clinker and imported clinker (and for importing cement). Assuming the mill to be in full production at 90% availability gives a weekly production of approximately 19500 tonnes. The lowest difference between the options (US \$ 5.25 per tonne) will therefore give a benefit of approximately \$ 120000 (19500 * \$ 5.25) weekly or a total over the five week bonus period of \$ 510000.

DRAFT COMMENT ON ATTACHED SEQUENCE OF EVENTS

1.

DURING CONTRACT NEGOTIATIONS, POLYSIUS AGREED TO MAKE AN EARLY START ON THE PROJECT, SUBJECT TO RECEIPT OF DM. 150,000 AND THE CONTRACT BEING SIGNED BY THE END OF FEBRUARY.

DM. 150,000 WAS PAID ON THE 3RD FEBRUARY. THE CONTRACT WAS NOT SIGNED UNTIL THE 10TH MARCH.

2.

IN ORDER TO OPEN THE LETTERS OF CREDIT, A SIGNED AGREEMENT WAS REQUIRED WITH CITICORP TRADING CORPORATION OF THE BAHAMAS.

THIS AGREEMENT WAS COMPLETED ON 24TH MARCH BUT NOT SIGNED UNTIL THE 2ND APRIL.

3.

IT WAS AGREED IN CONTRACT NEGOTIATIONS THAT THE LETTERS OF CREDIT WOULD EITHER BE OPENED IN A GERMAN BANK OR CONFIRMED IN GERMAN BANK FOR THE GERMAN SUPPLY (AND MEXICAN BANKS FOR THE MEXICAN SUPPLY).

CITIBANK OPENED THE LETTERS OF CREDIT IN THE BAHAMAS ON THE 4TH APRIL. CEMENTO MELON'S INSTRUCTIONS TO CONFIRM THE LETTERS OF CREDIT (IN GERMANY AND NEW YORK WITH THE AGREEMENT OF POLYSIUS MÉXICO) WERE ISSUED ON THE 8TH APRIL AND COMPLIED WITH BY THE 15TH APRIL.

4.

THERE WERE THEREFORE TWO PERIODS OF DELAY WHICH CAN BE ATTRIBUTED TO CEMENTO MELON AS FOLLOWS :-

- 1ST TO THE 10TH MARCH DUE TO LATE SIGNATURE OF THE DOCUMENT
- 24TH MARCH TO THE 15TH APRIL DUE TO DELAY IN PROVIDING THE LETTERS OF CREDIT AS AGREED.

5.

POLYSIUS DID NOT SIGN THE CONTRACT UNTIL 24TH MARCH.

THE CONTRACT WAS REQUIRED TO ENABLE CEMENTO MELON TO OPEN THE LETTERS OF CREDIT.

6.

POLYSIUS WERE ASKED TO PROVIDE THEIR GUARANTEES ON THE 10TH APRIL.

THE BONDS WERE NOT PROVIDED UNTIL 22ND APRIL (AND REQUIRED AMENDMENT ALTHOUGH THIS DID NOT DELAY PAYMENT).

7.

PAYMENT WAS REQUESTED ON THE 23RD APRIL AND MADE ON THE 29TH APRIL.

8.

THERE WERE THEREFORE THE FOLLOWING PERIODS OF DELAY WHICH CAN BE ATTRIBUTED TO POLYSIUS OR THE TIME NORMALLY REQUIRED TO CARRY OUT THE PROCEDURES REQUIRED :-

- 10TH TO THE 17TH MARCH TO DISPATCH DOCUMENTS TO POLYSIUS IN GERMANY
- 17TH TO THE 24TH MARCH DUE TO THE TIME REQUIRED FOR POLYSIUS TO SIGN THE CONTRACT
- 10TH TO THE 22ND APRIL DUE THE TIME TAKEN FOR POLYSIUS TO PROVIDE GUARANTEES.
- 23RD TO THE 29TH APRIL FOR THE TIME REQUIRED TO MAKE THE PAYMENT

CLAIM FOR DELAY IN PAYMENT OF ADVANCE PAYMENT - SEQUENCE OF EVENTS

| DATE | EVENT |
|------------------------|---|
| 3 RD FEB. | DM 150,000 ADVANCE PAID (FOR EARLY START) |
| 25 TH FEB. | DRAFT PERFORMANCE BOND, ADVANXE PAYMENT GUARANTEE AND LETTERS OF CREDIT RECEIVED FROM POLYSIUS GERMANY |
| 27 TH FEB. | CONTRACT DOCUMENTS COMPLETED AND READY FOR AUTHORISATION / SIGNATURE |
| 4 TH MARCH | DRAFT LETTER OF CREDIT RECEIVED FROM POLYSIUS MEXICO |
| 7 TH MARCH | DRAFTS ABOVE MODIFIED AND INCLUDED IN CONTRACT DOCUMENT |
| | <u>8TH - 9TH MARCH - WEEKEND</u> |
| 10 TH MARCH | CONTRACT DOCUMENTS SIGNED BY CEMENTO MELON |
| 12 TH MARCH | CONTRACT DOCUMENTS SENT BY COURIER TO GERMANY FOR SIGNATURE |
| 14 TH MARCH | COMIN SIGN LOCAL CONTRACT |
| | <u>15TH - 16TH MARCH - WEEKEND</u> |
| 18 TH MARCH | IEI SIGN LOCAL CONTRACT |
| | <u>22ND - 23RD MARCH - WEEKEND</u> |
| 24 TH MARCH | POLYSIUS SIGN SUPPLY CONTRACT |
| | <u>28TH - 30TH MARCH - WEEKEND (28TH CHILEAN NATIONAL HOLIDAY)</u> |
| 2 ND APRIL | CITC CONTRACT SIGNED BY CEMENTO MELON TO ENABLE L/C TO BE OPENED |
| 4 TH APRIL | CITC ISSUE THROUGH <u>CITICORP BANKING CORPORATION, NASSAU, BAHAMAS</u> IRREVO CABLE L/C |
| 4 TH APRIL | POLYSIUS FAX STATING THAT L/C SHOULD BE ISSUED OR CONFIRMED BY A GERMAN BANK (AS AGREED DURING CONTRACT NEGOTIATIONS) |
| | <u>5TH - 6TH APRIL - WEEKEND</u> |
| 8 TH APRIL | INSTRUCTIONS ISSUED FOR L/CS TO BE CONFIRMED IN FRANKFURT (FOR POLYSIUS GERMANY) AND NEW YORK (FOR POLYSIUS MÉXICO) |
| 10 TH APRIL | POLYSIUS ASKED TO ISSUE GUARANTEES AS SOON AS POSSIBLE |
| | <u>11TH - 12TH APRIL - WEEKEND</u> |
| 15 TH APRIL | L/CS CONFIRMED AS INSTRUCTED |
| 16 TH APRIL | COPIES OF L/CS FAXED TO POLYSIUS |
| | <u>18TH - 19TH APRIL - WEEKEND</u> |
| 22 ND APRIL | POLYSIUS GUARANTEES RECEIVED BY FAX (DRESDNER BANK) |
| | CEMENTO MELON SENT INSTRUCTIONS TO PAY TO CITIBANK TOGETHER WITH GUARANTEES |
| | CITIBANK NOTE DISCREPENCIES IN GUARANTEES BUT PROCEED WITH ARRANGEMENTS TO PAY SUBJECT TO DISCREPENCIES BEING REMOVED |
| 23 RD APRIL | POLYSIUS SUBMIT INVOICES FOR PAYMENT TO CITIBANK FRANKFURT |
| | <u>25TH - 26TH APRIL - WEEKEND</u> |
| 29 TH APRIL | PAYMENTS MADE |

Present and proposed system of liquidated damages for delay and bonus payments - ref. Polysius claim for delay due to late payment of advance

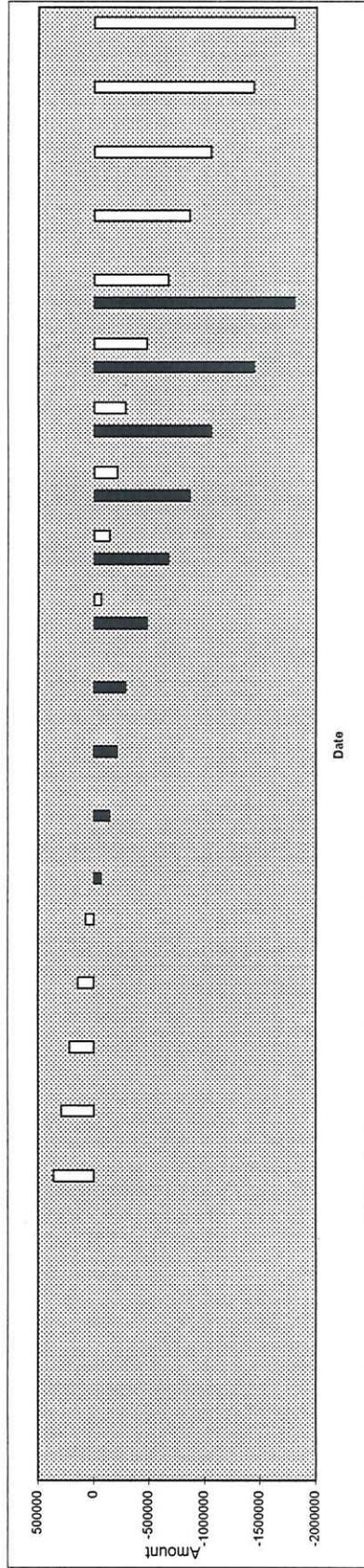
(Contract completion date to remain 3rd august in line with the programme submitted by Polysius)

(Amounts are dollar conversions of the UF amounts of liquidated damages using \$31.66 to 1 UF)

| Week beginning | Junio | | | Julio | | | Aug. | | | Sept. | | | Oct. | | | Nov. | | | | | | | | |
|----------------|-------|-----|------|-------|--------|----------|--------|----------|-------|----------|---------|---------|---------|----------|---------|---------|----------|----------|----------|---------|----------|----------|----------|--|
| | 1st | 8th | 15th | 22nd | 29th | 6th | 13th | 20th | 27th | 3rd | 10th | 17th | 24th | 31st | 7th | 14th | 21st | 28th | 5th | 12th | 19th | 26th | Nov. 2nd | |
| Present | | | | | | | | | | -72248.1 | -144528 | -216776 | -289024 | -481739 | -674421 | -865461 | -1059819 | -1445184 | -1806488 | | | | | |
| Proposed | | | | | 361276 | 289024.1 | 216776 | 144527.9 | 72248 | 0 | 0 | 0 | 0 | -72248.1 | -144528 | -216776 | -289024 | -481739 | -674421 | -867104 | -1059819 | -1445184 | -1806488 | |

Charge: mill

Commission



Estimate of cost benefit per tonne of cement

| | Cement imported | Cement imported clinker | Cement own clinker |
|-----------------------|-----------------|-------------------------|--------------------|
| Cost at plant | * | 48.4 | 40.5 |
| Cost at Vent | 53.21 | | |
| Transport to Santiago | 12 | 7 | 7 |
| Factor (OPC-Especial) | 0.93 | * | * |
| Comparitive cost | 60.65 | 55.4 | 47.5 |

Minimum benefit per tonne**5.25****NOTES :-**

1. The cost of cement at the plant using imported clinker includes all current costs associated with the operation of Ventanas and transport to La Calera. The cost given is therefore the total cost at La Calera.
2. The cost of transport of imported cement is from Ventanas to Santiago. The comparative cost does not include operating costs for Ventanas as these costs are not yet available.
3. The minimum benefit given is therefore conservative.
4. The costs given have been abstracted from the attached cost sheets after discussion with IdR.

NEW CEMENT MILL 22 - MONTHLY REPORT FOR JULY

| | | |
|------|--|----------|
| TO | :- J. SOLAR | DATE :- |
| FROM | :- PAUL CLARKE | |
| CC. | :- RJC, SD, EZ, AS, BS, IdR, PO (CM, MG) | 21 08.97 |

Progress

Progress to the end of July was reported as follows :-

- Mechanical engineering design work was well advanced with the general arrangement drawings 65 % complete and equipment design in Mexico 90 % complete. Further reviews of the general arrangement drawings were carried out and these should be agreed for construction in August. Fabrication of filters and fans has begun and fabrication of the SEPOL housing continues. Purchasing of equipment is 40 % complete and the first delivery is expected in October
- Design of equipment by Polysius in Germany is 50% complete and purchasing is 40 % complete. The first delivery is expected in October.
- Basic electrical engineering is expected to be completed in August. Cemento Melon requirements for medium voltage equipment were defined and design work and ordering of equipment is in progress.
- Mill foundation drawings were submitted for comment by Polysius. Cade-Idepe approved the drawings with comments. All comments related to the civil design were of a minor nature. However Polysius had not provided a vibration analysis of the foundation as required by the contract and the drawings could not be approved for construction.
- The contractor began to construct his site installations and these were substantially complete by the end of the month

Programme

Lack of approval of the mill foundation drawings will mean that excavation of the foundations will not begin as programmed on the 1st of August. The contractor has not indicated what effect this delay may have on his overall programme.

Contractual items

Polysius have not yet replied to the Cemento Melon response to claim 1.

The contractor has been asked to prepare a variation to the electrical supply system to allow both mills 21 and 22 to be powered by any one of the three transformers that will be in place at the end of the contract. The two transformers to be supplied under the contract were originally intended to power mill 22 only. This variation will give rise to an increase in cost of approximately US \$ 100,000 but will not affect the contract period.

Following requests from plant operations Polysius were instructed to revise the cement transport system. The revisions reduce the scope of work slightly and make the transport system more flexible as all the smaller cement silos will now be able to be filled from mill 22. No increase in cost or the contract period will result from this change

The contractor provided details of his site organisation and personnel and his site representative was approved.

Other issues

All outstanding matters required to allow the Jefe de Obras to issue the permit for construction were completed and the permit was issued on the 4th August.

The base measurements of the existing noise levels at the factory boundary were taken during the month and the measurements were witnessed by Polysius. Initial reports indicate that the levels are above the levels permitted under Chilean standards. Polysius have been asked to provide details of possible improvements to the noise levels attributable to the new plant, and in particular the fans, together with some information about the cost and effectiveness of the measures suggested.

Discussion of the interfaces between the project and the existing plant began with the plant operation and maintenance departments to determine the action necessary to mitigate the effect of these interfaces and to begin the process of co-ordinating interaction between project and plant activities.

Visits

10th July - COMIN to site to discuss site installation, safety and security

11th / 12th July - Cade-Idepe on site to take noise measurements

14th July - COMIN to site to discuss civil engineering

15th July - Part of D. Baird 's time used to review mill 22 drawings

16th July - IEI to site to discuss variation order and other electrical items

21st July - Polysius to site to discuss outstanding issues from the first progress meeting. A review of the general arrangement drawings was also carried out with D. Baird.

Paul Clark

NUEVO MOLINO DE CEMENTO N°22 - REPORTE MENSUAL OCTUBRE 1998

| | | |
|-----|-------------------------------------|----------|
| A | :- M . GREEN | FECHA :- |
| DE | :- EDUARDO NAVARRO O. | |
| CC. | :- JP, JS , SD, EZ, AS, BS, IdR, PO | 12/11/98 |

Progreso

Diseño y fabricación

- Suministro Alemania , se ha completado el 100% .
- Suministro México , se ha completado el 100% .
- El suministro de equipos eléctrico y de control sigue en un 99.5% , quedando pendiente el sistema de aire presurizado en CCM S/E G.
- Equipos dañados : Se ha comprometido reposición por Polysius , sin costo para Melón , de equipos dañados con ocasión de la puesta en marcha , como por ejemplo : partida motor principal , cinta de dosificadores puzolana y yeso , válvulas de bola para poldens , transformadores de alta y media tensión y variador de frecuencia para separador .

Trabajos en la planta

- Trabajos civiles : Están terminados
- Montaje mecánico : Edificio molino , se fabrican e instalan nuevos accesos que den una operación funcional y segura a las instalaciones . En la sala de compresores está montado el tercer compresor . En la recepción de clinker, están terminados y se corrigen actualmente deficiencias mecánicas . En el horno 9 , se trabaja en accesos y solución de problemas funcionales . En el horno 8 se trabaja en el montaje de equipos .
- Montaje eléctrico : Molino , está terminado y sólo se continúan corrigiendo trabajos y disposiciones en curvas conduit . Horno 9 , está terminado . Recepción de clinker , está terminado y se corrigen algunas deficiencias . Horno 8 se trabaja en cableado y CCM
- Molino 21 , está preparada la conexión al silo de clinker importado para el momento de tener producción permanente en el Molino 22 .

Situación actual

Molino : El 20 de Octubre de 1998 se ha iniciado la puesta en marcha , y producción de cemento , se han producido a la fecha 17.000 toneladas . Han terminado las dos primeras etapas de marcha con 100 horas cada una . Se ha cumplido la primera mantención entre estos dos periodos y actualmente se termina la segunda . El programa actual es reanudar la marcha el viernes 13 de Noviembre a las 14.00 hrs. con la estación de trabajo desde la sala de control del Horno 9 y buscar el 90% de producción por 7 días continuos para dar así cumplimiento al primer hito contractual. La operación la está haciendo el propio personal de Melón y en las mantenciones con participación directa , en ambos casos bajo la supervisión de Polysius . Se ha hecho ver a Polysius la necesidad de elaborar finalmente un programa de producción para coordinar su trabajo con producción y procesos , de tal forma de evitar sus continuas descoordinaciones consorciales . En esta área de molienda , a la fecha se han acumulado 8 semanas de atraso

Horno 9 : Está en servicio y se hacen mejoras en accesos y seguridad

Recepción y manejo de clinker : Ha funcionado recibiendo 2.400 tons. de clinker importado y hoy está a la espera de las mejoras en accesos y correcciones mecánicas .

Horno 8 : Se debe entregar a las pruebas el 30 de Noviembre

En estas otras áreas , recepción y manejo de clinker , se han acumulado 4 semanas de atraso

Ha sido recibida , el 06 de Noviembre , la respuesta de Polysius a la carta de E. Melón del 09 de Octubre en relación a los aspectos de no conformidad con la situación global del proyecto . Esta respuesta no es satisfactoria y deberán sucederse nuevos acuerdos hasta lograr la corrección de varios aspectos hasta lograr la satisfacción de E. Melón como cliente.

Avance global del proyecto

Al día 06 de Noviembre , el avance global del proyecto es de un 98.1% , este porcentaje ha sido incrementado por el peso específico en el área molienda con el inicio de la producción en puesta en marcha y con el funcionamiento a un 100% en horno 9 y recepción de clinker.

Pagos

Se han terminado los suministros de Alemania con DM 11.485.076 , de México con US \$ 3.858.313,7 y US \$455.001 por transporte. Estos pagos corresponden al " 60% del pago " al despacho .

IEI : ha sido aprobado el vigésimo estado de pago y se mantiene con un pago del 87.90% del valor total del contrato .

COMIN , ha sido aprobado el décimo quinto estado de pago de COMIN , con esto se llega a un 89.10% del valor total del contrato . Se ha recibido para aprobación el estado de pago décimo sexto .

Variaciones

Está pendiente la información desde Polysius para definir el origen de los recursos para un nuevo pago a COMIN por cambio de responsabilidad de suministro , similar a lo hecho en variaciones anteriores (positiva para COMIN y negativa para Polysius) .

Claim

Ha sido presentado por Polysius la segunda parte del claim , mencionado en el reporte anterior por las estructuras metálicas que , a juicio de Polysius , no estaban contempladas en su oferta original . Se prepara en este momento la estrategia para responderlas .

Proyectos complementarios

Secador de puzolana : No hay avance desde el reporte anterior.

Transporte de puzolana seca : Están enviados los planos con el lay out final al proveedor y se espera la cotización final para la emisión de la orden de compra .

Sistema de alimentación y recirculación de aguas : Está terminado

Combustible para el molino 22 : Está terminado

Recepción clinker por FFCC en La Calera : Se ha coordinado con FEPASA las vías disponibles para el proyecto y actualmente se prepara el contrato por la ingeniería de detalles

Visitas y Reuniones

Reunión de progreso : Con POLYSIUS , COMIN e IEI el 15 , 26 de Octubre y el 4 de Noviembre . La reunión del 15 de Octubre se suspendió por llegada en una hora de atraso del consorcio Polysius . La próxima reunión de progreso es en La Calera el 17 de Noviembre .

Reuniones extraordinarias se hacen permanentemente con POLYSIUS Site y los contratistas.

Está en el proyecto , desde el 19 de Octubre el Sr. Sebastian Maibaum , de BCTC , colaborando con la puesta en marcha .

Ha sido solicitada , por Polysius , una reunión extraordinaria con el Sr. Bruno Mayer , Gerente de Contratos de Polysius para el 13 de Noviembre en La Calera .

Anexos

Se adjunta :

Resumen general de avance de construcción

Control de avance general



PROYECTO MOLINO 22

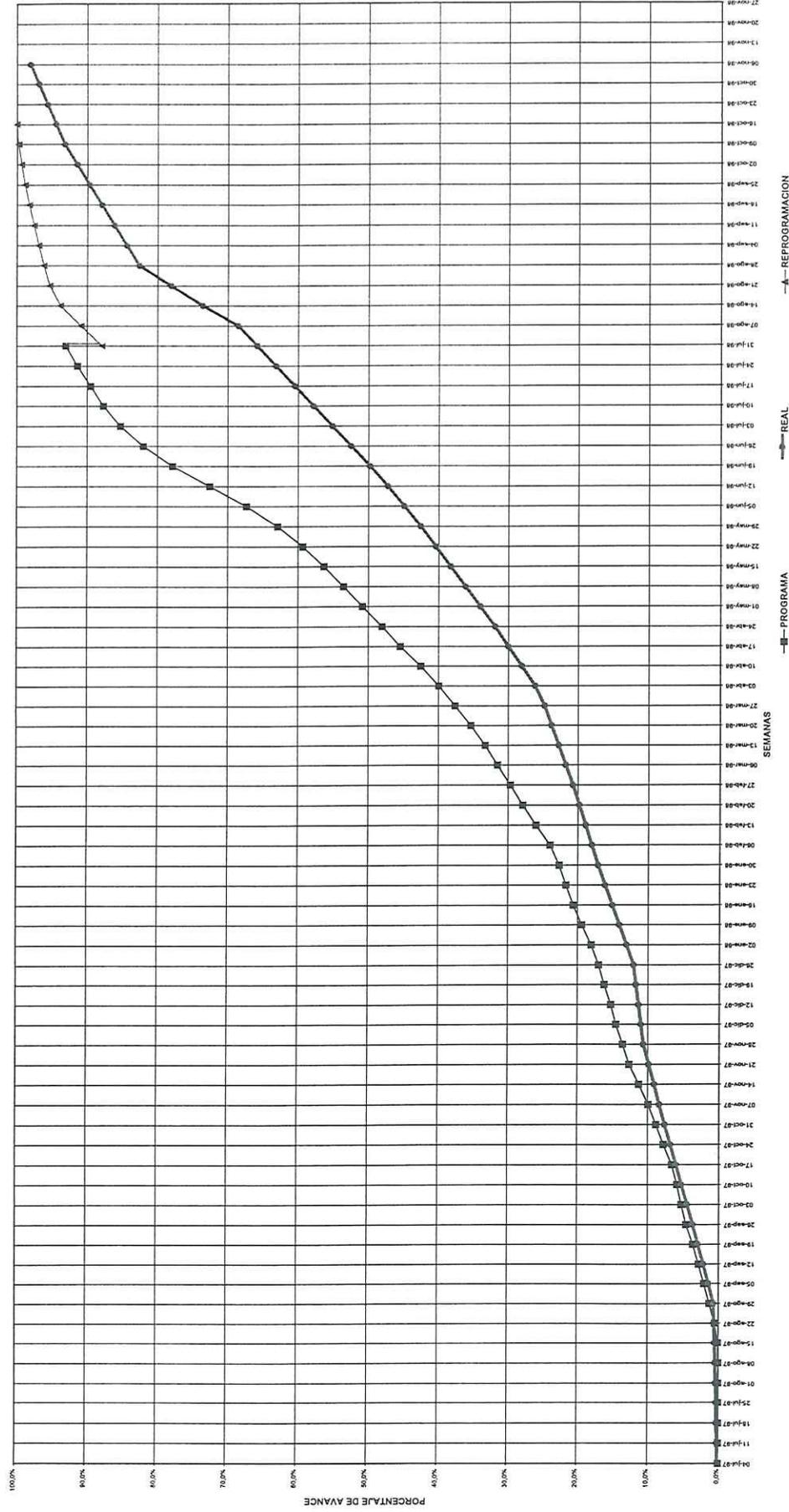
RESUMEN GENERAL DE AVANCE DE CONSTRUCCION

Fecha Control : 06-nov-98

C:\A-PRG CONSULTORES\MOLINO 22\PROGRAMAS\AVANCES\control prg.xls\RESUMEN AVANCE

| ITEMS | DESCRIPCION | HH (HH Equiv.) | PESO ESPECIF. | PESO GRAL. | %AVANCE | | ATRASO |
|---|---|-------------------|------------------|---------------|---------------|--------------|-------------|
| | | | | | PROG. | REAL | |
| MONTAJES INDUSTRIALES COMIN S.A. | | | | | | | |
| 3.2 | Obras Civiles | 97.860 | 38,9% | 25,7% | 100,0% | 99,8% | 0,2% |
| 3.3 | Montaje Mecánico | 128.511 | 51,1% | 33,8% | 100,0% | 99,3% | 0,7% |
| 3.3.3 | Pruebas en vacío equipos area molino | 6.000 | 2,4% | 1,6% | 100,0% | 100,0% | |
| 3.3.4 | Pruebas en vacío conjunto molino y asoc | 1.000 | 0,4% | 0,3% | 100,0% | 100,0% | |
| 4 | Puesta en Marcha | 25.000 | 9,9% | 6,6% | 100,0% | 85,0% | 15,0% |
| | TOTAL | 251.372 | 100,0% | | 100,0% | 98,1% | 1,9% |
| IEI LTDA. | | | | | | | |
| 5.2 | Subestación "C" | 14783,33 | 11,5% | 3,9% | 92,0% | 90,3% | 1,7% |
| 5.3 | Alimentación Eléctrica Sala Eléctrica "G" | 13750 | 10,7% | 3,6% | 85,8% | 85,7% | 0,1% |
| 5.4 | Sala Eléctrica "G" | 27675 | 21,5% | 7,3% | 96,5% | 95,2% | 1,3% |
| 5.5 | Sala Eléctrica "D" | 3100 | 2,4% | 0,8% | 95,2% | 83,9% | 11,3% |
| 5.6 | Sala Eléctrica "G" y Terreno | 62587,5 | 48,5% | 16,5% | 97,3% | 96,2% | 1,1% |
| 5.7 | Puesta en Marcha | 3200,00 | 2,5% | 0,8% | 65,6% | 59,1% | 6,6% |
| 5.8 | Iluminación Molino 22 | 3868,75 | 3,0% | 1,0% | 100,0% | 90,0% | 10,0% |
| | TOTAL | 128.965 | 100,0% | | 100,0% | 98,0% | 2,0% |
| | AVANCE TOTAL DEL PROYECTO | 380.336 | | 100,0% | 100,0% | 98,1% | 1,9% |

CURVA DE AVANCE TOTAL SEMANAL



| MESES | N° SEMANAS | FECHAS | PROGRAMA | REAL | REPROGRAMACION | FECHA DE EMISION |
|---------------|------------|----------|----------|--------|----------------|------------------|
| Julio-99 | 54 | 03-07-99 | 87,7% | 85,3% | | noviembre 99 |
| | 55 | 10-07-99 | 89,5% | 88,5% | | 73 |
| Agosto-99 | 56 | 17-07-99 | 91,4% | 90,9% | | 74 |
| | 57 | 24-07-99 | 93,1% | 92,5% | | 75 |
| Septiembre-99 | 58 | 31-07-99 | 94,8% | 94,2% | | 76 |
| | 59 | 07-08-99 | 96,5% | 95,9% | | 77 |
| Octubre-99 | 60 | 14-08-99 | 98,2% | 97,6% | | 78 |
| | 61 | 21-08-99 | 99,9% | 99,3% | | 79 |
| Noviembre-99 | 62 | 28-08-99 | 100,0% | 100,0% | | 80 |
| | 63 | 04-09-99 | 100,0% | 100,0% | | 81 |
| Diciembre-99 | 64 | 11-09-99 | 100,0% | 100,0% | | 82 |
| | 65 | 18-09-99 | 100,0% | 100,0% | | 83 |
| Enero-00 | 66 | 25-09-99 | 100,0% | 100,0% | | 84 |
| | 67 | 02-10-99 | 100,0% | 100,0% | | 85 |
| Febrero-00 | 68 | 09-10-99 | 100,0% | 100,0% | | 86 |
| | 69 | 16-10-99 | 100,0% | 100,0% | | 87 |
| Marzo-00 | 70 | 23-10-99 | 100,0% | 100,0% | | 88 |
| | 71 | 30-10-99 | 100,0% | 100,0% | | 89 |
| Abril-00 | 72 | 06-11-99 | 100,0% | 100,0% | | 90 |
| | 73 | 13-11-99 | 100,0% | 100,0% | | 91 |
| Mayo-00 | 74 | 20-11-99 | 100,0% | 100,0% | | 92 |
| | 75 | 27-11-99 | 100,0% | 100,0% | | 93 |
| Junio-00 | 76 | 04-12-99 | 100,0% | 100,0% | | 94 |
| | 77 | 11-12-99 | 100,0% | 100,0% | | 95 |
| Julio-00 | 78 | 18-12-99 | 100,0% | 100,0% | | 96 |
| | 79 | 25-12-99 | 100,0% | 100,0% | | 97 |
| Agosto-00 | 80 | 01-01-00 | 100,0% | 100,0% | | 98 |
| | 81 | 08-01-00 | 100,0% | 100,0% | | 99 |
| Septiembre-00 | 82 | 15-01-00 | 100,0% | 100,0% | | 100 |
| | 83 | 22-01-00 | 100,0% | 100,0% | | 101 |
| Octubre-00 | 84 | 29-01-00 | 100,0% | 100,0% | | 102 |
| | 85 | 05-02-00 | 100,0% | 100,0% | | 103 |
| Noviembre-00 | 86 | 12-02-00 | 100,0% | 100,0% | | 104 |
| | 87 | 19-02-00 | 100,0% | 100,0% | | 105 |
| Diciembre-00 | 88 | 26-02-00 | 100,0% | 100,0% | | 106 |
| | 89 | 05-03-00 | 100,0% | 100,0% | | 107 |
| Enero-01 | 90 | 12-03-00 | 100,0% | 100,0% | | 108 |
| | 91 | 19-03-00 | 100,0% | 100,0% | | 109 |
| Febrero-01 | 92 | 26-03-00 | 100,0% | 100,0% | | 110 |
| | 93 | 02-04-00 | 100,0% | 100,0% | | 111 |
| Marzo-01 | 94 | 09-04-00 | 100,0% | 100,0% | | 112 |
| | 95 | 16-04-00 | 100,0% | 100,0% | | 113 |
| Abril-01 | 96 | 23-04-00 | 100,0% | 100,0% | | 114 |
| | 97 | 30-04-00 | 100,0% | 100,0% | | 115 |
| Mayo-01 | 98 | 07-05-00 | 100,0% | 100,0% | | 116 |
| | 99 | 14-05-00 | 100,0% | 100,0% | | 117 |
| Junio-01 | 100 | 21-05-00 | 100,0% | 100,0% | | 118 |
| | 101 | 28-05-00 | 100,0% | 100,0% | | 119 |
| Julio-01 | 102 | 04-06-00 | 100,0% | 100,0% | | 120 |
| | 103 | 11-06-00 | 100,0% | 100,0% | | 121 |
| Agosto-01 | 104 | 18-06-00 | 100,0% | 100,0% | | 122 |
| | 105 | 25-06-00 | 100,0% | 100,0% | | 123 |
| Septiembre-01 | 106 | 02-07-00 | 100,0% | 100,0% | | 124 |
| | 107 | 09-07-00 | 100,0% | 100,0% | | 125 |
| Octubre-01 | 108 | 16-07-00 | 100,0% | 100,0% | | 126 |
| | 109 | 23-07-00 | 100,0% | 100,0% | | 127 |
| Noviembre-01 | 110 | 30-07-00 | 100,0% | 100,0% | | 128 |
| | 111 | 06-08-00 | 100,0% | 100,0% | | 129 |
| Diciembre-01 | 112 | 13-08-00 | 100,0% | 100,0% | | 130 |
| | 113 | 20-08-00 | 100,0% | 100,0% | | 131 |
| Enero-02 | 114 | 27-08-00 | 100,0% | 100,0% | | 132 |
| | 115 | 03-09-00 | 100,0% | 100,0% | | 133 |
| Febrero-02 | 116 | 10-09-00 | 100,0% | 100,0% | | 134 |
| | 117 | 17-09-00 | 100,0% | 100,0% | | 135 |
| Marzo-02 | 118 | 24-09-00 | 100,0% | 100,0% | | 136 |
| | 119 | 01-10-00 | 100,0% | 100,0% | | 137 |
| Abril-02 | 120 | 08-10-00 | 100,0% | 100,0% | | 138 |
| | 121 | 15-10-00 | 100,0% | 100,0% | | 139 |
| Mayo-02 | 122 | 22-10-00 | 100,0% | 100,0% | | 140 |
| | 123 | 29-10-00 | 100,0% | 100,0% | | 141 |
| Junio-02 | 124 | 05-11-00 | 100,0% | 100,0% | | 142 |
| | 125 | 12-11-00 | 100,0% | 100,0% | | 143 |
| Julio-02 | 126 | 19-11-00 | 100,0% | 100,0% | | 144 |
| | 127 | 26-11-00 | 100,0% | 100,0% | | 145 |
| Agosto-02 | 128 | 03-12-00 | 100,0% | 100,0% | | 146 |
| | 129 | 10-12-00 | 100,0% | 100,0% | | 147 |
| Septiembre-02 | 130 | 17-12-00 | 100,0% | 100,0% | | 148 |
| | 131 | 24-12-00 | 100,0% | 100,0% | | 149 |
| Octubre-02 | 132 | 31-12-00 | 100,0% | 100,0% | | 150 |
| | 133 | 07-01-01 | 100,0% | 100,0% | | 151 |
| Noviembre-02 | 134 | 14-01-01 | 100,0% | 100,0% | | 152 |
| | 135 | 21-01-01 | 100,0% | 100,0% | | 153 |
| Diciembre-02 | 136 | 28-01-01 | 100,0% | 100,0% | | 154 |
| | 137 | 04-02-01 | 100,0% | 100,0% | | 155 |
| Enero-03 | 138 | 11-02-01 | 100,0% | 100,0% | | 156 |
| | 139 | 18-02-01 | 100,0% | 100,0% | | 157 |
| Febrero-03 | 140 | 25-02-01 | 100,0% | 100,0% | | 158 |
| | 141 | 03-03-01 | 100,0% | 100,0% | | 159 |
| Marzo-03 | 142 | 10-03-01 | 100,0% | 100,0% | | 160 |
| | 143 | 17-03-01 | 100,0% | 100,0% | | 161 |
| Abril-03 | 144 | 24-03-01 | 100,0% | 100,0% | | 162 |
| | 145 | 31-03-01 | 100,0% | 100,0% | | 163 |
| Mayo-03 | 146 | 07-04-01 | 100,0% | 100,0% | | 164 |
| | 147 | 14-04-01 | 100,0% | 100,0% | | 165 |
| Junio-03 | 148 | 21-04-01 | 100,0% | 100,0% | | 166 |
| | 149 | 28-04-01 | 100,0% | 100,0% | | 167 |
| Julio-03 | 150 | 05-05-01 | 100,0% | 100,0% | | 168 |
| | 151 | 12-05-01 | 100,0% | 100,0% | | 169 |
| Agosto-03 | 152 | 19-05-01 | 100,0% | 100,0% | | 170 |
| | 153 | 26-05-01 | 100,0% | 100,0% | | 171 |
| Septiembre-03 | 154 | 02-06-01 | 100,0% | 100,0% | | 172 |
| | 155 | 09-06-01 | 100,0% | 100,0% | | 173 |
| Octubre-03 | 156 | 16-06-01 | 100,0% | 100,0% | | 174 |
| | 157 | 23-06-01 | 100,0% | 100,0% | | 175 |
| Noviembre-03 | 158 | 30-06-01 | 100,0% | 100,0% | | 176 |
| | 159 | 07-07-01 | 100,0% | 100,0% | | 177 |
| Diciembre-03 | 160 | 14-07-01 | 100,0% | 100,0% | | 178 |
| | 161 | 21-07-01 | 100,0% | 100,0% | | 179 |
| Enero-04 | 162 | 28-07-01 | 100,0% | 100,0% | | 180 |
| | 163 | 04-08-01 | 100,0% | 100,0% | | 181 |
| Febrero-04 | 164 | 11-08-01 | 100,0% | 100,0% | | 182 |
| | 165 | 18-08-01 | 100,0% | 100,0% | | 183 |
| Marzo-04 | 166 | 25-08-01 | 100,0% | 100,0% | | 184 |
| | 167 | 01-09-01 | 100,0% | 100,0% | | 185 |
| Abril-04 | 168 | 08-09-01 | 100,0% | 100,0% | | 186 |
| | 169 | 15-09-01 | 100,0% | 100,0% | | 187 |
| Mayo-04 | 170 | 22-09-01 | 100,0% | 100,0% | | 188 |
| | 171 | 29-09-01 | 100,0% | 100,0% | | 189 |
| Junio-04 | 172 | 06-10-01 | 100,0% | 100,0% | | 190 |
| | 173 | 13-10-01 | 100,0% | 100,0% | | 191 |
| Julio-04 | 174 | 20-10-01 | 100,0% | 100,0% | | 192 |
| | 175 | 27-10-01 | 100,0% | 100,0% | | 193 |
| Agosto-04 | 176 | 03-11-01 | 100,0% | 100,0% | | 194 |
| | 177 | 10-11-01 | 100,0% | 100,0% | | 195 |
| Septiembre-04 | 178 | 17-11-01 | 100,0% | 100,0% | | 196 |
| | 179 | 24-11-01 | 100,0% | 100,0% | | 197 |
| Octubre-04 | 180 | 01-12-01 | 100,0% | 100,0% | | 198 |
| | 181 | 08-12-01 | 100,0% | 100,0% | | 199 |
| Noviembre-04 | 182 | 15-12-01 | 100,0% | 100,0% | | 200 |
| | 183 | 22-12-01 | 100,0% | 100,0% | | 201 |
| Diciembre-04 | 184 | 29-12-01 | 100,0% | 100,0% | | 202 |
| | 185 | 05-01-02 | 100,0% | 100,0% | | 203 |
| Enero-05 | 186 | 12-01-02 | 100,0% | 100,0% | | 204 |
| | 187 | 19-01-02 | 100,0% | 100,0% | | 205 |
| Febrero-05 | 188 | 26-01-02 | 100,0% | 100,0% | | 206 |
| | 189 | 02-02-02 | 100,0% | 100,0% | | 207 |
| Marzo-05 | 190 | 09-02-02 | 100,0% | 100,0% | | 208 |
| | 191 | 16-02-02 | 100,0% | 100,0% | | 209 |
| Abril-05 | 192 | 23-02-02 | 100,0% | 100,0% | | 210 |
| | 193 | 01-03-02 | 100,0% | 100,0% | | 211 |
| Mayo-05 | 194 | 08-03-02 | 100,0% | 100,0% | | 212 |
| | 195 | 15-03-02 | 100,0% | 100,0% | | 213 |
| Junio-05 | 196 | 22-03-02 | 100,0% | 100,0% | | 214 |
| | 197 | 29-03-02 | 100,0% | 100,0% | | 215 |
| Julio-05 | 198 | 05-04-02 | 100,0% | 100,0% | | 216 |
| | 199 | 12-04-02 | 100,0% | 100,0% | | 217 |
| Agosto-05 | 200 | 19-04-02 | 100,0% | 100,0% | | 218 |
| | 201 | 26-04-02 | 100,0% | 100,0% | | 219 |
| Septiembre-05 | 202 | 03-05-02 | 100,0% | 100,0% | | 220 |
| | 203 | 10-05-02 | 100,0% | 100,0% | | 221 |
| Octubre-05 | 204 | 17-05-02 | 100,0% | 100,0% | | 222 |
| | 205 | 24-05-02 | 100,0% | 100,0% | | 223 |
| Noviembre-05 | 206 | 31-05-02 | 100,0% | 100,0% | | 224 |
| | 207 | 07-06-02 | 100,0% | 100,0% | | 225 |
| Diciembre-05 | 208 | 14-06-02 | 100,0% | 100,0% | | 226 |
| | 209 | 21-06-02 | 100,0% | 100,0% | | 227 |
| Enero-06 | 210 | 28-06-02 | 100,0% | 100,0% | | 228 |
| | 211 | 05-07-02 | 100,0% | 100,0% | | 229 |
| Febrero-06 | 212 | 12-07-02 | 100,0% | 100,0% | | 230 |
| | 213 | 19-07-02 | 100,0% | 100,0% | | 231 |
| Marzo-06 | 214 | 26-07-02 | 100,0% | 100,0% | | 232 |
| | 215 | 02-08-02 | 100,0% | 100,0% | | 233 |
| Abril-06 | 216 | 09-08-02 | 100,0% | 100,0% | | 234 |
| | 217 | 16-08-02 | 100,0% | 100,0% | | 235 |
| Mayo-06 | 218 | 23 | | | | |

ANEXO 4

CAREY Y CIA. LTDA.
ABOGADOS

JORGE CAREY
JUAN G. LEVINE
JAIME CAREY
JAIME MARTINEZ
PEDRO P. GUTIERREZ
RICARDO PEÑA
RAPHAEL VERGARA
FELIPE TUPPER
ALFONSO SILVA

OSCAR R. AJTKEN
ALBERTO EGUIGUREN
CLAUDIO LIZANA
SOLIMAD CASTRO
RAIMUNDO CARVALLO
M. TERESA ZAÑARTU
JORGE CAREY C.
JOSE A. SILVA
SALVADOR VALDES

GUILLERMO CAREY C.
ISMAEL URRUTIA
GONZALO FERNANDEZ
PABLO IACOBELLI
CRISTIAN SHEA
GONZALO SMITH
DANIEL ALTIKES
EDUARDO MARTIN
VERNA CAMBILIO

CONSULTOR RABY
MATTIAS SANHURZA
EDUARDO LAGOS
M. ANGELICA RIVERA
MARTIN SANTA MARIA
CARLOS SCHULTZ
SEBASTIAN DOREN
CONSULTOR LEGAL:
Guillermo Carey B.



February 14, 1997

Mr. Paul Clark
Cemento Melón

Ref.: New Cement Mill 22
Contract Documents

Dear Paul:

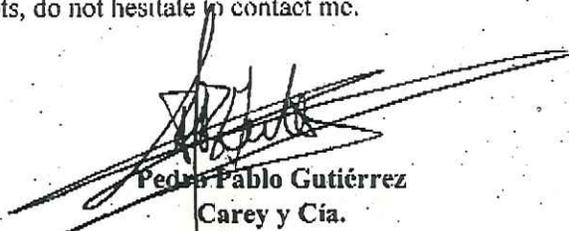
With reference to the copies of the draft to the contract documents for the above project, this will confirm to you that all of the amendments that were discussed with the undersigned are properly reflected on the various documents.

On my review of the Master Agreement, I have noted that the references to "joint" and "severally guaranty" is only used in English language. In one occasion a few years ago, a debate arose in a local court as to the exact meaning of the terms "joint" and "severally" in Spanish. In order to avoid any discussion on this matter, and having in mind that this matter is essential, I suggest to insert between parenthesis after the words "joint" and "severally" the words ("codeudores solidarios").

Before these contracts are executed, it will be necessary to the representatives of Montajes Industriales Comin S.A. to show evidence that the shareholders of such company have agreed to the joint and severally liability by means of an extraordinary Shareholders Meeting which is a legal requirement under Chilean law. The German party to the contract should also evidence that their representatives are entitled to enter into this agreement including the possibility to have their company become joint and severally liable of the obligations incurred in favor of Cemento Melón by Montajes Industriales Comin S.A.

In case you have any doubts, do not hesitate to contact me.

Truly yours,


Pedro Pablo Gutiérrez
Carey y Cia.

GAPOCSABOGADOS\1268 01\1268-01\673 1.DOC

ANEXO 5



**CEMENTO MELÓN S.A.
LA CALERA WORKS**

**NEW CEMENT MILL & ASSOCIATED
CLINKER HANDLING SYSTEMS**

MASTER AGREEMENT

PRINTED IN 1997

Master Agreement

between

Cemento Melón S.A., Miraflores 178, 4th Floor, Santiago de Chile,
hereinafter referred to as the Employer,
on the one side,

and

Krupp Polysius AG, Graf-Galen-Strasse 17, 59269 Beckum, Germany,
hereinafter referred to as the "Supply Contractor",

and

a Joint Venture consisting of

Montajes Industriales Comin S.A., Enrique Foster 39, 4th Floor, Las Condes, Santiago de Chile,

and

Ingeniería Eléctrica y de Instrumentación Ltda., José Domingo Cañas 1425, Ñuñoa, Santiago de Chile,

hereinafter jointly referred to as the "Local Contractor",

and together with the Supply Contractor hereinafter referred to as the "Contractors"

on the other side,

for the supply, manufacturing, erection, commissioning and testing of a close circuit mill with separator and associated clinker handling plant.

All words and expressions used in this agreement and defined in the Contracts shall have the meaning therein assigned to them.

WHEREAS,

- The Employer has issued a tender inquiry document for the provision of a new close circuit mill with high efficiency separator and associated clinker handling plant facilities (the Works), as a turn-key project.
- The Local Contractor and the Supply Contractor have submitted separate bids for each of them to perform part of the Works required under the two Contracts.
- The Employer has awarded to the Supply Contractor under a Supply Contract the design, manufacture, supply and delivery of all the mechanical equipment and machinery required for the Works, and has awarded, to the Local Contractor under a separate Construction and Installation Contract, the supply and delivery of all the electrical and control equipment, erection and building of the Works.
- The award of the original turn-key project for the Works to two separate Contractors has been made based on the joint commitments of both Contractors under this Master Agreement.

As

As

ARTICLE FIRST; CONTRACTOR'S COOPERATION

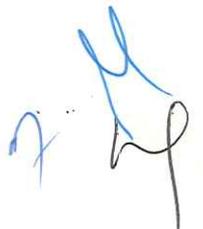
1.1. - The Local and the Supply Contractor shall cooperate with each other so as to achieve the timely completion of the facilities, on budget and with the technical and quality requirements as set forth in the Contract.

1.2. - No act or omission, drawing, instruction, information or delay in the performance of the respective obligation of one Contractor shall be used by the other Contractor as grounds for claims of any nature against the Employer, including but not limited to extensions of their respective programs to perform their work nor to excuse the timely, correct and complete performance of their respective obligations. However, if one Contractor is entitled to a claim for Extension of Time and the respective delay has an effect on the performance of the other Contractor, this Contractor shall also be entitled to claim for an Extension of Time under his Contract.

1.3. - In case the Employer issues a Variation Order under one Contract the effects thereof shall be duly considered also with respect to the other Contract. If necessary the Employer shall issue a Variation Order under both Contracts. Otherwise the other Contractor is entitled to claim for extra costs including profit and/or an Extension of Time, if applicable.

1.4. - Both Contractors agree to be joint and severally (codeudores solidarios) liable for completing the Works as per the Contracts.

1.5. - Both Contractors agree to be joint and severally (codeudores solidarios) liable for making good the defects and damages in accordance with clause 30 of the two Contracts.



ARTICLE SECOND: TESTING AND COMMISSIONING

The testing and commissioning obligations under the Contracts will be assumed jointly by both contractors. The Supply Contractor will provide sufficient technical support by way of experienced, professional and technical personnel on site, from the date when the start-up is commenced until the date when the Works achieve the Performance Guarantees.

ARTICLE THIRD: PERFORMANCE GUARANTY OBLIGATIONS.

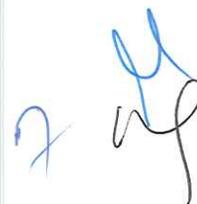
Both Contractors hereby agree to be joint and severally (codeudores solidarios) liable for the performance guaranty obligations under the two Contracts.

ARTICLE FOURTH: SEPARATE AGREEMENTS.

Save by the joint commitments and obligations stated herein, each Contract between the Employer and the Local Contractor and the Supply Contractor is to be construed as an independent and separate agreement between the parties thereto.

ARTICLE FIFTH: NO DOUBLE ENTITLEMENT

The rights and remedies under the Contracts are only to be executed once in respect of the same item.



ARTICLE SIXTH: JOINT COMING INTO FORCE AND TERMINATION

It is agreed that the Supply Contract and the Local Contract shall only come into force jointly and that a reason for terminating one of the Contracts shall also be regarded as a reason to terminate the respective other Contract so that both Contracts are terminated jointly at the same time.

ARTICLE SEVENTH: EFFECTS OF OFFSHORE FINANCING SCHEME

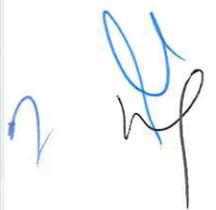
The Employer represents and guarantees that the offshore financing scheme applied in the Supply Contract will not effect the mutual rights and remedies to be executed under the Contracts except that the invoicing and payment procedure will include the offshore financing company.

ARTICLE EIGHTH: CONFIDENTIALITY

The Employer and the Contractors shall treat this Master Agreement and the Cooperation Agreement to be concluded between the Supply Contractor and the Local Contractor as strictly confidential. In case either party discloses one or both of the Agreements such Party having disclosed shall indemnify the other party from all claims and losses resulting from that disclosure. This confidentiality does not apply in case of arbitration proceedings as under ARTICLE ~~TENTH~~ ELEVENTH and for the consecutive enforcement of an arbitral award, as far as necessary.



~~TENTH~~
ELEVENTH
Ev



ARTICLE NINTH: TAX SITUATION

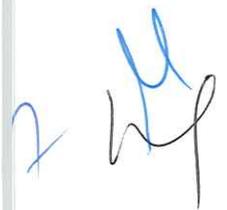
The parties to this Master Agreement are of the opinion that no income taxes are to be levied on payments made in connection with the Supply Contract according to Chilean tax regulations. In case income taxes are officially demanded by Chilean tax authorities in connection with payments by the Employer, whether through its offshore financing company or not, under the Supply Contract, the Contractors shall immediately inform the Employer about the respective official request and/or demand. The Employer and the Contractors shall then consult on the appropriate action to be taken. The Contractors shall provide the Employer with all necessary information and render such other assistance as the Employer may reasonably request. The Contractors shall neither acknowledge nor honour any such official request regarding income taxes without the Employer's prior consent, except when provided for in the mandatory law of Chile.

The parties to this Agreement agree to exhaust all legal measures to contest such official request until the same has become final and executory under Chilean Law.

Subject to the foregoing the Employer shall be responsible for the final settlement of income taxes which become payable in Chile in connection with payments made to the Supply Contractor under the Supply Contract.

ARTICLE TENTH APPLICABLE LAW

This Agreement shall in all respects be governed and construed in accordance with the laws of the Republic of Chile.



ARTICLE ELEVENTH: ARBITRATION

All disputes arising in connection with the present Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules.

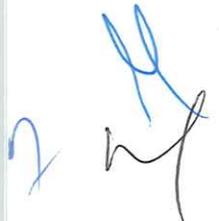
Each party shall nominate one arbitrator. These arbitrators shall then agree on the third arbitrator who will act as the Chairman of the arbitration court. The third arbitrator shall be appointed by the Parties within 90 days from a list of persons proposed by the International Chamber of Commerce (ICC) and such list shall consist of individuals of neutral countries, meaning not from Chile, Germany or the United Kingdom. In case of failure to agree within such terms, the appointment of the third arbitrator shall be made by the ICC.

The arbitral award shall be rendered primarily according to the Conditions of the Contracts and the underlying General Conditions thereof. In case the Contracts will not provide a provision for a certain issue or an applicable provision has to be construed and interpreted the general principles of the applicable Chilean law shall be applied.

Any appeal and/or recourse to the Ordinary Courts of Law, including for the purpose of injunctions and other pre-trial or temporary measures which are to be issued by the Arbitration Court only, is ruled out, except for the "Recurso de Queja" (a remedy to the Superior Courts of Chile grounded in fault or abuse incurred by the arbitrators) or for the mandatory recourse in case of enforcement of an arbitral award.

The arbitration proceedings shall be held in Santiago de Chile in the English language.

The final Arbitration Award may be enforced in any jurisdiction or country where the defendant is domiciled or has business or assets.



The arbitration proceedings and the award shall be treated as strictly confidential and the award may only be disclosed to the extent it is necessary to enforce it.

In Witness whereof the Parties hereto have executed this Master Agreement on the day of 1997 in

For Cemento Melón S.A.:

m. Green

Richard J. Cheney
10/03/97



For Krupp Polysius AG:

Uthoff

Dürr

24.03.1997

For Montajes Industriales COMIN S.A.:

Alejandro Kübler Brümmer
14/03/97

For Ingeniería Eléctrica y de Instrumentación Ltda.:

Alejo Moreno Vargas
18/03/97

CEMENTO MELON

LA CALERA WORKS

**NEW CEMENT MILL 22 AND ASSOCIATED
CLINKER HANDLING SYSTEMS**

LOCAL CONTRACT

VOLUME 1

Form of Agreement

February 1997

**FORM OF AGREEMENT FOR ELECTRICAL AND CONTROL ENGINEERING,
ELECTRICAL AND CONTROL EQUIPMENT SUPPLY, ELECTROMECHANICAL
ERECTION, CONSTRUCTION, START UP AND COMMISSIONING OF A NEW CLOSE
CIRCUIT MILL**

This agreement made the _____ day of _____ 1997 and effective on the date hereof between Cemento Melón S.A. of Miraflores 178, 4th floor, Santiago, Chile (hereinafter called the "Employer") and Montajes Industriales Comin S.A. Enrique Foster Sur N° 39 4 Piso, Santiago Chile and Ingeniería Eléctrica y de Instrumentación Ltda. José Domingo Cañas 1725, Santiago, Chile. (hereinafter called the "Local" Contractor).

WHEREAS:

- 1) The Employer has issued a tender inquiry for the provision of a New Close Circuit Cement Mill with High Efficiency Separator and Associated Clinker Handling Plant.
- 2) The Local Contractor has presented a tender for Electrical and Control Engineering, Electrical and Control Equipment Supply, Electromechanical Erection and Construction for this new Plant.
- 3) The Employer has accepted to award the Local Contractor the Electrical and Control Engineering, Electrical and Control Equipment Supply, Electromechanical Erection and Construction for the New Plant.

Now it is agreed as follows:

- 1) In this Agreement and unless stated otherwise, all words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
- 2) The following documents shall be deemed to form part of this agreement:
 - a) This Form of Agreement;
 - b) The Preamble;
 - c) The Conditions of Contract (Amended Conditions of Contract of the Federation Internationale des Ingenieurs Conseils FIDIC, Edition 1987, together with amendments thereto;
 - d) The Tender of the Local Contractor;
 - e) The tender inquiry documents issued August 1996 by the Employer.
- 3) The Local Contractor shall procure the Electrical and Control Engineering, Electrical and Control Equipment Supply, Electromechanical Erection and Construction in conformity with such Provisions of the Contract as respectively apply.

4) The Employer shall pay the Local Contractor in consideration of the Electrical and Control Engineering, Electrical and Control Equipment Supply, Electromechanical Erection and Construction, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The Contract Price for COMIN is: Unidades Fomento 158,319.00

The Contract Price for I.E.I is: Unidades Fomento 134,625.00

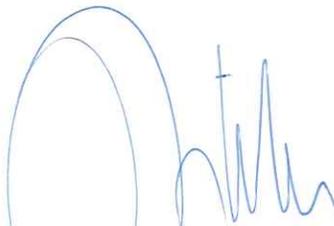
5) The Parties have entered into this agreement in accordance with their respective laws and statutes or constitutions on the date hereof by their duly authorised signatories.



Signed on behalf of Cemento Melón S.A.

Richard J. Cheney

10/03/97



Signed on behalf of COMIN S.A.

Alejandro Kübler Binner

14/03/97



Signed on behalf of I.E.I. Ltda.

Alejo Moreno Vargas

18/03/97

M. Green
mg



CEMENTO MELON

LA CALERA WORKS

**NEW CEMENT MILL 22 AND ASSOCIATED
CLINKER HANDLING SYSTEMS**

SUPPLY CONTRACT

VOLUME 1

Preamble

PREAMBLE

This Preamble must be completed in all cases referring to Completed schedules where appropriate. When completed, this Preamble, the General Conditions, Specification, Employer's and Contractor's Drawings, Schedules and other documents can constitute a contract on the basis of the General Conditions in Part I. If this is not what is required, Part II must also be completed.

Commencement Date

Sub-Clause 1.1.1.(i)

The date for commencement of the Works is 3rd February 1997

The Employer

Sub-Clause 1.1.12.

The Employer is Cemento Melón S.A.

The Engineer

Sub-Clause 1.1.15.

The Engineer is The Office of the Expansions Manager
Cemento Melón S. A. Pedro de Valdivia 98, La Calera, Chile

Time for Completion

Sub-Clause 1.1.35.

The Time for Completion is 18 months from the Commencement Date.

Contractor's Profit

Sub-Clause 1.6.

The percentage to cover profit entitlement, where appropriate, is 3 %.

Ruling Language

Sub-Clause 5.1

The version in the English language (ruling language) shall prevail.

Day to Day Communications

Sub-Clause 5.2

The language for day to day communications in writing is English

Programme to be Furnished

Sub-Clause 12.1.

The Programme must be submitted in the form of _____
yet to be advised by the contractor (but shall be ' Microsoft Project ' based)

Electricity Water Gas and Other Services

Sub-Clause 14.3.

Supplies on the Site are:

a. Electricity: not applicable

b. Water: not applicable

c. Gas: not applicable

d. Other services: not applicable

**Employer's
Equipment**

Sub-Clause 14.4.
The following Employer's equipment is available for use by the Contractor under
the Employer's operation: not applicable

Working Hours

Sub-Clause 18.3.
The normal working hours are not applicable

Delay in Completion

Sub-Clause 27.1.
Failure to meet the Time for Completion entitles the Employer to reduction in
Contract Price as follows:
Percentage per day not applicable %
Maximum not applicable %

Prolonged Delay

Sub-Clause 27.2.
Maximum amount recoverable from the Contractor by the Employer:
not applicable

Terms of Payment

Sub-Clause 33.1.
In addition to the provisions under Clause 33, the terms of payment shall be:
none

**Payment in Foreign
Currencies**

Sub-Clause 35.1.
Payment in foreign currencies shall be arranged as follows:
refer to terms of payment

Rates of Exchange

Sub-Clause 35.3.
The rates of exchange for the purpose of the Contract are:
not applicable

**Payment against
Provisional Sums**

Sub-Clause 36.4.(b)
The percentage to be applied to Provisional Sums shall be not applicable %

Maximum Liability

Sub-Clause 42.2.
The maximum liability of the Contractor to the Employer shall be the contract
price

Insurance of Works

Sub-Clause 43.1.
The deductible limits in the insurance cover of the Works shall not exceed yet to be advised by the contractor

Sub-Clause 43.1.(a)
The additional risks to be insured are:
not applicable

Third Party Liability

Sub-Clause 43.3.
The amount of insurance against third party liability taken out by the Contractor shall not be less than:
US \$ one million for any one incident

Payment on Termination for Employer's Default

Sub-Clause 46.4.
The additional amount payable by the Employer on termination shall not exceed:
Contract Price (clause 46.1 details payment)

Labour, Materials and Transport

Sub-Clause 47.1.
The method of calculating adjustments for changes in costs shall be:
not applicable

Notices to Employer and Engineer

Sub-Clause 49.2.
The address of the Employer for notices is:
Cemento Melón S. A. ,Miraflores 178,
4th Floor, Santiago, Chile

The address of the Engineer for notices is:
yet to be advised by the employer

Applicable Law

Sub-Clause 51.1.
The applicable law is Chilean law.

Procedural Law for Arbitration

Sub-Clause 51.2.
The procedural law for arbitration is 1 The Rules of Conciliation and Arbitration of the International Chamber of commerce
2 Chilean Law

Language and Place of Arbitration

Sub-Clause 51.3
The language of arbitration is the English language.
The place of arbitration is Santiago Chile

CEMENTO MELON

LA CALERA WORKS

**NEW CEMENT MILL 22 AND ASSOCIATED
CLINKER HANDLING SYSTEMS**

SUPPLY CONTRACT

VOLUME 1

Conditions of Contract

CONDITIONS OF CONTRACT

Definitions and Interpretations

Definitions

- 1.1 In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them.
- 1.1.1 "Commencement Date" means the date specified in the Preamble as the date for commencement of the Works.
- 1.1.2 "Conditions" means the Preamble to and these Conditions of Contract.
- 1.1.3 "Contract" means the agreement between the Employer and the Contractor for the execution of the supply, testing and commissioning of Plant for incorporation in the Works incorporating the Conditions, Specification, Employer's Drawings and Contractor's Drawings, priced and completed Schedules, Contractor's Tender, Employer's Tender Enquiry document and such further documents as may be expressly incorporated.
- 1.1.4 "Contract Agreement" means the document recording the terms of the Contract between the Employer and the Contractor.
- 1.1.5 "Contract Price" means the sum stated in the Form of Agreement as payable to the Contractor for the execution of the Works.
- 1.1.6 "Contractor" means the person or persons whose tender has been accepted by the Employer and the legal successors in title to the Contractor but not (except with the consent of the Employer) any assignee of the Contractor.
- 1.1.7 "Contractor's Drawings" means all drawings, samples, patterns, models and operation and maintenance manuals to be submitted by the Contractor in accordance with Clause 6.
- 1.1.8 "Contractor's Equipment" means all appliances or things of whatsoever nature required for the purposes of the Works but does not include Plant.
- 1.1.9 "Contractor's Risks" means the risks defined in Sub-Clause 37.3.
- 1.1.10 "Defects Liability Certificate" means the certificate to be issued by the Engineer to the Contractor in accordance with Sub-Clause 30.11.
- 1.1.11 "Defects Liability Period" means one year following taking over, during which the Contractor is responsible for making good defects and damage in accordance with Clause 30.
- 1.1.12 "Employer" means the person designated as such in the preamble and the legal successors in title to the Employer but not (except with the consent of the Contractor) any assignee of the Employer.




- 1.1.13 "Employer's Drawings" means all the drawings and information provided by the Employer or the Engineer to the Contractor under the Contract.
- 1.1.14 "Employer's Risks" means those risks defined in Sub-Clause 37.2.
- 1.1.15 "Engineer" means the person appointed by the Employer to act as Engineer for the purposes of the Contract and designated as such in the Preamble.
- 1.1.16 "Engineer's Representative" means any representative of the Engineer appointed from time to time by the Engineer under Sub-Clause 2.2.
- 1.1.17 "Final Certificate of Payment", means the certificate to be issued by the Engineer to the Employer in accordance with Sub-Clause 33.10.
- 1.1.18 "Force Majeure" has the meaning assigned to it under Sub-Clause 44.1.
- 1.1.19 "Foreign Currency" means a currency of a country other than that in which Plant is to be installed.
- 1.1.20 "Gross Misconduct" means any act or omission of the Contractor including the design and construction of the works in violation of the most elementary rules of diligence which a conscientious contractor in the same position and under the same circumstances would have followed.
- 1.1.21 Void.
- 1.1.22 "Performance Security" means the security to be provided by the Contractor in accordance with Sub-Clause 10.1. for the due performance of the Contract.
- 1.1.23 "Plant" means machinery, apparatus, materials and all things to be provided under the Contract for incorporation in the Works.
- 1.1.24 "Programme" means the Programme to be submitted by the Contractor in accordance with Sub-Clause 12.1. and any approved revisions thereto.
- 1.1.25 Void
- 1.1.26 "Risk Transfer Date" means the date when the risk of loss of or damage to the Works passes from the Contractor to the Employer in accordance with Sub-Clause 39.1.
- 1.1.27 "Schedule of Prices" means the completed and priced Schedule of Prices, or any part or individual schedule thereof, submitted by the Contractor with his Tender and forming a part of the Contract documents.



- 1.1.28 "Section" means a part of the Works specifically identified as such in the Contract.
- 1.1.29 "Site" means the place or places, provided or made available by the Employer where work is to be done by the Contractor or to which Plant is to be delivered, together with so much of the area surrounding the same as the Contractor shall with the consent of the Employer use in connection with the Works otherwise than merely for the purposes of access.
- 1.1.30 "Specification" means the specification of the Works included in the Contract and any modification thereof made under Clause 31.
- 1.1.31 "Subcontractor" means any person (other than the Contractor) named in the Contract for any part of the Works, or any person to whom any part of the Contract has been subcontracted with the consent of the Employer, and the Subcontractor's legal successors in title but not any assignee of the Subcontractor.
- 1.1.32 "Taking-Over Certificate" means the certificate to be given by the Engineer to the Contractor in accordance with Clause 29.
- 1.1.33 "Tender" means the Contractor's priced offer to the Employer for the execution of the Works including any approved variations and/or additions agreed in contract negotiations.
- 1.1.34 "Tests on Completion" means the tests specified in the Contract or otherwise agreed by the Engineer and the Contractor to be performed before the Works are taken over by the Employer which shall include the no-load tests and performances tests referred to in clause 28.
- 1.1.35 "Time for Completion" means the time stated in the Preamble for completing the Works and passing the Tests on Completion calculated from the Commencement Date unless extended in accordance with Clause 26.
- 1.1.36 "Variation Order" means any written order, identified as such, issued to the Contractor by the Engineer under Sub-Clause 31.1.
- 1.1.37 "Works" means all Plant to be provided and work to be done by the Contractor under the Contract whether defined or implicit for functional completeness of the works including any temporary works.
- 1.1.38 "Tender Enquiry Document" is the enquiry document issued by Cemento Melon on the 1st August 1996 including documents listed in the schedule of additional documents issued to tenderers during the tender period.
- 1.1.39 "Completion of Erection" means the date on which all of the Plant has been erected and each section of the Works has passed the appropriate no load tests to enable the Plant to be commissioned.

- 1.1.40 "Commissioning" means the period of time following Completion of Erection during which each section of the Works is to be prepared for start-up, started up and tested in accordance with the performance test criteria set out in Clause 28 of these Conditions.
- 1.1.41 "Tests" means (as the context may require) the no load tests referred to in Sub-Clause 28.3 and the performance tests referred to in the Contractor's tender section Performance Warranties and Liquidated Damages revisior 02 dated 20th January 1997 and which are to be carried out within the Time for Completion.
- Headings and Titles** 1.2 The headings and titles in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract.
- Interpretation** 1.3 Words importing persons or parties shall include firms and corporations and any organisation having legal capacity. Words importing the singular only also include the plural and vice versa where the context requires.
- Written Communications** 1.4 Wherever in the Contract provision is made for a communication to be "written" or "in writing" this means any hand-written, type-written or printed communication including telex, cable and facsimile transmission.
- Notices, Consents and Approvals** 1.5 Wherever in the Contract provision is made for the giving of notice, consent or approval by any person, such consent or approval shall not be unreasonably withheld. Unless otherwise specified, such notice, consent or approval shall be in writing and the word 'notify' shall be construed accordingly.
- Costs, Overhead Charges and Profit** 1.6 Whenever by these conditions the Contractor is entitled to be paid cost, such cost shall be the direct costs actually incurred and shall include a reasonable overhead properly allocable thereto which in no case shall be greater than 12% of the direct costs actually incurred. Any profit entitlement shall be added to the cost at the percentage stated in the Preamble.
- Periods** 1.7 In these Conditions "day" means calendar day and "year" means 365 days according to the Gregorian calendar.

Engineer and Engineer's Representative

- Engineer's Duties** 2.1 The Engineer shall carry out the duties specified in the Contract.
- If the Engineer is required, under the terms of his appointment by the Employer, to obtain the specific approval of the Employer before carrying out any of these duties, this shall be notified by the Employer to the Contractor.
- Except as expressly stated in the Contract the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.




Engineer's Representative

2.2 The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall only carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3.

Engineer's Power to Delegate

2.3 The Engineer may from time to time delegate to the Engineer's Representative any of the duties vested in the Engineer and may at any time revoke such delegation.

Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor and the Employer.

Any decision, instruction or approval given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. However:

- (a) any failure of the Engineer's Representative to disapprove any Plant or workmanship shall not prejudice the right of the Engineer to disapprove such Plant or workmanship and to give instructions for the rectification thereof;
- (b) if the Contractor questions any decision or instruction of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary such decision or instruction.

Engineer to Act Impartially

2.4 Wherever under the Contract the Engineer is required to exercise his discretion by:

- (a) giving his decision, opinion or consent, or
- (b) expressing his satisfaction or approval, or
- (c) determining value, or
- (d) otherwise taking action which may affect the rights and obligations of the Employer or the Contractor,

he shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances.

Engineer's Decisions and Instructions

2.5 The Contractor shall proceed with the decisions and instructions given by the Engineer in accordance with these Conditions.

Confirmation in Writing

2.6 The Contractor may require the Engineer to confirm in writing any decision or instruction of the Engineer which is not in writing. The Contractor shall notify the Engineer of such requirement without undue delay. Such a decision or instruction shall not be effective until written confirmation thereof has been received by the Contractor.

Disputing Engineer's Decisions and Instructions

2.7 If the Employer or the Contractor disputes or questions any decision or instruction under Sub-Clause 2.6, he shall give notice to the Engineer within 14 days after receipt thereof, giving his reasons.

The Engineer shall with a further period of 14 days by notice to the Contractor and the Employer with reasons, confirm, reverse or vary such decision or instruction.

If either party disagrees with the action taken by the Engineer, or if the Engineer fails to reply to the Contractor's

notice within the stipulated 14 days, and the matter cannot be settled amicably that party shall be at liberty, subject to Sub-Clause 50.1, to refer the matter to arbitration in accordance with the Contract.

Replacement of Engineer

- 2.8 The Employer shall not appoint any person to act in replacement of the Engineer without advising the Contractor.

Assignment and Subcontracting

Assignment

- 3.1 The Contractor shall not assign the Contract or any of his obligations under the Contract. A charge in favour of the Contractor's bankers of any monies due under the Contract shall not be considered an assignment.

Subcontracting

- 4.1 The Contractor shall not subcontract the whole of the Works.

Except where otherwise provided by the Contract the Contractor shall not subcontract any part of the Works without the prior consent of the Employer to the part of the works to be sub-contracted and to the sub-contractor to carry out the same.

The Contractor shall however, not require such consent for purchases of materials or to place contracts for minor details or for any part of the Works of which the manufacturer or supplier is named in the Contract.

The Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents or employees as fully as if they were the acts, defaults or neglects of the Contractor, his agents or employees.

The Contractor shall ensure that all the rights of the Employer and the Engineer under the Contract are not, in any way, contradicted by the Terms and Conditions of any Sub-contract. Any difference that may exist between any Sub-Contract and the Contract shall not relieve the Contractor of his full responsibility under the Contract. Should a Sub-contractor be in any way in breach of terms of any Sub-contract and, accordingly the Contract, then the Employer may revoke the approval of the sub-contractor without prejudice to the Contractor's liability to complete the works.

Contract Documents

Ruling Language

- 5.1 Where versions of the Contract are prepared in different languages, the version which is to prevail shall be specified in the Preamble. The language of such version is referred to as the ruling language.

Day to Day Communications

- 5.2 The language for day to day communications in writing is stated in the Preamble.




- Priority of Contract documents** 5.3 Unless otherwise provided in the Contract Documents the priority of the Contract Documents shall be as follows:
1. The Form of Agreement
 2. The Preamble
 3. The Conditions of Contract
 4. The Contractor's tender document
 5. The Tender Enquiry Document
 6. Any other document forming part of the Contract
- Documents Mutually Explanatory** 5.4 Subject to Sub-Clause 5.3 the Contract documents shall be taken as mutually explanatory. Any ambiguities or discrepancies shall be resolved by the Engineer, who shall then instruct the Contractor thereon.
- If the Contractor considers that compliance with such instructions will result in any cost which the Contractor could not reasonably have anticipated, he shall forthwith inform the Engineer with full supporting details. The Engineer shall then, if he approves, certify such costs as may be reasonable together with profit where appropriate, which shall be added to the Contract Price.
- If on the other hand compliance with such instructions results in lower costs for the Contractor than he had reason to anticipate, the Engineer shall certify a deduction from the Contract Price.
- Contractor's Drawings** 6.1 The Contractor shall submit to the Engineer for approval:
- (a) within the time given in the Contract or in the Programme such drawings, samples, models or information as may be called for therein, and in the numbers therein required, and
 - (b) during the progress of the Works, such drawings of the general arrangement and details of the Works as specified in the Contract or as the Engineer may require.
- The Engineer shall signify his approval or disapproval thereof. If he fails to do so within the time given in the Contract or the Programme or if no time limit is specified, within 14 days of receipt in the offices of Cemento Melon and Blue Circle, they shall be deemed to be approved.
- Approved drawings, samples and models shall be signed or otherwise identified by the Engineer.
- The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the Contract.
- Consequences of Disapproval of Contractor's Drawings** 6.2 Any Contractor's Drawings which the Engineer disapproves, shall be forthwith modified to meet the requirements of the Engineer and shall be re-submitted.
- Approved Contractor's Drawings** 6.3 Approved Contractor's Drawings shall not be departed from except as provided in Clause 31.




- Inspection of Contractor's Drawings** 6.4 The Engineer shall have the right at all reasonable times to inspect, at the Contractor's premises, all Contractor's Drawings of any part of the Works.
- Erection Information** 6.5 The Contractor shall provide, within the times stated in the Contract or in the Programme, drawings showing how the Plant is to be affixed and any other information required for:
- (a) preparing suitable foundations or other means of support, and
 - (b) providing suitable access on the Site for the Plant and any necessary equipment to the place where the Plant is to be erected, and
 - (c) making necessary connections to the Plant.
- Operation and Maintenance Manuals** 6.6 Before the Works are taken over in accordance with Clause 29 the Contractor shall supply operation and maintenance manuals together with drawings of the Works as built. These shall be in such detail as will enable the Employer to operate, maintain, adjust and repair all parts of the Works. The manuals and drawings shall be in Spanish, adhere to the metric system and in such form and numbers as stated in the Contract.
- Unless otherwise agreed, the Works shall not be considered to be completed for the purposes of taking over until such manuals and drawings have been supplied to the Employer.
- Employer's Use of Contractor's Drawings** 6.7 Contractor's Drawings may be used by the Employer for no other purpose than completing, operating, maintaining, adjusting and repairing the Works.
- Contractor's Use of Employer's Drawings** 6.8 The Employer's Drawings, Specification and other information submitted by the Employer or the Engineer to the Contractor shall remain the property of the Employer. They shall not, without the consent of the Employer, be used, copied or communicated to a third party by the Contractor unless necessary for the purposes of the Contract.
- Manufacturing Drawings** 6.9 The Contractor shall not be required to disclose to the Employer or the Engineer the Contractor's confidential manufacturing drawings, designs, know-how or manufacturing practices, processes or operations.
- Errors in Contractor's Drawings** 7.1 The Contractor shall be responsible for any errors or omissions in the Contractor's Drawings unless they are due to incorrect Employer's Drawings or other written information supplied by the Employer or the Engineer. Approval by the Engineer of the Contractor's Drawings shall not relieve the Contractor from any responsibility under this Sub-Clause.
- The Contractor shall bear any costs he may incur as a result of delay in providing Contractor's Drawings and other information or as a result of errors or omissions therein, for which the Contractor is responsible.




The Contractor shall at his own cost carry out any alterations or remedial work necessitated by such errors or omissions for which he is responsible and modify the Contractor's Drawings and such other information accordingly.

The performance of his obligations under this Clause shall be in full satisfaction of the Contractor's liability under this Clause but shall not however relieve him of his liability for any resulting delay in deliveries.

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| Errors by Employer or Engineer | 7.2 | The Employer shall be responsible for the Employer's Drawings and for other written information supplied by the Employer or the Engineer and for the details of special work specified by either of them. If such Employer's Drawings information or details are incorrect and necessitate alterations of the work, the Employer shall pay the Contractor the cost of the alterations together with profit as certified by the Engineer. |
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Obligations of the Contractor

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| General Obligations | 8.1 | The Contractor shall, in accordance with the Contract, with due care and diligence, design, manufacture, deliver to Site, supervise the erection, testing and commissioning of the Plant and carry out the Works within the Time for Completion. The Contractor shall also provide all necessary Contractor's Equipment, superintendence, labour materials and all other things necessary therefore, whether of a temporary or permanent nature, and all necessary facilities therefor. |
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| Setting Out | 8.2 | The Contractor shall in his design set out the Works in relation to original points, lines and levels of reference given by the Engineer in writing and which the Contractor has verified and agreed at site and shall provide all necessary instruments, appliances and labour for such purposes. |
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If, at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error.

The Contractor shall bear the cost of rectifying the error unless the error results from incorrect information supplied in writing by the Employer, the Engineer or from default by another contractor, in which case the cost together with profit shall be borne by the Employer.

The checking of any setting-out by the Engineer shall not relieve the contractor of his responsibility for the accuracy thereof.

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| Contract Agreement | 9.1 | The Contractor shall, if called upon so to do, execute a Contract Agreement recording all the terms of the Contract to be prepared by and completed at the cost of the Employer in the form annexed hereto. |
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| Performance security | 10.1 | The Contractor shall within 28 days of signature of the Contract and, as a conditional precedent to payment of any amount by the Employer to the Contractor under the |
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Contract, obtain and deliver to the Employer, at his own cost, a Performance Security to the value of 10% of the Contract Price and valid until the end of the Defects Liability Period of 12 months (30 months in total unless the Contract Period is extended) to secure the complete, timely and correct performance of the Contractor's obligations under the Contract. This bond shall be issued by a bank previously approved by the Employer.

The Bond shall be completely refunded upon delivery of the Final Defects Liability Certificate along with the delivery by the Contractor to the Employer of a statement executed by its legal representative before a public notary declaring that the Contractor has no pending claims against the Employer in connection with the Contract, that all labour, social benefits, taxes, sub-contractors and suppliers have been duly paid up to that date and that there are no claims, lawsuits, injunctions or the like against sub-contractors, the Contractor or the Employer filed or threatening to be filed.

Notwithstanding the stages of refund outlined in the preceding paragraph, if 20 days prior to the expiry date of the bond, the Final Defects Liability Certificate has not been issued by the Employer and delivered to the Contractor, the Contractor shall renew the then existing bond by delivering to the Employer a new bond for the same amount and valid for an additional 90 days. The failure of the Contractor to timely comply with this renewal obligation shall constitute a material breach of the Contract and shall give the right to the Employer to collect any and all performance bonds and to withhold any payments due or to become due to the Contractor under the Contract.

All bonds shall be issued by a first class bank as per the draft attached to the Contract Conditions and shall be payable on demand as described in the attached draft, without the need of an arbitration award, in case the Contractor fails to timely perform any obligation under the Contract.

Site Data

- 11.1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself as regards existing roads or other means of communication with and access to the Site, the climatic conditions, the form and nature of the Site, the risk of injury or damage to property adjacent to the Site or to the occupiers of such property, the nature of any materials (whether natural or otherwise) for the completion of the Works, the conditions affecting or which might affect the operation of the Plant, the accommodation required during the execution of the Works, and generally to have obtained his own information on all matters influencing or affecting his Tender, the Contract price, and the execution, commissioning and maintenance under the Defects Liability Clause 30 of the Works. The Contractor shall include within his Contract Price for the carrying out of a soil survey to confirm the soil parameters used in his design. No increase in costs will be considered unless changes in the soil parameters lead to a substantive change in design.

Sufficiency of Contract Price

11.2 The Contractor shall be deemed to have satisfied himself on and taken account of in his Tender:

- (a) all the conditions and circumstances affecting the Contract Price,
- (b) the possibility of carrying out the Works as described in the Contract,
- (c) the general circumstances at the Site (if access has been made available to him)
- (d) all matters set out in Sub-Clause 11.1

The Contractor shall not be responsible for the accuracy of information given in writing by the Employer or the Engineer but shall be responsible for his interpretation of information received from whatever source.

Physical Obstructions and Conditions

11.3 If during the execution of the Works on site the Contractor encounters unforeseen ground conditions including changes in soil parameters referred to in Sub-Clause 11.1, the Contractor shall be entitled to recover additional costs incurred in consequence.

The Engineer shall certify and there shall be added to the Contract Price the additional cost of

- (a) complying with any instruction of which the Engineer, after due consultation with the Employer and the Contractor, issues to the Contractor therewith, and
- (b) any measures necessary for reasons of safety which the Contractor may have to take in the absence of specific instructions from the Engineer.

Programme to be Furnished

12.1 The Contractor shall within 28 days after the Commencement Date prepare and submit to the Engineer for the Engineer's approval a combined manufacturing and installation Programme with detailed Milestones amplifying the Preliminary Programme submitted with his Tender and taking into account any conditions of acceptance of the Tender. The Contractor's Programme shall set out the order of procedure and the activity durations which the Contractor proposes to adopt when carrying out the works including the design, manufacture, delivery to Site, supervision of erection, commissioning and maintenance thereof and the dates for which access to the various sections of the works are required. The submission to and approval by the Engineer of the Programme shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

Alteration to Programme

12.2 No alteration to the Programme which affects the Time for Completion shall be made without the approval of the Engineer.

The programme shall be updated at the Employer's request as the Works proceed and as provided for in the Specification. The Contractor shall submit monthly progress

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| | | reports in a form to be agreed with the Engineer, and at his own expense attend progress meetings either in the country of manufacture of the Plant or in Chile at times and places notified by the Engineer. |
| Revision of Programme | 12.3 | <p>If the progress of the Works does not conform to the Programme, the Engineer may instruct the Contractor to revise the Programme.</p> <p>If such modifications are required for reasons for which the Contractor is not responsible, the cost of preparing the revised Programme shall be certified by the Engineer and added to the Contract Price.</p> |
| Contractor's Representative | 13.1 | <p>The Contractor shall employ one or more competent Spanish speaking representatives first approved by the Engineer superintend the carrying out of the Works on Site. They shall be fluent in the language for day to day communications. Their names shall be communicated in writing to the Engineer for the Engineer's approval before work on Site begins.</p> <p>Any instruction or notice which the Engineer gives to the Contractor's representatives shall be deemed to have been given to the Contractor.</p> |
| Objection to Contractor's Employees | 13.2 | The Contractor shall, upon the Engineer's written instruction, remove from the Works any person employed by him in the execution of the Works, who misconducts himself or is incompetent or negligent or who in the opinion of the Employer or the Engineer is otherwise unsuitable for his position or for employment on the Contract. |
| Contractor's Equipment | 14.1 | Void |
| Safety Precautions | 14.2 | The Contractor shall observe all applicable regulations regarding safety on the Site. |
| Electricity, Water and Gas | 14.3 | Void. |
| | 14.4 | Void. |
| Clearance of Site | 14.5 | Void. |
| Opportunities for Other Contractors | 14.6 | Void. |
| Authority for Access | 14.7 | Void. |
| Information for Import Permits and Licences | 14.8 | <p>The Contractor shall obtain any permits or licenses required for export of the equipment from the source country.</p> <p>The Employer shall be responsible for the payment of all import duties and taxes with respect to all imported equipment for the Project.</p> <p>The Contractor shall assist the Employer by providing information to obtain import licences required for any part of the Plant or Works in reasonable time having regard to the</p> |




time for delivery of the Plant and completion of the Works. The Contractor shall remain fully responsible for all administrative procedures relating to the transport of the Plant to site.

The Contractor shall be responsible for arranging all import and re-export licences for Contractor's equipment.

- 14.9 The supervision of erection, testing and commissioning of the Works shall, so far as compliance with the requirements of the Contract permits, be carried out so as not to interfere unnecessarily or improperly with the continued operation of the plant in La Calera, the users of the Plant, or the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or any other person. The Contractor shall defend, save harmless and indemnify the Employer in respect of all justifiable and duly supported claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any action or omission which a diligent contractor could have avoided.
- 14.10 (a) The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to and from site, or the areas within the La Calera plant from being blocked, damaged or injured by any traffic of the Contractor or any of his sub-contractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any extraordinary traffic as will inevitably arise from the moving of the Plant and materials to and from site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such highways and bridges.
- (b) Should it be found necessary for the Contractor to move one or more loads of Contractor's Equipment, machinery or pre-constructed units or parts of units or work over part of a highway or bridge, the moving whereof is likely to damage any highway or bridge unless special protection or strengthening is carried out then the Contractor shall before moving the load on to such highway or bridge give notice to the local highway authority or other appropriate body the weight and other particulars of the load to be moved and his proposals for protecting or strengthening the said highway or bridge. The Contractor shall be responsible for obtaining all necessary consents and approvals for the transport of special loads and oversized consignments and for paying all relevant dues and charges, and/or executing any repairs requested by the Authorities.
- (c) Where the nature of the Works is such as to require the use by Contractor of waterborne transport the foregoing provisions of this Sub-Clause shall be construed as though "highway" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included a seagoing vessel, and shall have effect accordingly.

14.11 The Employer shall be responsible for obtaining all local permits and environmental permits for the Works. The Contractor shall actively assist the Employer to obtain these permits including the timely provision of plans and specifications of equipment to be installed. Should any delay in the works occur as a result of the Contractor's failure to provide the necessary information in a reasonable time scale, then the Contractor shall be fully responsible for the resultant delay and his own cost of such delay. The Contractor shall continue to be responsible for all breaking ground Certificates (if applicable), work permits for non-Chilean personnel, work visas and any legal permissions concerning its presence in Chile. The Contractor shall provide to the Employer adequate evidence thereof upon request, and, upon completion of the Works, shall deliver to the Employer a full set of those Permits or approvals for which he was responsible.

Compliance with Statutes, Regulations

15.1 The Contractor shall, in all matters arising in the performance of the Contract, comply in all respects with give all notices and pay all fees and impositions required by the provisions of any national or state statute, ordinance or other law or any regulation or bye-law of any duly constituted authority.

Compliance with Laws

15.2 The Contractor shall comply with the laws of the country of manufacture concerning the manufacture of the Plant, and the laws of the country where the Plant is to be erected so far as such laws concern the manufacture, erection and operation of the Works.

Patent Rights

16.1 The Contractor shall indemnify the Employer against all claims of infringement of any patent, registered design, copyright, trade mark or trade name or other intellectual property right provided that all of following conditions are satisfied:

- (a) The claim or proceedings arise out of the design, construction, manufacture or use of the Works or any Plant supplied by the Contractor.
- (b) The right was protected at the date of the Contract in the Contractor's country or the country in which the Plant is to be manufactured or erected.
- (c) The infringement or allegation of infringement was not caused by any use of the Works otherwise than for the purpose indicated by or reasonably to be inferred from the Specification.
- (d) The infringement or allegation of infringement was not caused by the use of any plant in association or combination with any plant not supplied by the Contractor, unless such association or combination was disclosed to the Contractor prior to the date of tender.
- (e) The infringement or allegation of infringement was not caused by the Contractor following the design or instruction of the Employer or the Engineer.

- Claims in respect of Patent Rights** 16.2 The Contractor shall be promptly notified of any claim under this Clause made against the Employer. The Contractor may at his own cost conduct negotiations for the settlement of such claim, and any litigation that may arise therefrom. The Employer shall not except as forced by a local law or regulation make any admission which might be prejudicial to the Contractor unless the Contractor has failed to take over the conduct of the negotiations or litigation within a reasonable time after having been so requested. The Contractor may not, however, conduct such negotiations or litigation before he has given the Employer such reasonable security as the Employer may require. The security shall be for an amount which is an assessment of the compensation, damages, expenses and costs for which the Employer may become liable and which are the subject of the indemnity under Sub-Clause 16.1. The Employer shall, at the request of the Contractor provide all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable costs incurred in so doing.

Obligations of the Employer

- Access to and Possession of the Site** 17.1 The Employer shall to the extent stated in the specification provide means of access within the Employer's premises for the delivery of all Plant and Contractor's equipment to the site.
- Assistance with Local Regulations** 17.2 The Employer shall assist the Contractor in ascertaining the nature and extent of any laws, regulations, orders or bye-laws and customs in the country where the Plant is to be erected, which may affect the Contractor in the performance of his obligations under the Contract. The Employer shall if so requested procure for the Contractor copies thereof and information relating thereto at the Contractor's cost.
- Civil Works on Site** 17.3 Any building, structure, foundation or means of access on the Site to be provided by the Employer shall be in a condition suitable for the reception, movement, installation and maintenance of the Works within the time or times indicated in the Programme.
- 17.4 Void
- 17.5 The Employer shall obtain all import permits or licences required and clearance through customs for any part of the Plant or the Works in reasonable time having regard to the time for delivery of the Plant and completion of the Works.

Labour

- Engagement of Labour** 18.1 Void
- Returns of Labour** 18.2 Void
- Working Hours** 18.3 Void

Restriction on Working Hours 18.4 Void

Workmanship and Materials

Manner of Execution 19.1 All Plant to be supplied shall be manufactured and all work to be done shall be executed in the manner set out in the Contract.

Where the manner of manufacture and execution is not set out in the Contract, the work shall be executed in a proper and workmanlike manner in accordance with recognised good practice and the Contractor's Quality Assurance procedures.

Covering up Work 19.2 Void

Uncovering Work 19.3 Void

Independent Inspection 20.1 The Employer and the Engineer may delegate inspection and testing of plant to an independent inspector. Any such delegation by the Employer and Engineer shall be effected in the manner required by Sub-Clause 2.3, and for this purpose such independent inspector shall be considered as an Engineer's Representative. Notice of such appointment (being not less than 14 days) shall be given by the Engineer to the Contractor.

Any failure of the independent inspector or Engineer to disapprove any plant or workmanship not in accordance with the Contract shall not prejudice the right of the Employer to disapprove such plant or workmanship and to give instructions for the rectification thereof.

Inspection and Testing During Manufacture 20.2 The Independent Inspector or the Engineer shall be entitled during manufacture to inspect, examine and test the materials and workmanship and check the progress of manufacture of all Plant to be supplied under the Contract. This shall take place on the Contractor's premises during working hours. If Plant is being manufactured on other premises, the Contractor shall obtain permission for the Independent Inspector or the Engineer to carry out such inspection, examination and testing on those premises.

None of these inspections, examinations, or testing by the Employer, Engineer or Independent Inspector or lack thereof shall be construed as relieving or diminishing Contractor's obligations under the Contract.

Dates for Inspection and Testing 20.3 The Contractor shall agree with the Independent Inspector or the Engineer the time and place for the testing of any Plant as provided in the Contract. The Independent Inspector or the Engineer shall give the Contractor 24 hours notice of his intention to attend the tests.

If the Independent Inspector or the Engineer does not attend on the date agreed, the Contractor may, unless the Independent Inspector or the Engineer instructs the Contractor not to do so, proceed with the tests, which shall be deemed to have been made in the Independent Inspector or the Engineer's presence.

The Contractor shall forthwith forward to the Independent Inspector or the Engineer duly certified copies of the test results. If the Independent Inspector or the Engineer has not attended the test, he shall accept the validity of the test readings.

- Facilities for Testing** 20.4 Where the Contract provides for tests on the premises of the Contractor or of any Sub-contractor, the Contractor shall provide such assistance, labour, materials, electricity, fuel stores, apparatus and instruments as may be necessary to carry out the tests efficiently. The costs incurred by the Employer or his delegated representative shall be to the Employer's account.
- Certificate of Testing** 20.5 When Plant has passed the tests referred to in this Clause the Independent Inspector or the Engineer shall furnish to the Contractor a certificate or endorse the Contractor's test certificate to that effect.
- Rejection** 21.1 If, as a result of the inspection, examination or testing referred to in Clause 20, the Engineer decides that any Plant is defective or otherwise not in accordance with the Contract, he may reject such Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Engineer shall not reject any Plant for minor defects which do not affect the commercial operation of such Plant.
The Contractor shall then with all speed make good the defect or ensure that any rejected Plant complies with the Contract.
If the Engineer requires such Plant to be re-tested, the tests shall be repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall be deducted from the Contract Price.
- Permission to Deliver** 22.1 The Contractor shall apply in writing to the Engineer for permission to deliver any Plant or Contractor's Equipment to the Site. No Plant or Contractor's Equipment may be delivered to the Site without the Engineer's written permission.
The Contractor shall be responsible for the reception on Site of the Plant and Contractor's Equipment.
- Suspension of Works or Delivery**
- Order to Suspend** 23.1 The Engineer may with the Employer's approval at any time instruct the Contractor to:
- (a) suspend progress of the Works, or
 - (b) suspend delivery of Plant or Contractor's Equipment which is ready for delivery to the Site at the time for delivery specified in the Programme, or if no time is specified, at the time appropriate for it to be delivered.
- The Contractor shall during suspension protect and secure the Works or Plant affected at the Contractor's works or elsewhere or at the Site, as the case may be, against any deterioration, loss or damage and shall keep such contemporary records and documents as may reasonably be necessary to support and substantiate any claim he may subsequently make in respect of such suspension

- Cost of Suspension** 24.1 The additional cost incurred by the Contractor in protecting, securing and insuring the Works or Plant and in following the Engineer's instructions under Sub-Clause 23.1 and in resumption of the work and which is substantiated by the contractor's records and documents required to be kept under Sub-clause 23.1 shall be added to the Contract Price. The Contractor shall not be entitled to be paid any additional costs if such suspension is necessary by reason of a default on the part of the Contractor.
- The Contractor shall not be entitled to additional costs unless he notifies the Engineer of his intention to make such claim, within 28 days after receipt of the order to suspend progress or delivery or of the date of deemed suspension under Sub-Clause 23.1.
- Payment in Event of Suspension** 24.2 The Contractor shall be entitled to payment for Plant which has not been delivered to Site if the work on Plant or delivery of Plant has been suspended for more than 28 days. After 28 days of suspension, the Contractor shall be entitled to payment of the value of such Plant as at the date of suspension.
- A certificate of payment shall be issued on condition that:
- (a) the Contractor has marked the Plant as the Employer's property in accordance with the Engineer's instructions, and
- (b) the suspension is not due to the Contractor's fault.
- Prolonged Suspension** 24.3 If suspension under Clause 23.1 has continued for more than 84 days, and the suspension is not due to the Contractor's default, the Contractor may by notice to the Engineer require permission to proceed within 28 days.
- If permission is not granted within that time, the Contractor may treat the suspension as an omission under Clause 31 of the Section it affects, or if the suspension affects the whole of the Works, terminate the Contract and the provisions of Clause 46 shall apply.
- Resumption of Work** 24.4 If the Contractor chooses not to treat prolonged suspension as an omission or termination under Sub-Clause 24.3, the Employer may upon the request of the Contractor, take over the responsibility for protection, storage, security and insurance of the suspended Works and risk of loss or damage thereto shall thereupon pass to the Employer.
- After receipt of permission or an order to proceed, the Contractor shall, after due notice to the Engineer, examine the Works and the Plant affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant that may have occurred during the suspension. Cost properly incurred by the Contractor which would not have been incurred but for the suspension shall be added to the Contract Price together with profit.




The Contractor shall not be entitled to payment for costs incurred in making good any deterioration, defect or loss caused by faulty workmanship or materials or by the Contractor's failure to take the measures specified in Sub-Clause 23.1.

If the Employer has taken over risk and responsibility for the suspended Works under this Sub-Clause, risk and responsibility shall revert to the Contractor 14 days after receipt of the permission or order to proceed.

Completion

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| Time for Completion | 25.1 | The Plant shall be delivered so that the Works shall be completed and shall have passed the Tests on Completion within the Time for Completion. |
| Extension of time for completion | 26.1 | The Contractor may only request an extension to the Time for Completion grounded on delays caused by the Employer's fault, extra or additional work ordered in writing under Clause 31, unforeseen ground conditions as per Clause 11.3 or Force Majeure, provided that there has been no fault or negligence by the Contractor and that the Contractor has made every effort to overcome the situation and minimise the delays. The request for an extension in the Time for Completion must be submitted by the Contractor to the Engineer in writing within ten days following the commencement of the delay in question. |
| Delays by Sub-Contractors | 26.2 | The Contractor shall be entitled to claim an extension of time if delay on the part of a Subcontractor is due to a cause mentioned in Clause 26.1, and such delay prevents the Contractor from meeting the Time for Completion. |
| Delay in Completion | 27.1 | Void |
| Prolonged Delay | 27.2 | Void |

Tests on Completion

- 28.1 The performance test shall be carried out in accordance with the Contractor's Tender section Performance Warranties and Liquidated Damages revision 02 dated 20th January 1997.
- 28.2 The Contractor shall give to the Engineer 21 days notice of the date after which he shall be ready to make the Tests. Unless otherwise agreed, the Tests shall take place within 14 days after the said date on such day or days as the Engineer shall notify the Contractor.
- 28.3 Following the erection of the Works the Contractor, at his own cost, shall supervise no load tests in the presence of the Employer and the Engineer. The no load tests shall cover a continuous period of controlled operation of each section of the Works as agreed between the Engineer and the Contractor and upon completion of such tests a test report shall be drawn up and signed by the Contractor, the Engineer and the Employer or his appointed representative. If no

faults are referred to in the report, the section shall be deemed to be fully erected and no load tested. Any defect which has no effect on Commissioning or the Works being put into production shall be corrected or repaired by the Contractor at his own cost as soon as possible after the tests have been carried out.

- 28.4 Void
- 28.5 Void
- 28.6 If the Tests are being unduly delayed by the Contractor the Engineer may by notice require the Contractor to make the Tests within 21 days after the receipt of such notice. The Contractor shall make the Tests on such days within that period as the Contractor may fix and of which he shall give notice to the Engineer.
- 28.7 The Contractor shall specify in writing at least three (3) months prior to commissioning his detailed requirements for operators, raw materials, electricity, water, fuel, grease and lubricants to enable the Employer to make arrangements for the provision of the same.
- 28.8 The Contractor may at any time during Commissioning after consultation with the Engineer, make under the Contractor's own supervision and responsibility, such changes modifications or additions to the Plant, as the Contractor deems desirable in order to eliminate any defects and achieve the specified Performance Guarantees subject to the Contractor bearing all costs and expenses in relation thereto.
- 28.9 The first Performance Test must be held within three (3) months of Completion of Erection. In the event that any section of the Works fails to pass its Performance Test(s) the Contractor shall take such measures as may be necessary to remedy such failure at his own cost and expense (including the repair and replacement of defective parts and equipment) and shall repeat the Performance Test(s). The Contractor may hold up to three repeat Performance Tests provided that they are held within three (3) months of the original Performance Test and provided that, subject to Sub-Clause 28.13 such repeat tests are held within six (6) months of the Completion of Erection.
- 28.10 The Contractor shall pay for the costs of one (1) expatriate engineer of the Employer to monitor repeated Performance Tests after the Time for Completion. Each party shall otherwise bear his own costs for repeated Performance Tests.
- 28.11 Void



- 28.12 The Employer will assist the Contractor in obtaining any necessary export and/or import licences in respect of any additional materials that may be required and/or any items which may have to be returned to their country of origin in connection with the repair or replacement of any defective Plant provided always that any resulting costs and delays shall be solely for the account of the Contractor.
- 28.13 If despite any changes, modifications, alterations or repairs undertaken by the Contractor, any of the Performance Guarantees set out in the Contractor's Tender section referred to in Sub-Clause 28.1 are not achieved within six (6) months after Completion of Erection, or any extended time granted under Sub-Clause 26, the Contractor shall (unless Sub-Clause 29.4 applies or the Employer waives any such Performance Guarantees) pay the Employer liquidated damages in the sums and at the rates specified in the Contractor's tender section referred to in Sub-Clause 28.1.
- 28.14 The total liquidated damages/penalties payable by the Contractor for failure to achieve such Performance Guarantees shall not exceed the amount as stated in the Contractor's Tender section referred to in Sub-Clause 28.1. The Employer may without prejudice to any other method of recovery deduct the amount of any such liquidated damages/penalties from any cash in his hands due or which may become due to the Contractor and each such payment or deduction under the Contract shall be by way of liquidated damages/penalties for failure to achieve the Performance Guarantees.
- 28.15 Notwithstanding the Employer's right to payment of liquidated damages/penalties under Sub-Clause 28.14, if in the opinion of the Engineer any section fails to meet the minimum output specified in the Contractor's Tender section referred to in Sub-Clause 28.1, the Employer shall be entitled to reject the Works or such section or part thereof in which event the Employer shall have the same remedies against the Contractor as are provided in Sub-Clause 30.5

Taking Over

Taking-Over

- 29.1 The Works or such section thereof as the Employer may at his discretion decide shall be taken over by the Employer when they have been completed in accordance with the Contract, except in minor respects (hereinafter referred to as "outstanding work") that do not affect the use of the Works for their intended purpose, have passed the Tests on Completion or the Contractor has paid liquidated damages/penalties in accordance with Sub-Clause 28.14. Provided always that the Employer has not exercised his right under Sub-Clause 28.15 and a Taking Over Certificate has been issued or deemed to have been issued in accordance with Sub-Clause 29.2.

Taking-Over Certificate

- 29.2 The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will in the Contractor's opinion be complete and ready for taking over under Sub-Clause 29.1.

The Engineer shall within 28 days after the receipt of the Contractor's application either :

- (a) issue the Taking-Over Certificate to the Contractor with a copy to the Employer stating the date on which the Works were complete and ready for taking over, or
- (b) reject the application giving his reasons and specifying the works required to be done by the Contractor to enable the Taking-Over Certificate to be issued.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days he shall be deemed to have issued the Taking-Over Certificate on the last day of that period.

**Use before
Taking-Over**

- 29.3 The Employer shall not use any part of the Works unless a Taking-Over Certificate has been issued in respect thereof. If nevertheless the Employer uses any part of the Works, that part shall be deemed to have been taken over at the date of such use. The Engineer shall on request of the Contractor issue a Taking-Over Certificate accordingly. If the Employer uses any part of the Works before taking over the Contractor shall be given the earliest opportunity of taking such steps as may be necessary to carry out the Tests on Completion.

The provisions for delay in completion shall not apply to any part of the Works while being so used by the Employer. Clause 30 shall apply as if the part had been taken over on the date it was taken into use.

**Interference with
Tests on Completion**

- 29.4 If the Contractor is prevented from carrying out the Tests on Completion within 6 months after the Completion of Erection by a cause for which the Employer or the Engineer or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly.

The Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

If the Works are taken over under this Clause the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests on Completion to be carried out by 14 days notice and in accordance with the relevant provisions of Clause 28.

Any additional costs to which the Contractor may be put in making the Tests on Completion during the Defects Liability Period, shall be added to the Contract Price.

Defects after Taking Over

**Defects Liability
Period**

- 30.1 Where any part of the Works is taken over separately from the Works the Defects Liability Period for that part shall commence on the date it was taken over.

- Making Good Defects** 30.2 The Contractor shall, subject to Sub-Clause 30.9, be responsible for completing any outstanding work and making good any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arises from, either:
- (a) any defective materials, workmanship or design, or
 - (b) any act or omission of the Contractor during the Defects Liability Period.
- The Contractor shall make good the defect or damage within such time as may be specified by the Engineer and at the Contractor's own cost.
- Notice of Defects** 30.3 If any such defect appears or damage occurs, the Employer or the Engineer shall forthwith notify the Contractor thereof.
- Extension of Defects Liability Period** 30.4 The provisions of this Clause shall apply to all replacements or renewals carried out by the Contractor as if the replacements and renewals had been taken over on the date they were completed.
- The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected the Defects Liability Period shall be extended only for that part.
- In neither case shall the Defects Liability Period be extended by more than one year.
- Failure to Remedy Defects** 30.5 If the Contractor fails to remedy a defect or damage within the time specified by the Engineer, the Employer may fix a final time for remedying the defect or damage.
- If the Contractor fails to do so, the Employer may:
- (a) carry out the work himself or by others at the Contractor's risk and cost, provided that he does so in a reasonable manner. The costs properly incurred by the Employer in remedying the defect or damage shall be deducted from the Contract Price, but the Contractor shall have no responsibility for such work, or
 - (b) require the Contractor to grant the Employer reasonable reduction in the Contract Price to be agreed or fixed by arbitration under Clause 50, or
 - (c) if the defect or damage occurs in a major item of Plant and is such that the Employer has been deprived of substantially the whole of the benefit of the Works he may terminate the Contract in respect of such major items of Plant as cannot be put to the intended use in accordance with clause 45 of these Conditions.
- Removal of Defective Work** 30.6 If the defect or damage is such that repairs cannot be expeditiously carried out on the Site, the Contractor may with the consent of the Engineer or the Employer remove from the Site for the purpose of repair any part of the Works which is defective or damaged.

- Further Tests on Completion** 30.7 If the replacements or renewals are such that they may affect the performance of the Works, the Employer may request that Tests on Completion be repeated to the extent necessary. The request shall be made by notice at any time within the Defect Liability Period. The Tests shall be carried out in accordance with Clause 28.
- Right of Access** 30.8 Until the Final Certificate of Payment has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the working and performance of the Works.
Such right of access shall be during the Employer's normal working hours at the Contractor's risk and cost. Access shall also be granted to any duly authorised representative of the Contractor whose name has been communicated in writing to the Engineer.
Subject to the Engineer's approval, the Contractor may also at his own risk and cost make any tests which he considers desirable.
- Defects in Employer's and Engineer's Designs** 30.9 The Contractor shall not be liable for any defects resulting from designs furnished by the Employer or the Engineer.
- Contractor to Search** 30.10 The Contractor shall, if required by the Engineer in writing search for the cause of any defect, under the direction of the Engineer. Unless the defect is one for which the Contractor is liable under this Clause, the cost of the work carried out by the Contractor in searching for the cause of the defect shall be added to the Contract Price.
- Defects Liability Certificate** 30.11 When the Defects Liability Period for the Works or any part thereof has expired and the Contractor has fulfilled all his obligations under the Contract the Engineer shall issue within 28 days to the Employer and the Contractor a Defects Liability Certificate to that effect.
- Exclusive Remedies** 30.12 Except in the case of Gross Misconduct, the Employer's remedies under this Clause shall be in place of and to the exclusion of any other remedy in relation to defects whatsoever.

Variations

- Engineer's Right to Vary** 31.1 The Engineer subject to the approval of the Employer may by Variation Order to the Contractor at any time before the Works are taken over, instruct the Contractor to alter, amend, omit, add to or otherwise vary any part of the Works. The Contractor shall not vary or alter any of the Works except in accordance with a Variation Order from the Engineer. The Contractor may, however, at any time propose variations of the Works to the Engineer.
The Contractor shall have no right to claim additional time to complete the works or additional payment on account of extra work which has not been authorised in writing by the Employer or the Engineer
- Variation Order Procedure** 31.2 Prior to any Variation Order under Sub-Clause 31.1 the Engineer shall notify the Contractor of the nature and form of such variation.




Within the time specified by the Engineer the Contractor shall submit to the Engineer:

- (a) a description of work, if any, to be performed and a programme for its execution, and
- (b) the Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 26.1 or to any of the Contractor's obligations under the Contract, and
- (c) the Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Engineer shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out.

If the Engineer decides that the variation shall be carried out he shall issue a Variation Order clearly identified as such. The same, except as otherwise agreed in writing by the Contractor and the Engineer, shall be deemed to be:

- (1) for the work referred to in paragraph 31.2(a) hereof and
- (2) an approval by the Engineer of the programme referred to in paragraph 31.2(a) hereof and of the modification of the Programme referred to in paragraph 31.2(b) hereof and
- (3) a modification of the Contractor's obligations under the Contract and whether or not the Employer shall have approved the same, notwithstanding anything contained in Sub-Clause 2.1

**Disagreement on
Adjustment of the
Contract Price**

- 31.3 If the Contractor and the Engineer are unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in the Schedule of Prices.

If the rates contained in the Schedule of Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Engineer reflecting the level of pricing in the Schedule of Prices.

Where rates are not contained in the said Schedule, the amount shall be such as is in all the circumstances reasonable. Due account shall be taken of any over or under recovery of overheads by the Contractor in consequence of the variation.

The Contractor shall also be entitled to be paid:

- (a) the cost of any partial execution of the Works rendered useless by any such variation, and
- (b) the cost of making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation, and

(c) any additional costs incurred by the Contractor by the disruption of the progress of the Works as detailed in the Programme, and

(d) the net effect of the Contractor's finance costs, including interest, caused by the variation.

The Engineer shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

Contractor to Proceed

31.4 On receipt of a Variation Order, the Contractor shall forthwith proceed to carry out the variation and be bound to these Conditions in do doing as if such variation was stated in the Contract.

The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause 31.3.

Records of Costs

31.5 In any case where the Contractor is instructed to proceed with a variation prior to the determination of the adjustment to the Contract Price in respect thereof the Contractor shall keep records of the cost of undertaking the variation and of time expended thereon. Such records shall be open to inspection by the Engineer at all reasonable times.

Ownership of Plant

Ownership of Plant

32.1 Plant to be supplied pursuant to the Contract shall become the property of the Employer at whichever is the earlier of the following times:

(a) when Plant is delivered to Site, or

(b) when by virtue of Sub-Clause 24.2 the Contractor becomes entitled to payment of the value of the Plant.

32.2 Where the property in Plant passes to the Employer prior to the physical delivery of such plant, the Contractor shall to the reasonable satisfaction of the Engineer:

(a) Provide documentary evidence that the property in the Plant has vested in the Employer

(b) Suitably set aside the Plant and mark the Plant as to the property of the Employer; and

(c) Send to the Engineer a schedule listing and giving the value of every item of Plant so set aside and marked inviting him to inspect the same.

32.3 Neither the Contractor nor any Sub-Contractor nor any other person shall have any lien on any plant which has vested in the Employer under Clause 32 for any sum due to the Contractor, Sub-Contractor or any other person and the Contractor shall take all such steps as may reasonably be necessary to ensure that the title of the Employer and the exclusion of any such lien are brought to the notice of Sub-Contractors and other persons dealing with or claiming rights over any such plant.

Certificates and Payment

33.1 The Contract Price (as may be adjusted to give effect to such additions thereto and deductions there from as are provided in the Contract) shall be paid in Deutsche Mark DEM and US \$ for the German portion in deliveries and in US \$ for the Mexican portion in deliveries as follows :

20% of the Contract Price

Advance payment at coming into force of the Contract against submittal of invoice and an on demand advance payment Guarantee as per the draft attached to this document issued by a first class bank in favour of the Employer amounting to 20% of the Contract Price. The advance payment will be reduced pro-rata delivery and will be valid until completion of delivery.

** guarantee*



60% of the Contract Price

Payable pro-rata of the deliveries/presentation of an independent warehouse receipt and pro-rata services rendered.

10% of the Contract Price.

Payable on Completion of Erection against submittal of invoice and corresponding certificate issued by the Employer or the Engineer.

10% of the Contract Price

Upon issue of the Taking-Over Certificate (bond to cover retention as per Clause 10.1)

If for any reason due to the Employer's default and/or Force Majeure the Taking-Over Certificate has not been issued six months after Completion of Erection the 10% payment due shall be effected against the Contractor's statement that the Taking-Over Certificate has not been issued due to the Employer's default and/or Force Majeure.

On signature of the Contract the Employer shall open irrevocable letters of credit as per the drafts attached to this document, for a total of 100% of the Contract Price, with a first class German bank for the German delivery part and a first class Mexican bank for the Mexican delivery part. All charges associated with the letters of credit shall be borne by the Employer.

33.2 Applications by the Contractor for payment shall be made for additional payments in accordance with Clause 34.

Issue of Certificate of Payment

33.3 Within 10 days after receiving an application for payment which the Contractor was entitled to make the Engineer shall issue a Certificate of Payment to the Employer showing the amount due, with a copy to the Contractor.

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

(a) defects of a minor character which are not such as to affect the use of the Works, or




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

Corrections to Certificates of Payment 33.4 Void

Payment 33.5 Void

Delayed payment 33.6 Void

Remedies on failure to certify or make payment 33.7 Void

Payment by measurement 33.8 Void

Application for Final Certificate of Payment for Release of the Performance Bond 33.9 The Contractor shall make application to the Engineer for the Final Certificate of Payment for the release of the Performance Bond within 20 days after the issue of the Defects Liability Certificate, or if more than one, the last Defects Liability Certificate.

The application for the Final Certificate of Payment shall be accompanied by a final account prepared by the Contractor. The final account shall give full details of the value of all plant supplied and work done under the Contract together with such additions to or deductions from the Contract Price as have been agreed.

Issue of Final Certificate of Payment for Release of the Performance Bond 33.10 Within 28 days after receiving an application in accordance with Sub-Clause 33.9, the Engineer may either issue to the Employer with copy to the Contractor, the Final Certificate of Payment or, request the Contractor for additional information and/or rectification of its application, as the case may be.

The Employer shall notify the Contractor of any claims and if no corrective action is taken within a reasonable period according to the nature of the claim the Employer shall have the right to withhold release of the Performance Bond. The value of the Performance Bond shall be adjusted to the value of the claim.

If the Contractor has not applied for a Final Certificate of Payment within the time specified in sub-clause 33.9 or has not submitted the information or amended application within 28 days as of the Engineer's instructions, the Engineer shall request the Contractor to do so within a further period of 28 days. If the Contractor fails to comply with the Engineer's requirements within this new term of 28 days, the Engineer shall issue the Final Certificate of Payment for such amount as he deems correct.

The Employer shall release the Performance Bond and make any payments due in accordance with Sub-Clause 33.5 or require the value of the Performance Bond to be adjusted and the Performance Bond to be retained until such time as any payments due from the Contractor are made.

**Final Certificate of Payment
Conclusive**

33.11 A Final Certificate of Payment shall be conclusive evidence of the value of the Works, that the Works are in accordance with the Contract and that the Contractor has performed all his obligations under the Contract.

The release of the Performance Bond and payment of any amount certified in the Certificate of Payment shall be conclusive evidence that the Employer has performed all his obligations under the Contract.

A Final Certificate of Payment or payment shall not be conclusive:

(a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the certificate, or

(b) if any arbitration or court proceedings under the Contract have been commenced by either party before the expiry of 84 days after the issue of the Final Certificate of Payment.

Claims

Procedure

34.1 In any case where under these Conditions there are circumstances which the Contractor considers entitle him to claim additional payment, the Contractor shall:

(a) if he intends to make any claim for additional payment give to the Engineer notice of his intention to make such claim within 28 days after the said circumstances became known to the Contractor stating the reasons for his claim and

(b) keep such contemporary records and documents as may reasonably be necessary to support and substantiate any claim he may subsequently make, and

(c) as soon as reasonably practical after the date of such notice submit to the Engineer full and detailed particulars of his claim but not later than 182 days after such notice unless otherwise agreed by the Engineer. In any event such particulars shall be submitted not later than the application for the Final Certificate of Payment. The Contractor shall thereafter promptly submit such further particulars as the Engineer may reasonably require to assess the validity of the claim.

Assessment

34.2 When the Engineer has received full and detailed particulars of the Contractor's claim in accordance with Sub-Clause 34.1 and such further particulars as he may reasonably have required he shall after due consultation with the Employer and the Contractor determine whether the Contractor is entitled to additional payment and notify the parties accordingly.

The Engineer may reject any claim for additional payment which does not comply with the requirements of Sub-Clause 34.1.

Foreign Currency and Rates of Exchange

Payment in Foreign Currencies 35.1 Arrangements for payment in foreign currencies shall be as stated in the Preamble.

36 Void

Risk and Responsibility

Allocation of Risk and Responsibility 37.1 The Risks of loss of or damage to physical property and of death and personal injury which arise in consequence of the performance of the Contract shall be allocated between the Employer and the Contractor as follows:

(a) the Employer: the Employer's Risks as specified in Sub-Clause 37.2

(b) the Contractor: the Contractor's Risks as specified in Sub-Clause 37.3.

Employer's Risks 37.2 The Employer's Risks are:

(a) war and hostilities (whether war be declared or not) invasion, act of foreign enemies, insofar as it relates to the country in which the works are to be located;

(b) rebellion, revolution, insurrection, military or usurped power or civil war insofar as it relates to the country in which the Works are located.

(c) ionising radiation or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof insofar as it relates to the country in which the works are to be located;

(d) pressure waves caused by aircraft travelling at sonic or supersonic speed, insofar as it relates to the country in which the works are to be located;

(e) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his sub-contractors insofar as it relates to the country in which the works are to be located;

(f) use or occupation of the Works or any part thereof by the Employer;

(g) fault, error, defect or omission in the design of any part of the Works by the Engineer, Employer or those for whom the Employer is responsible;

(h) the use or occupation of the site by the Works or any part thereof, or for the purposes of the Contract, or interference whether temporary or permanent with any right of way, light air or water or with any easement, wayleaves or right of a similar nature on the site which is the inevitable result of the construction of the Works in accordance with the Contract;

(i) the right to construct the Works or any part thereof on over, under, in or through any land;

(j) damage (other than that resulting from the Contractor's method of construction) which is the inevitable result of the construction of the works in accordance with the Contract;

(k) the act, neglect or omission or breach of contract or of statutory duty of the Engineer, the Employer or other contractors engaged by the Employer or of their respective employees or agents;

and all risks in the country the site is to be located, which an experienced contractor could not have foreseen or, if foreseeable, against which measures to prevent loss damage or injury from occurring could not reasonably have been taken by such contractor.

Contractor's Risks 37.3 The Contractor's Risks are all risks other than those identified as the Employer's Risks.

Care of the Works and Passing of Risk

Contractor's Responsibility for the Care of the Works 38.1 The Contractor shall be responsible for the care of the Works or any Section thereof from the Commencement Date until the Risk Transfer Date applicable thereto under Sub-Clause 38.2

The Contractor shall also be responsible for the care of any part of the Works upon which any outstanding work is being or is to be performed by the Contractor during the Defects Liability Period until completion of such outstanding work.

Risk Transfer Date 38.2 The Risk Transfer Date in relation to the Works or a Section thereof is the earliest of either:

(a) the date of issue of the Taking-Over Certificate, or

(b) the date when the Engineer is deemed to have issued the Taking-Over Certificate or the Works are deemed to have been taken over in accordance with Clause 29, or

(c) the date of expiry of the notice of termination when the Contract is terminated by the Employer or the Contractor in accordance with these Conditions.

Passing of Risk of Loss of or Damage to the Works 39.1 The risk of loss of or damage to the Works or any Section thereof shall pass from the Contractor to the Employer on the Risk Transfer Date applicable thereto.

Loss or Damage Before Risk Transfer Date 39.2 Loss of or damage to the Works or any Section thereof occurring before the Risk Transfer Date shall:

(a) to the extent caused by any of the Contractor's Risks, be made good forthwith by the Contractor at his own cost, and

(b) to the extent caused by any of the Employer's Risk, be made good by the Contractor at the Employer's expense in so far as required by the Engineer. The price for making good such loss and damage shall be in all circumstances reasonable and shall be agreed by the Employer and the Contractor, or in the absence of agreement, shall be fixed by arbitration under Clause 50.

**Loss or Damage
After Risk
Transfer Date**

39.3 After the Risk Transfer Date, the Contractor's liability in respect of loss of or damage to any part of the Works shall except in the case of Gross Misconduct, be limited:

(a) to the fulfilment of the Contractor's obligations under Clause 30 in respect of defects therein, and

(b) to making good forthwith loss or damage caused by the Contractor during the Defects Liability Period.

Damage to Property and Injury to Persons

**Contractor's
Liability**

40.1 The Contractor shall hold harmless, defend and indemnify the Employer including its employees, officers and directors from and against all and any liability, claim, lawsuit proceeding, action, lien, fines, condemnatory awards injunctions and the like, including legal costs and attorney's fees caused and arising out of:-

(a) Any actual or assessed breach or non-compliance by the Contractor, its Sub-Contractors, their employees, agents or invitees of any law, statute, regulation, decree, ordinance or order or any public authority or any safety regulations of the Employer.

(b) Any actual or assessed breach of any copy rights, industrial property patents, licenses and trade marks by the Contractor, sub-contractors, suppliers or any employee agent or officer thereof.

(c) Inadequate safety or hygiene conditions in the Contractor's or Subcontractor's work place.

(d) Injury, sickness or death of any person and loss or damage to any third party or Employer's property caused or arising out of actions or omissions of the Contractor, its sub-contractors, suppliers and any employee, invitee agent or officer thereof.

(e) Loss or damage to the Contractor's or sub-contractor equipment or vehicles.

(f) Operation or Ownership by the Contractor or sub-contractor including their respective employees, agents invitees or officers of any type of equipment or vehicles.

(g) Non compliance in due time with labour, social security worker's compensation, legal insurance, taxation and other legal or contractual obligations with its workers suppliers or sub-contractors.

(h) The indemnification obligations provided for in this clause shall not be limited by any insurance coverage required under the Contract as outlined in the Preamble.

The Employer may withhold payment due to the Contractor to secure the performance of the Contractor's indemnification obligations hereunder.

The indemnification obligations provided for in this Clause shall be due and enforceable from the moment when the

Employer is summoned in a lawsuit, proceeding, etc. or, as the case may be, as soon as the Employer is required to make any payment as result of any of the reasons stated in this clause, notwithstanding the right of the Contractor to recover from the Employer any amount that may returnable as a result of any favourable resolution of pending remedies.

Employer's Liability 40.2 The Employer shall be liable for and shall indemnify the Contractor against all losses, expenses or claims in respect of loss of or damage to any physical property or of death or personal injury whenever occurring, to the extent caused by any of the Employer's Risks.

Accidents 41.1 The Contractor shall be liable for and shall indemnify the Employer against all losses, expenses or claims arising in connection with the death of or injury to any person employed by the Contractor or his Subcontractors for the purpose of the Works, unless caused by any acts or defaults of the Engineer, the Employer or other contractors engaged by the Employer or by their respective employees or agents. In the latter cases the Employer shall be liable for and shall indemnify the Contractor against all losses, expenses and claims arising in connection therewith.

Limitations of Liability

Liability for Indirect or Consequential Damage 42.1 Neither party shall be liable to the other for any loss of profit, loss of use, loss of production, loss of contracts or for any other indirect or consequential damage that may be suffered by the other, except:

- (a) as expressly provided and limited to in Clause 28, and
- (b) those provisions of these Conditions whereby the Contractor is expressly entitled to receive profit.

Maximum Liability 42.2 The liability of the Contractor to the Employer under these Conditions shall in no case exceed the Contract Price.

Liability after Expiration of Defects Liability Period 42.3 The Contractor shall have no liability to the Employer for any loss of or damage to the Employer's physical property which occurs after the expiration of the Defects Liability Period unless caused by Gross Misconduct of the Contractor.

Exclusive Remedies 42.4 The Employer and the Contractor intend that their respective rights, obligations and liabilities as provided for in these Conditions shall alone govern their rights under the Contract and in relation to the Works.

Accordingly, the remedies provided under the contract in respect of or in consequence of:

- (a) any breach of contract, or
- (b) any negligent act or omission, or
- (c) loss or damage to any property

are, save in the case of Gross Misconduct, to be to the exclusion of any other remedy that either may have against the other under the law governing the Contract or otherwise.

Mitigation of Loss or Damage 42.5 In all cases the party claiming a breach of Contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur.

Foreseen Damages 42.6 Where either the Employer or the Contractor is liable in respect of damages to the other these shall not exceed the damages which the party in default could reasonably have foreseen at the date of the Contract.

The liquidated damages/penalty payable by the Contractor under Clause 28 are a genuine attempt to estimate the loss which the Employer will suffer in such circumstance and the Employer shall be under no obligation to provide evidence or to substantiate any loss damage suffered

Insurance

The Works 43.1 The Contractor shall insure the Works in the joint names of the Contractor and the Employer to their full replacement value with deductible limits not exceeding those stated in the Preamble.

(a) from the Commencement Date until the Risk Transfer Date against any loss or damage caused by any of the Contractor's Risks and any other risks specified in the Preamble, and

(b) during the Defects Liability period against any loss or damage which is caused either:

(i) by the Contractor in completing any outstanding work or complying with his obligations under Clause 30, or

(ii) by any of the Contractor's Risks which occurred prior to the Risk Transfer Date.

Contractor's Equipment 43.2 The Contractor shall insure Contractor's Equipment for its full replacement value whilst in transit to the Site, from commencement of loading until completion of unloading at the Site and while on the Site against all loss or damage caused by any of the Contractor's Risks.

Third Party Liability 43.3 The Contractor shall insure against liability to third parties for any death or personal injury and loss of or damage to any physical property arising out of the performance of the Contract and occurring before the issue of the last Defects Liability Certificate.

Such insurance shall be effected before the Contractor begins any work on the Site. The insurance shall be for not less than the amount specified in the Preamble.

Employees 43.4 The Contractor shall insure and maintain insurance against his liability under Sub-Clause 41.1.

General Requirements of Insurance Policies 43.5 The Contractor shall:

(a) whenever required by the Employer produce the policies or certificates of any insurance which he is required to effect under the Contract together with receipts for the premiums,

- (b) effect all insurances for which he is responsible with an insurer and in terms approved by the Employer, and
- (c) make no material alterations to the terms of any insurance without the Employer's approval. If an insurer makes any material alteration to the terms the Contractor shall forthwith notify the Employer, and
- (d) in all respects comply with any conditions stipulated in the insurance policies which he is required to place under the Contract.
- Permitted Exclusions from Insurance Policies** 43.6 The insurance cover effected by the Contractor may exclude any of the following:
- (a) the cost of making good any part of the Works which is defective or otherwise does not comply with the Contract provided that it does not exclude the cost of making good any loss or damage to any other part of the Works attributable to such defect or non-compliance.
- (b) indirect or consequential loss or damage including any reduction in the Contract Price for delay,
- (c) wear and tear, shortages and theft,
- (d) risks relating to vehicles for which third party or other insurance is required by law.
- Remedies on the Contractor's Failure to Insure** 43.7 If the Contractor fails to produce evidence of insurance cover as stated in Sub-Clause 43.5.
- (a) then the Employer may effect and keep in force such insurance. Premiums paid by the Employer for this purpose shall be deducted from the Contract Price.
- Amounts not Recovered** 43.8 Any amounts not recovered from the insurers shall be borne by the Employer or Contractor in accordance with their responsibilities under Clause 37.
- 43.9 The parties to the Contract shall obtain waiver of subrogation for the other parties including employees, directors and agents.
- Force Majeure** 44.1 If either of the parties hereto fails to comply with any of its obligations under an Agreement by reason of Force Majeure such failure shall not be regarded as a breach of its obligations. Force Majeure shall be deemed to include any act and event which is unforeseeable and irresistible and outside the control of either of the parties having a direct influence on the performance and obligations under the Contract and which, in particular, results from Acts of God, revolution, war, mobilisation for war, or other hostilities, political disturbance, public disorders, fires, floods, explosions, epidemics, quarantine, riot, commotion or disorder (except when solely restricted to employees of the Contractor) and earthquake arising after the coming into force of the Contract and which prevent the fulfilment of a party's obligation either in whole or on part. Either party claiming Force Majeure shall inform the other in writing

within thirty (30) days of its commencement. Insofar as one or the other parties is prevented from carrying out its obligations under an Agreement because of Force Majeure its obligations shall be provisionally suspended, but any party which is prevented from or delayed in carrying out its obligations shall keep the other party fully advised and shall resume its obligations as soon as possible after the cause of Force Majeure has lapsed. Whenever Force Majeure occurs the parties shall use their best endeavours to minimise its effects on the performance of the agreement but if one or other of the parties is prevented from performing its obligations for a continuous period of four consecutive months, any of the parties shall be at liberty of terminate this Contract by written notice to the other.

44.2 If the Contract shall be terminated under the provisions of the last preceding Sub-Clause the Contractor shall with all reasonable despatch remove from the site all Contractor's Equipment and shall give similar facilities to enable his Sub-Contractors to do same.

44.3 If the Contract shall be terminated as aforesaid, the Contractor shall be paid by the Employer (in so far such amounts or items shall not have already been covered by payments on account made to the Contractor) for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:-

The cost of Plant and materials supplied to or ordered for the works for which the Contractor has already paid or is legally bound to pay (and such Plant and materials shall, if not already vested in the Employer become the property of the Employer upon payment being made therefore pursuant to this Sub-Clause);

Provided always that, against any payment due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of plant and materials, and any sum previously paid by the Employer to the Contractor in respect of the execution of the Works

Default

Notice of Default 45.1 If the Contractor is not executing the Works in accordance with the Contract or is neglecting to perform his obligations thereunder so as seriously to affect the carrying out of the Works, the Engineer may give notice to the Contractor requiring him to make good such failure or neglect.

Contractor's Default 45.2 If the Contractor:

- (a) has failed to comply within the time specified by the Engineer with a notice under Sub-Clause 45.1, or
- (b) assigns the Contract or subcontracts the whole of the Works without the Employer's written consent, or

(c) becomes bankrupt or insolvent, has a receiving order made against him or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation,

The Employer may, after having given 7 days notice to the Contractor, terminate the Contract and expel the Contractor from the Site or take immediate possession of all Contractor's equipment, facilities materials and tools at the time on site, for the purposes of finishing the work.

Any such expulsion and termination shall be without prejudice to any other rights or powers of the Employer or the Engineer or the Contractor under the Contract.

The Employer may upon such termination complete the Works himself or by any other contractor.

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| Valuation at Date of Termination | 45.3 | The Engineer shall, as soon as possible after such termination, certify the value of the Works and all sums then due to the Contractor as at the date of termination in accordance with Clause 33. |
| Payment after Termination | 45.4 | The Employer shall not be liable to make any further payments to the Contractor until the Works have been completed. When the Works are so complete, the Employer shall be entitled to recover from the Contractor the extra costs, if any, of completing the works after allowing for any sum due to the Contractor under Sub-Clause 45.3. If there is no such cost the Employer shall pay any balance due to the Contractor. |
| Effect on Liability for Delay | 45.5 | The Contractor's liability under Clause 28 shall immediately cease when the Employer expels him from the Site without prejudice to any liability thereunder that may have already occurred. |
| Termination for Convenience | 46.1 | The Employer shall have the right to unilaterally terminate all or part of this Contract for reasons of convenience and in such case shall pay the Contractor the costs correctly incurred and legally committed for the work, goods and services correctly provided up to the termination date plus 10% of the price for the remaining portion of the work not yet undertaken as final indemnification (Termination fee). All these amounts shall be set-off against any other amount due to the Employer by the Contractor and the Employer shall have the right to make the appropriate deductions. Terminations shall take place by means of a written notice delivered within 30 days advance from the termination date as set forth therein. Such notice shall indicate the effective date, scope and other instructions relating to the termination. Upon receiving such notice, the Contractor shall, unless instructed otherwise in writing by the Employer, stop the Works terminating on a date determined by the Employer and shall further comply with other instructions given by the Employer. Payment of the Termination fee and any other payments for work correctly performed up to the date of termination shall be applied for in a Final Payment Application which shall be subject to Section 33.9 |

- Employer's default** 46.2 The Contractor may, by giving 14 days notice to the Employer and the Engineer, terminate the Contract if the Employer :
- (a) fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the amount became payable, or
 - (b) becomes bankrupt or insolvent, has a receiving order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation, or
 - (c) consistently fails to meet his contractual obligations.
- Removal of Contractor's equipment** 46.3 Any such termination shall be without prejudice to any other rights of the Contractor under the Contract. On such termination the Contractor shall be entitled to remove immediately all Contractor's equipment which is on the site.
- Payment on termination for Employer's default** 46.4 In the event of such termination the Employer shall pay the Contractor an amount calculated in accordance with Sub Clause 46.1.

Changes in Cost and Legislation

- Labour, Materials and Transport** 47.1 No allowance or adjustment to the Contract price will be accepted for any increase or decrease in cost to the Contractor in carrying out the Works by reason of any alteration in the rates of wages or allowances payable to labour or change in the cost of materials (whether forming part of the Works or not) consumable stores, landing charges or demurrage charges, or as a result of any variation in the cost of any other matter or thing of whatsoever nature subsequent to the date of Tender.
- Statutory and other regulations** 47.2 The Contract Price shall be adjusted to take account of any increase or decrease in cost resulting from changes in legislation, excluding labour related legislation, of the country where the site is located or its generally accepted interpretation. Legislation means any law, order, regulation or bye-law having the force of law, which affects the Contractor in the performance of his obligations under the Contract, made after the date of signature of the Contract. The Engineer shall certify the amount of the resulting increase or decrease in cost, which shall be added to or deducted from the Contract Price.

Customs

- Customs and Import Duties** 48.1 The Employer shall pay all customs, import duties and taxes in consequence of the importation of plant.




Notices

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| Notices to Contractor | 49.1 | All certificates, notices or written orders to be given to the Contractor by the Employer or the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose, or may be handed over to the Contractor's representative. |
| Notices to Employer and Engineer | 49.2 | Any notice to be given to the Employer or to the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in the Preamble, or handed over to the Engineer's or the Employer's representative authorised to receive it. |
| Minutes of Meetings | 49.3 | Instructions or notices to the Contractor and notices from the Contractor to the Engineer or the Employer recorded in a minute of protocol signed by the authorized representatives of the giver and recipient of such notice or instruction shall be valid notice or instruction for the purposes of the Contract. |

Disputes and Arbitration

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| Disputes concerning Engineer's Decisions | 50.1 | If either party is dissatisfied with a decision or instruction of the Engineer as confirmed, reversed or varied in accordance with Clause 2 he may refer the matter to arbitration pursuant to Sub-Clause 50.2. |
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Unless the dissatisfied party has notified the other party and the Engineer within 56 days of such decision or instruction of his intention to refer the matter to arbitration, he shall be deemed to have accepted the decision as final.

Reference to arbitration shall not relieve the Contractor of his obligation to proceed with the Works in accordance with the Engineer's decision or instruction, nor relieve the Employer of any of his obligations under the Contract.

The Contractor shall in any such arbitration be at liberty to rely on reasons additional to the reasons stated in the notice given under Sub-Clause 2.7.

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| Arbitration | 50.2 | All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said rules. |
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Each party shall nominate one arbitrator. These arbitrators shall then agree on the third arbitrator who will act as Chairman of the arbitration court. The third arbitrator shall be appointed within 90 days from a list of persons proposed by the International Chamber of Commerce (ICC) and such list shall consist of individuals from neutral countries, meaning not from Chile, Germany or the United Kingdom. In case of failure to agree to such terms, the appointment of the third arbitrator shall be made by the ICC.




The arbitral award shall be primarily rendered according to the Conditions of the Contract and the underlying General Conditions thereof. In case the Contract will not provide a provision for a certain issue or an applicable provision has to be constructed or interpreted, the general principles of the Chilean Law shall apply.

Any appeal and/or recourse to the ordinary Courts of Law including for the purposes of injunctions and other pretrial or temporary measures which are to be issued by the Arbitration Court only, is ruled out, except for the "Recurso de Queja" (a remedy before the Superior Courts of Chile grounded in fault or abuse incurred by the arbitrators) or a mandatory recourse in case of enforcement of an arbitral award.

The final Arbitration Award may be enforced in any jurisdiction or country where the defendant is domiciled or has business or assets.

The arbitration proceedings shall take place in Santiago Chile in the English language.

The arbitration proceedings and the award may only be disclosed to the extent it is necessary.

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| Works to Continue | 50.3 | Performance of the Contract shall continue during arbitration proceedings unless the Employer shall order suspension. If any such suspension is ordered the reasonable costs incurred by the Contractor and occasioned thereby shall be added to the Contract Price. No payments due or payable by the Employer shall be withheld on account of pending reference to arbitration. |
| Time Limit for Arbitration | 50.4 | Formal notice of arbitration must be given to the other party and where required to the appropriate arbitration body, not later than 84 days after the release of the Performance Bond. |
| Validity of Provisions | 51.1 | In the event that any provision, part or portion of this Contract is held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portion of that provision or any other provision hereof. |
| Waiver | 51.2 | Any failure by the Employer to insist on the performance of any term, condition or instruction or failure to exercise any right or privilege or its waiver of any breach, shall not be considered as a waiver of any term, condition, instruction right or privilege nor as the acceptance of any other future breaches. |
| Confidential Information | 51.3 | Documents and all other information related to this Contract shall be the property of the Employer and shall be deemed confidential. The Contractor shall not disclose such information to any third party nor use such information for other purposes outside of the Contract, even after termination. |

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Draft
Advance Payment Guarantee

Our customer, Messrs. Krupp Polysius AG, Graf-Galen-Str. 17, D-59269 Beckum, hereinafter called the "Seller", concluded with you, hereinafter called the "Buyer", a contract dated, concerning the supply of machinery and equipment and erection supervision for a cement plant in the total amount of DEM 14.122.025,00 and US\$ 5.397.283,00.

According to the conditions of said contract the Buyer has to effect an advance payment amounting to twenty per cent (20%) of the US\$ contract value, i.e. US\$ 1.079.456,60 against presentation of an advance payment guarantee.

We, the (name of the bank) have been requested by the Seller to issue this advance payment guarantee.

We hereby irrevocably undertake to pay to you any amount up to the maximum of

US\$ 1.079.456,60

(in words: United States Dollars: onemillionseventyninethousandfourhundredfiftysix and 60/100)

upon receipt of your first demand in writing stating Seller's default in respect of his contractual delivery obligations and specifying the amount due resulting from this default.

This guarantee becomes effective as soon as the advance payment of US\$ 1.079.457,60 has been received by the Seller (which date will be confirmed to us by Seller).

This guarantee reduces automatically pro rata delivery or warehousing of the goods upon presentation to us of a copy of Seller's shipping documents or independent warehouse receipt and the respective invoice by 20 per cent of each invoice value.

It expires even if this document is not returned to us, with the date of final delivery or warehousing, however on at the latest, unless your written demand under this guarantee in accordance with the above mentioned terms and conditions has reached us in by the end of that day.

This guarantee is to be returned to us upon its expiry or upon payment of its amount.

All rights and obligations arising from this guarantee shall be governed by the laws of the Federal Republic of Germany.

Name of German Bank

Draft
Performance Bond

Our customer, Messrs. Krupp Polysius AG, Graf-Galen-Str. 17, 59269 Beckum hereinafter called the "Seller", concluded with you, hereinafter called the "Buyer", a contract dated concerning the supply of machinery and equipment and erection supervision for a Cement Plant in the total amount of DEM 14.122.025,00 and US\$ 5.397.283,00

According to the conditions of said contract a performance bond is to be issued for 10 percent of the contract value, i.e. DEM 1.412.202,50 for the due fulfillment of the Seller's warranty obligations under the above mentioned contract.

We, the (Name of German Bank) have been requested by the Seller to issue this performance bond.

We hereby irrevocably undertake to pay to you any amount up to the maximum of

DEM 1.412.202,50

(in words: Deutsche Marks onemillionfourhundredtwelvethousandtwohundredtwo and 50/100)

upon receipt of your first written demand stating Seller's default of his obligations under the contract and specifying the amount due resulting from this default.

This performance bond expires at the end of the defects liability period, even if this document is not returned to us, however at the latest 30 months after the coming in force date of the contract, i.e. on 02.09.1999, unless your written demand under this bond in accordance with the above mentioned terms and conditions has reached us in by the end of that day.

All rights and obligations arising from this bond shall be governed by the laws of the Federal Republic of Germany.

This performance bond may not be transferred, assigned or otherwise ceded to any third party.

Name of German Bank



**Draft
Performance Bond**

Our customer, Messrs. Krupp Polysius AG, Graf-Galen-Str. 17, 59269 Beckum, hereinafter called the "Seller", concluded with you, hereinafter called the "Buyer", a contract dated concerning the supply of machinery and equipment and erection supervision for a Cement Plant in the total amount of DEM 14.122.021,00 and US\$ 5.397.283,00

According to the conditions of said contract a performance bond is to be issued for 10 percent of the contract value, i.e. US\$ 539.728,30, for the due fulfillment of the Seller's warranty obligations under the above mentioned contract.

We, the (Name of German Bank) have been requested by the Seller to issue this performance bond.

We hereby irrevocably undertake to pay to you any amount up to the maximum of

US\$ 539.728,30

(in words: United States Dollars five hundred thirty nine thousand seven hundred twenty eight and 30/100)

upon receipt of your first written demand stating Seller's default of his obligations under the contract and specifying the amount due resulting from this default.

This performance bond expires at the end of the defects liability period, even if this document is not returned to us, however at the latest 30 months after the coming in force date of the contract, i.e. on 02.09.1999, unless your written demand under this bond in accordance with the above mentioned terms and conditions has reached us in by the end of that day.

All rights and obligations arising from this bond shall be governed by the laws of the Federal Republic of Germany.

This performance bond may not be transferred, assigned or otherwise ceded to any third party.



Name of German Bank



Draft
Letter of Credit

Name of opening Bank:
Citibank AG, Frankfurt

Irrevocable Letter of Credit No.:

in favour of: **Krupp Polysius AG**
 Graf-Galen-Str. 17
 59269 Beckum
 Federal Republic of Germany

hereinafter called "Beneficiary"

for account of: **Citicorp International Trading Company,**
 Bahamas Limited
 Nassau Bahamas

hereinafter called "Applicant"

to the extent of: **DM 14.122.025,00**
and **US\$ 569.550,00**
(DDU La Calera - according to contract)

This L/C covers 100 % of the contract price for the supply of: (description of goods)
..... as per the contract no.

- A. The Advance Payment of 20% of the contract price, i.e. DM 2.824.405,00 and US\$ 113.910,00 shall be effected against presentation of the advance payment guarantee and Beneficiary's signed commercial invoice in one original and ... photocopies.
- B. Payments of 60 % of the contract value, i. e. DM 8.473.214,00 and US\$ 341.730,00 shall be effected pro rata deliveries or upon warehousing in an independant warehouse against presentation of the following documents:
1. Beneficiary's signed commercial invoice for 100% of the merchandise value in one original and ... photocopies
 2. Packing list in one original and ... photocopies

3. Full set of clean on Board Ocean Bills of Lading dated not prior to the date of this credit issued to the order of Citicorp International Trading Company, notify Applicant, marked "Freight collect/ Freight Prepaid" (as applicable according to contract).

or

Airwaybill in original plus ... non negotiable copies consigned to the order of ... marked "Freight collect/ Freight Prepaid" notify Applicant

or

An independant Warehouse Receipt (May only be presented if Beneficiary is not in a position to deliver the goods due to reasons beyond his control which fact is to be stated by Beneficiary's respective confirmation and which is to be notified to the Engineer).

- C. Payment of 10 % of the contract value, i. e. DM 1.412.203,00 and US\$ 56.955,00 shall be payable upon completion of erection against presentation of:

1. Applicant's or Engineer's "Completion of Erection Certificate"
2. Beneficiary's signed commercial invoice in one original and photocopies

- D. Payment of the final 10 % of the contract value, DM 1.412.203,00 and US\$ 56.955,00 is payable against presentation of:

1. Taking Over Certificate (photocopy) issued by Applicant or Engineer or Beneficiary's statement stating that the Taking Over Certificate has not been issued 6 months after completion of erection due to Applicant's fault or due to force majeure.
2. Beneficiary's signed commercial invoice in one original

Special Conditions:

- All bank charges associated with the letter of credit are for Applicant's account.
- Shipments are to be effected from any seaport/airport in Europe or Thailand to (name of destination)
- Partshipment permitted.
- Transshipment permitted.
- Documents for negotiation must be presented within 21 days from the date of issuance of the bill of lading or independant Warehouse Receipt.

- This credit is valid until for delivery and until for negotiation. (Dates to be supplied according to the contract/order confirmation.)
- For all payments made under this L/C you are authorized to debit our account no. maintained with

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce, Publication No. 500.

Citibank AG, Frankfurt am Main




Draft
Letter of Credit

Name of opening Bank:
Citibank, Mexico

Irrevocable Letter of Credit No.:

in favour of: **Krupp Engineering de Mexico S.A. de C.V.**
.....
.....
hereinafter called "Beneficiary"

for account of: **Citicorp International Trading Company,**
 Bahamas Limited
 Nassau Bahamas

hereinafter called "Applicant"

to the extent of: **US\$ 4.827.733,00**
(FOB, CFR, FCA, DDU- according to contract)

This L/C covers 100 % of the contract price for the supply of: (description of goods)
..... as per the contract no.....

- A. The Advance Payment of 20% of the contract price, i.e. US\$ 965.546,60 shall be effected against presentation of the advance payment guarantee and Beneficiary's signed commercial invoice in one original and ... photocopies.
- B. Payments of 60 % of the contract value, i. e. US\$ 2.896.639,80 and shall be effected pro rata deliveries or upon warehousing in an independent warehouse against presentation of the following documents:
1. Beneficiary's signed commercial invoice for 100% of the merchandise value in one original and ... photocopies
 2. Packing list in one original and ... photocopies
 3. Full set of clean on Board Ocean Bills of Lading or Multimodal Transport Bills of Lading dated not prior to the date of this credit issued to the order of Citicorp International Trading Company, notify Applicant, marked "Freight collect/ Freight Prepaid" (as applicable according to contract).
- or

- For all payments made under this L/C you are authorized to debit our account no. maintained with

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce, Publication No. 500.

Citibank AG, Mexico



CEMENTO MELON

LA CALERA WORKS

**NEW CEMENT MILL 22 AND ASSOCIATED
CLINKER HANDLING SYSTEMS**

SUPPLY CONTRACT

VOLUME 1

Form of Agreement

February 1997

**FORM OF AGREEMENT FOR DESIGN, MANUFACTURE AND SUPPLY OF
EQUIPMENT**

This Agreement made the day of 1997 and effective on the date hereof between Cemento Melón S.A. of Miraflores 178, 4th floor, Santiago, Chile (hereinafter called "Employer") and Krupp Polysius AG, Graf - Galen - Strasse 17, 59269 Beckum, Germany, (hereinafter called "The Supply Contractor").

WHEREAS:

- 1) The Employer has issued a tender inquiry for the provision of a New Close Circuit Cement Mill with High Efficiency Separator and Associated Clinker Handling Plant.
- 2) The Supply Contractor has presented a tender to design, manufacture, supply, deliver and sell DDU Incoterms 1990, all the equipment, for this new Plant.
- 3) The Employer has accepted to award the Supply Contractor the design, manufacture, supply and delivery DDU Incoterms 1990 of the equipment for the new Plant.

Now it is agreed as follows:

- 1) In this Agreement and unless stated otherwise, all words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
- 2) The following documents shall be deemed to form part of this agreement:
 - a) This Form of Agreement;
 - b) The Preamble;
 - c) The Conditions of Contract (Amended Conditions of Contract of the Federation Internationale des Ingenieurs Conseils FIDIC, Edition 1987)
 - d) The Tender of the Supply Contractor;
 - e) The tender inquiry documents issued August 1996 by the Employer.
- 3) The Supply Contractor shall design, manufacture, supply and deliver DDU La Calera as per Incoterms 1990, the equipment and machinery in conformity with such provisions of the Contract as respectively apply.

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4) The Employer shall pay the Supply Contractor in consideration of the design, manufacture, supply, delivery and sale of the equipment, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The Contract Price of the German portion is Deutsche Mark 14,122,025.00 (Fourteen million, one hundred twenty two thousand, twenty five Deutsche Mark only) plus US Dollars 569,550.00 (in words, five hundred and sixty nine thousand, five hundred and fifty US Dollars only) and shall be paid directly to Krupp Polysius A. G..

The Contract Price for the Mexican portion is US Dollars 4,827,733.00(four million eight hundred and twenty seven thousand, seven hundred thirty three US Dollars only) and shall be paid directly to Krupp Engineering de Mexico S. A. de C. V..

5) The parties have entered into this agreement in accordance with their respective laws and statutes or constitutions on the date hereof by their duly authorised signatories.

Signed on behalf of Cemento Melón S.A.
Richard J. Cheney
10/03/97

Signed on behalf of Krupp Polysius AG
Uthoff

Düsseldorf

24.03.1997

M. Green
T.M.G.

CEMENTO MELON

LA CALERA WORKS

**NEW CEMENT MILL 22 AND ASSOCIATED
CLINKER HANDLING SYSTEMS**

LOCAL CONTRACT

VOLUME 1

Preamble

February 1997

PREAMBLE

This Preamble must be completed in all cases referring to Completed schedules where appropriate. When completed, this Preamble, the General Conditions, Specification, Employer's and Contractor's Drawings, Schedules and other documents can constitute a contract on the basis of the General Conditions in Part I. If this is not what is required, Part II must also be completed.

Commencement Date Sub-Clause 1.1.1.(i)
The date for commencement of the Works is 3rd February 1997

The Employer Sub-Clause 1.1.12.
The Employer is Cemento Melón S.A.

The Engineer Sub-Clause 1.1.15.
The Engineer is The Office of the Expansions Manager
Cemento Melón S.A., Pedro de Valdivia 98, La Calera, Chile

Time for Completion Sub-Clause 1.1.35.
The Time for Completion is 18 months from the Commencement Date.

Contractor's Profit Sub-Clause 1.6.
The percentage to cover profit entitlement, where appropriate, is 3 %.

Ruling Language Sub-Clause 5.1
The version in the English language (ruling language) shall prevail.

Day to Day Communications Sub-Clause 5.2
The language for day to day communications in writing is English

Programme to be Furnished Sub-Clause 12.1.
The Programme must be submitted in the form of _____
yet to be advised by the contractor

Electricity Water Gas and Other Services Sub-Clause 14.3.
Supplies on the Site are:
a. Electricity: Contractor requires 150 Kva total (100 Kva workshop)
(40 Kva mill site)
_____ (10 Kva silo site)
b. Water: yet to be advised by the contractor

c. Gas: not applicable

d. Other services: telephone lines to be provided billed
to contractor 's account in storage / workshop area.

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| Employer's Equipment | Sub-Clause 14.4. The following Employer's equipment is available for use by the Contractor under the Employer's operation: <u>not applicable</u> |
| Working Hours | Sub-Clause 18.3. The normal working hours are <u>to be advised by the contractor</u> |
| Delay in Completion | Sub-Clause 27.1. Failure to meet the Time for Completion entitles the Employer to reduction in Contract Price as follows: Percentage per week <u>variable</u> See attached schedule Maximum <u>UF 57,059</u> % |
| Prolonged Delay | Sub-Clause 27.2. Maximum amount recoverable from the Contractor by the Employer: <u>not applicable</u> |
| Terms of Payment | Sub-Clause 33.1. In addition to the provisions under Clause 33, the terms of payment shall be: <u>none</u> |
| Payment in Foreign Currencies | Sub-Clause 35.1. Payment in foreign currencies shall be arranged as follows: <u>The value of UF applicable shall be that published on 11th october 1996 (Pesos 13.089.58 = 1 UF)</u> |
| Rates of Exchange | Sub-Clause 35.3. The rates of exchange for the purpose of the Contract are: <u>not applicable</u> |
| Payment against Provisional Sums | Sub-Clause 36.4.(b) The percentage to be applied to Provisional Sums shall be <u>not applicable</u> % |
| Maximum Liability | Sub-Clause 42.2. The maximum liability of the Contractor to the Employer shall be <u>the contract Price</u> |

Insurance of Works

Sub-Clause 43.1.
The deductible limits in the insurance cover of the Works shall not exceed yet to be advised by the contractor

Sub-Clause 43.1.(a)
The additional risks to be insured are:
not applicable

Third Party Liability

Sub-Clause 43.3.
The amount of insurance against third party liability taken out by the Contractor shall not be less than:
US \$ one million for any one incident

Payment on Termination for Employer's Default

Sub-Clause 46.4.
The additional amount payable by the Employer on termination shall not exceed:
Contract price (clause 46.1 details payment)

Labour, Materials and Transport

Sub-Clause 47.1.
The method of calculating adjustments for changes in costs shall be:
not applicable

Notices to Employer and Engineer

Sub-Clause 49.2.
The address of the Employer for notices is:
Cemento Melón S. A. Miraflores 178
4th Floor Santiago Chile

The address of the Engineer for notices is:
yet to be advised by the employer

Applicable Law

Sub-Clause 51.1.
The applicable law is Chilean law.

Procedural Law for Arbitration

Sub-Clause 51.2.
The procedural law for arbitration is 1 The Rules of Conciliation and Arbitration of the International Chamber of Commerce
2 Chilean Law

Language and Place of Arbitration

Sub-Clause 51.3
The language of arbitration is the English language.
The place of arbitration is Santiago Chile

CEMENTO MELON

LA CALERA WORKS

**NEW CEMENT MILL 22 AND ASSOCIATED
CLINKER HANDLING SYSTEMS**

LOCAL CONTRACT

VOLUME 1

Conditions of Contract

CONDITIONS OF CONTRACT

Definitions and Interpretations

Definitions

- 1.1 In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them.
- 1.1.1 "Commencement Date" means the date specified in the Preamble as the date for commencement of the Works.
- 1.1.2 "Conditions" means the preamble to and these Conditions of Contract.
- 1.1.3 "Contract" means the agreement between the Employer and the Contractor for the execution of the Works incorporating the Conditions, Specification, Employer's Drawings and Contractor's Drawings, priced and completed Schedules, Contractor's Tender, Employer's Tender Enquiry document and such further documents as may be expressly incorporated.
- 1.1.4 "Contract Agreement" means the document recording the terms of the Contract between the Employer and the Contractor.
- 1.1.5 "Contract Price" means the sum stated in the Form of Agreement as payable to the Contractor for the execution of the Works.
- 1.1.6 "Contractor" means the person or persons whose tender has been accepted by the Employer and the legal successors in title to the Contractor but not (except with the consent of the Employer) any assignee of the Contractor.
- 1.1.7 "Contractor's Drawings" means all drawings, samples, patterns, models and operation and maintenance manuals to be submitted by the Contractor in accordance with Clause 6.
- 1.1.8 "Contractor's Equipment" means all appliances or things of whatsoever nature required for the purposes of the Works but does not include Plant.
- 1.1.9 "Contractor's Risks" means the risks defined in Sub-Clause 37.3.
- 1.1.10 "Defects Liability Certificate" means the certificate to be issued by the Engineer to the Contractor in accordance with Sub-Clause 30.11.
- 1.1.11 "Defects Liability Period" means one year following taking over, during which the Contractor is responsible for making good defects and damage in accordance with Clause 30.
- 1.1.12 "Employer" means the person designated as such in the preamble and the legal successors in title to the Employer but not (except with the consent of the Contractor) any assignee of the Employer.

- 1.1.13 "Employer's Drawings" means all the drawings and information provided by the Employer or the Engineer to the Contractor under the Contract.
- 1.1.14 "Employer's Risks" means those risks defined in Sub-Clause 37.2.
- 1.1.15 "Engineer" means the person appointed by the Employer to act as Engineer for the purposes of the Contract and designated as such in the Preamble.
- 1.1.16 "Engineer's Representative" means any representative of the Engineer appointed from time to time by the Engineer under Sub-Clause 2.2.
- 1.1.17 "Final Certificate of Payment", means the certificate to be issued by the Engineer to the Employer in accordance with Sub-Clause 33.10.
- 1.1.18 "Force Majeure" has the meaning assigned to it under Sub-Clause 44.1.
- 1.1.19 "Foreign Currency" means a currency of a country other than that in which Plant is to be installed.
- 1.1.20 "Gross Misconduct" means any act or omission of the Contractor including the design and construction of the works in violation of the most elementary rules of diligence which a conscientious contractor in the same position and under the same circumstances would have followed.
- 1.1.21 Void
- 1.1.22 "Performance Security" means the security to be provided by the Contractor in accordance with Sub-Clause 10.1. for the due performance of the Contract.
- 1.1.23 "Plant" means machinery, apparatus, materials and all things to be provided under the Contract for incorporation in the Works.
- 1.1.24 "Programme" means the Programme to be submitted by the Contractor in accordance with Sub-Clause 12.1. and any approved revisions thereto.
- 1.1.25 Void
- 1.1.26 "Risk Transfer Date" means the date when the risk of loss of or damage to the Works passes from the Contractor to the Employer in accordance with Sub-Clause 39.1.
- 1.1.27 "Schedule of Prices" means the completed and priced Schedule of Prices, or any part or individual schedule thereof, submitted by the Contractor with his Tender and forming a part of the Contract documents.
- 1.1.28 "Section" means a part of the Works specifically identified as such in the Contract.

- 1.1.29 "Site" means the place or places, provided or made available by the Employer where work is to be done by the Contractor or to which Plant is to be delivered, together with so much of the area surrounding the same as the Contractor shall with the consent of the Employer use in connection with the Works otherwise than merely for the purposes of access.
- 1.1.30 "Specification" means the specification of the Works included in the Contract and any modification thereof made under Clause 31.
- 1.1.31 "Subcontractor" means any person (other than the Contractor) named in the Contract for any part of the Works, or any person to whom any part of the Contract has been subcontracted with the consent of the Employer, and the Subcontractor's legal successors in title but not any assignee of the Subcontractor.
- 1.1.32 "Taking-Over Certificate" means the certificate to be given by the Engineer to the Contractor in accordance with Clause 29.
- 1.1.33 "Tender" means the Contractor's priced offer to the Employer for the execution of the Works including any approved variations and/or additions agreed in contract negotiations.
- 1.1.34 "Tests on Completion" means the tests specified in the Contract or otherwise agreed by the Engineer and the Contractor to be performed before the Works are taken over by the Employer which shall include the no-load tests and performances tests referred to in clause 28.
- 1.1.35 "Time for Completion" means the time stated in the Preamble for completing the Works and passing the Tests on Completion calculated from the Commencement Date unless extended in accordance with Clause 26.
- 1.1.36 "Variation Order" means any written order, identified as such, issued to the Contractor by the Engineer under Sub-Clause 31.1.
- 1.1.37 "Works" means all Plant to be provided and work to be done by the Contractor under the Contract whether defined or implicit for functional completeness of the works including any temporary works.
- 1.1.38 "Tender Enquiry Document" is the enquiry document issued by Cemento Melon on the 1st August 1996 including documents listed in the schedule of additional documents issued to tenderers during the Tender Period.
- 1.1.39 "Completion of Erection" means the date on which all of the Plant has been erected and each section of the Works has passed the appropriate no load tests to enable the Plant to be commissioned.

1.1.40 "Commissioning" means the period of time following Completion of Erection during which each section of the Works is to be prepared for start-up, started up and tested in accordance with the performance test criteria set out in Clause 28 of these Conditions.

1.1.41 "Tests" means (as the context may require) the no load tests referred to in Sub-Clause 28.3 and the performance tests referred to in the Contractor's tender section Performance Warranties and Liquidated Damages revision 02 dated 20th January 1997 and which are to be carried out within the Time for Completion.

Headings and Titles

1.2 The headings and titles in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract.

Interpretation

1.3 Words importing persons or parties shall include firms and corporations and any organisation having legal capacity. Words importing the singular only also include the plural and vice versa where the context requires.

Written Communications

1.4 Wherever in the Contract provision is made for a communication to be "written" or "in writing" this means any hand-written, type-written or printed communication, including telex, cable and facsimile transmission.

Notices, Consents and Approvals

1.5 ^{scope 9'} Wherever in the Contract provision is made for the giving of notice, consent or approval by any person, such consent or approval shall not be unreasonably withheld. Unless otherwise specified, such notice, consent or approval shall be in writing and the word 'notify' shall be construed accordingly.

Costs, Overhead Charges and Profit

1.6 Whenever by these conditions the Contractor is entitled to be paid cost, such cost shall be the direct costs actually incurred and shall include a reasonable overhead properly allocable thereto which in no case shall be greater than 12% of the direct costs actually incurred. Any profit entitlement shall be added to the cost at the percentage stated in the Preamble.

Periods

1.7 In these Conditions "day" means calendar day and "year" means 365 days according to the Gregorian calendar.

Engineer and Engineer's Representative

Engineer's Duties

2.1 The Engineer shall carry out the duties specified in the Contract.

If the Engineer is required, under the terms of his appointment by the Employer, to obtain the specific approval of the Employer before carrying out any of these duties, this shall be notified by the Employer to the Contractor.

Except as expressly stated in the Contract the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.

- Engineer's Representative** 2.2 The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall only carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3
- Engineer's Power to Delegate** 2.3 The Engineer may from time to time delegate to the Engineer's Representative any of the duties vested in the Engineer and may at any time revoke such delegation.
- Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor and the Employer.
- Any decision, instruction or approval given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. However:
- (a) any failure of the Engineer's Representative to disapprove any Plant or workmanship shall not prejudice the right of the Engineer to disapprove such Plant or workmanship and to give instructions for the rectification thereof;
 - (b) if the Contractor questions any decision or instruction of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary such decision or instruction.
- Engineer to Act Impartially** 2.4 Wherever under the Contract the Engineer is required to exercise his discretion by:
- (a) giving his decision, opinion or consent, or
 - (b) expressing his satisfaction or approval, or
 - (c) determining value, or
 - (d) otherwise taking action which may affect the rights and obligations of the Employer or the Contractor,
- he shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances.
- Engineer's Decisions and Instructions** 2.5 The Contractor shall proceed with the decisions and instructions given by the Engineer in accordance with these Conditions.
- Confirmation in Writing** 2.6 The Contractor may require the Engineer to confirm in writing any decision or instruction of the Engineer which is not in writing. The Contractor shall notify the Engineer of such requirement without undue delay. Such a decision or instructions shall not be effective until written confirmation thereof has been received by the Contractor.
- Disputing Engineer's Decisions and Instructions** 2.7 If the Employer or the Contractor disputes or questions any decision or instruction under Sub-Clause 2.6, he shall give notice to the Engineer within 14 days after receipt thereof, giving his reasons.

The Engineer shall within a further period of 14 days by notice to the Contractor and the Employer with reasons, confirm, reverse or vary such decision or instruction.

If either party disagrees with the action taken by the Engineer, or if the Engineer fails to reply to the Contractor's notice within the stipulated 14 days, and the matter cannot be settled amicably that party shall be at liberty, subject to Sub-Clause 50.1, to refer the matter to arbitration in accordance with the Contract.

Replacement of Engineer

- 2.8 The Employer shall not appoint any person to act in replacement of the Engineer without advising the Contractor.

Assignment and Subcontracting

Assignment

- 3.1 The Contractor shall not assign the Contract or any of his obligations under the Contract. A charge in favour of the Contractor's bankers of any monies due under the Contract shall not be considered an assignment.

Subcontracting

- 4.1 The Contractor shall not subcontract the whole of the Works.

Except where otherwise provided by the Contract the Contractor shall not subcontract any part of the Works without the prior consent of the Employer to the part of the works to be sub-contracted and to the sub-contractor to carry out the same.

The Contractor shall however, not require such consent for purchases of materials or to place contracts for minor details or for any part of the Works of which the manufacturer or supplier is named in the Contract.

The Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents or employees as fully as if they were the acts, defaults or neglects of the Contractor, his agents or employees.

The Contractor shall ensure that all the rights of the Employer and the Engineer under the Contract are not, in any way, contradicted by the Terms and Conditions of any Sub-Contract. Any difference that may exist between any Sub-Contract and the Contract shall not relieve the Contractor of his full responsibility under the Contract. Should a Sub-contractor be in any way in breach of terms of any Sub-contract and, accordingly the Contract, then the Employer may revoke the approval of the sub-contractor without prejudice to the Contractor's liability to complete the works.

Contract Documents

Ruling Language

- 5.1 Where versions of the Contract are prepared in different languages, the version which is to prevail shall be specified in the Preamble. The language of such version is referred to as the ruling language.

- Day to Day Communications** 5.2 The language for day to day communications in writing is stated in the Preamble.
- Priority of Contract documents** 5.3 Unless otherwise provided in the Contract Documents the priority of the Contract Documents shall be as follows:
1. The Form of Agreement
 2. The Preamble
 3. The Conditions of Contract
 4. The Contractor's tender document
 5. The Tender Enquiry Document
 6. Any other document forming part of the Contract
- Documents Mutually Explanatory** 5.4 Subject to Sub-Clause 5.3 the Contract documents shall be taken as mutually explanatory. Any ambiguities or discrepancies shall be resolved by the Engineer, who shall then instruct the Contractor thereon.
- If the Contractor considers that compliance with such instructions will result in any cost which the Contractor could not reasonably have anticipated, he shall forthwith inform the Engineer with full supporting details. The Engineer shall then, if he approves, certify such costs as may be reasonable together with profit where appropriate, which shall be added to the Contract Price.
- If on the other hand compliance with such instructions results in lower costs for the Contractor than he had reason to anticipate, the Engineer shall certify a deduction from the Contract Price.
- Contractor's Drawings** 6.1 The Contractor shall submit to the Engineer for approval:
- (a) within the time given in the Contract or in the Programme such drawings, samples, models or information as may be called for therein, and in the numbers therein required, and
 - (b) during the progress of the Works, such drawings of the general arrangement and details of the Works as specified in the Contract or as the Engineer may require.
- The Engineer shall signify his approval or disapproval thereof. If he fails to do so within the time given in the Contract or the Programme or if no time limit is specified, within 14 days of receipt in the offices of Cemento Milon, they shall be deemed to be approved.
- Approved drawings, samples and models shall be signed or otherwise identified by the Engineer.
- The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the Contract.
- Consequences of Disapproval of Contractor's Drawings** 6.2 Any Contractor's Drawings which the Engineer disapproves, shall be forthwith modified to meet the requirements of the Engineer and shall be re-submitted.

- Approved Contractor's Drawings** 6.3 Approved Contractor's Drawings shall not be departed from except as provided in Clause 31.
- Inspection of Contractor's Drawings** 6.4 The Engineer shall have the right at all reasonable times to inspect, at the Contractor's premises, all Contractor's Drawings of any part of the Works.
- Erection Information** 6.5 The Contractor shall provide, within the times stated in the Contract or in the Programme, drawings showing how the Plant is to be affixed and any other information required for:
- (a) preparing suitable foundations or other means of support, and
 - (b) providing suitable access on the Site for the Plant and any necessary equipment to the place where the Plant is to be erected, and
 - (c) making necessary connections to the Plant.
- Operation and Maintenance Manuals** 6.6 Before the Works are taken over in accordance with Clause 29 the Contractor shall supply operation and maintenance manuals together with drawings of the Works as built. These shall be in such detail as will enable the Employer to operate, maintain, adjust and repair all parts of the Works.
- The manuals and drawings shall be in Spanish, adhere to the metric system and in such form and numbers as stated in the Contract.
- Unless otherwise agreed, the Works shall not be considered to be completed for the purposes of taking over until such manuals and drawings have been supplied to the Employer.
- Employer's Use of Contractor's Drawings** 6.7 Contractor's Drawings may be used by the Employer for no other purpose than completing, operating, maintaining, adjusting and repairing the Works.
- Contractor's Use of Employer's Drawings** 6.8 The Employer's Drawings, Specification and other information submitted by the Employer or the Engineer to the Contractor shall remain the property of the Employer. They shall not, without the consent of the Employer be used, copied or communicated to a third party by the Contractor unless necessary for the purposes of the Contract.
- Manufacturing Drawings** 6.9 The Contractor shall not be required to disclose to the Employer or the Engineer the Contractor's confidential manufacturing drawings, designs, know-how or manufacturing practices, processes or operations.
- Errors in Contractor's Drawings** 7.1 The Contractor shall be responsible for any errors or omissions in the Contractor's Drawings unless they are due to incorrect Employer's Drawings or other written information supplied by the Employer or the Engineer. Approval by the Engineer of the Contractor's Drawings shall not relieve the Contractor from any responsibility under this Sub-Clause.

The Contractor shall bear any costs he may incur as a result of delay in providing Contractor's Drawings and other information or as a result of errors or omissions therein, for which the Contractor is responsible.

The Contractor shall at his own cost carry out any alterations or remedial work necessitated by such errors or omissions for which he is responsible and modify the Contractor's Drawings and such other information accordingly.

The performance of his obligations under this Clause shall be in full satisfaction of the Contractor's liability under this Clause but shall not relieve him of his liability under Sub-Clause 27.1.

Errors by Employer or Engineer 7.2

The Employer shall be responsible for the Employer's Drawings and for other written information supplied by the Employer or the Engineer and for the details of special work specified by either of them. If such Employer's Drawings, information or details are incorrect and necessitate alterations of the work, the Employer shall pay the Contractor the cost of the alterations together with profit as certified by the Engineer.

Obligations of the Contractor

General Obligations 8.1

The Contractor shall, in accordance with the Contract, with due care and diligence, design, manufacture, deliver to Site, erect, test and commission the Plant and carry out the Works within the Time for Completion. The Contractor shall also provide all necessary Contractor's Equipment, superintendence, labour materials and all other things necessary therefore, whether of a temporary or permanent nature, and all necessary facilities therefor.

Setting Out 8.2

The Contractor shall set out the Works in relation to original points, lines and levels of reference given by the Engineer in writing and which the Contractor has verified and agreed at site and shall provide all necessary instruments, appliances and labour for such purposes.

If, at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error.

The Contractor shall bear the cost of rectifying the error, unless the error results from incorrect information supplied in writing by the Employer, the Engineer or from default by another contractor, in which case the cost together with profit shall be borne by the Employer.

The checking of any setting-out by the Engineer shall not relieve the contractor of his responsibility for the accuracy thereof.

Contract Agreement 9.1

The Contractor shall, if called upon so to do, execute a Contract Agreement recording all the terms of the Contract, to be prepared by and completed at the cost of the Employer in the form annexed hereto.

**Performance
security**

- 10.1 The Contractor shall within 28 days of signature of the Contract and, as a conditional precedent to payment of any amount by the Employer to the Contractor under the contract, obtain and deliver to the Employer, at his own cost, a Performance Security to the value of 10% of the Contract Price and valid until the end of the Defects Liability Period of 12 months (30 months in total unless the Contract Period is extended) to secure the complete, timely and correct performance of the Contractor's obligations under the Contract. This bond shall be issued by a bank previously approved by the Employer.

The Bond shall be completely refunded upon delivery of the Final Defects Liability Certificate along with the delivery by the Contractor to the Employer of a statement executed by its legal representative before a public notary declaring that the Contractor has no pending claims against the Employer in connection with the Contract, that all labour, social benefits, taxes, sub-contractors and suppliers have been duly paid up to that date and that there are no claims, lawsuits, injunctions or the like against sub-contractors, the Contractor or the Employer filed or threatening to be filed.

Notwithstanding the stages of refund outlined in the preceding paragraph, if 20 days prior to the expiry date of any of the bond, the Final Defects Liability Certificate has not been issued by the Employer and delivered to the Contractor, the Contractor shall renew the then existing bond by delivering to the Employer new bond for the same amount and valid for an additional 90 days. The failure of the Contractor to timely comply with this renewal obligation shall constitute a material breach of the Contract and shall give the right to the Employer to collect any and all performance bonds and to withhold any payments due or to become due to the Contractor under the Contract.

All bonds shall be issued by a first class bank as per the draft attached to the Contract Conditions and shall be payable on demand as described in the attached draft, without the need of an arbitration award, in case the Contractor fails to timely perform any obligation under the Contract.

Site Data

- 11.1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself as regards existing roads or other means of communication with and access to the Site, the climatic conditions, the form and nature of the Site, the risk of injury or damage to property adjacent to the Site or to the occupiers of such property, the nature of any materials (whether natural or otherwise) for the completion of the Works, the conditions affecting or which might affect the operation of the Plant, the accommodation required during

the execution of the Works, and generally to have obtained his own information on all matters influencing or affecting his Tender, the Contract price, and the execution, commissioning and maintenance under the Defects Liability Clause 30 of the Works. The Contractor shall include within his Contract Price for the carrying out of a soil survey to confirm the soil parameters used in his design. No increase in costs will be considered unless changes in the soil parameters lead to a substantive change in design.

Sufficiency of Contract Price

11.2 The Contractor shall be deemed to have satisfied himself on and taken account of in his Tender:

- (a) all the conditions and circumstances affecting the Contract Price,
- (b) the possibility of carrying out the Works as described in the Contract,
- (c) the general circumstances at the Site (if access has been made available to him)
- (d) the general labour position at the Site and
- (e) all matters set out in Sub-Clause 11.1

The Contractor shall not be responsible for the accuracy of information given in writing by the Employer or the Engineer but shall be responsible for his interpretation of information received from whatever source.

Physical Obstructions and Conditions

If during the execution of the Works on site the Contractor encounters unforeseen ground conditions including changes in soil parameters referred to Sub-Clause in 11.1, the Contractor shall be entitled to recover additional costs incurred in consequence.

The Engineer shall certify and there shall be added to the Contract Price the additional cost of

- (a) complying with any instruction of which the Engineer, after due consultation with the Employer and the Contractor, issues to the Contractor therewith, and
- (b) any measures necessary for reasons of safety which the Contractor may have to take in the absence of specific instructions from the Engineer.

Programme to be Furnished

12.1 The Contractor shall within 28 days after the Commencement Date prepare and submit to the Engineer for the Engineer's approval a combined manufacturing and installation Programme with detailed Milestones amplifying the Preliminary Programme submitted with his Tender and taking into account any conditions of acceptance of the Tender. The Contractor's Programme shall set out the order of procedure and the activity durations which the Contractor proposes to adopt when carrying out the works including the design, manufacture, delivery to Site,

erection, commissioning and maintenance thereof and the dates for which access to the various sections of the works are required. The submission to and approval by the Engineer of the Programme shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

Alteration to Programme

- 12.2 No alteration to the Programme shall be made without the approval of the Engineer.

The programme shall be updated at the Employer's request as the Works proceed and as provided for in the Specification. The Contractor shall submit monthly progress reports in a form to be agreed with the Engineer, and at his own expense attend progress meetings either in the country of manufacture of the Plant or in Chile at times and places notified by the Engineer.

The Contractor shall submit to the Engineer a weekly report in a form to be agreed between the Contractor and the Engineer. Upon completion of the Contract, the Contractor shall submit to the Engineer a de-mobilisation plan and shall commence de-mobilisation only once the Engineer has approved in writing such de-mobilisation plan.

Revision of Programme

- 12.3 If the progress of the Works does not conform to the Programme, the Engineer may instruct the Contractor to revise the Programme.

If such modifications are required for reasons for which the Contractor is not responsible, the cost of preparing the revised Programme shall be certified by the Engineer and added to the Contract Price.

Contractor's Representative

- 13.1 The Contractor shall employ one or more competent Spanish speaking representatives first approved by the Engineer superintend the carrying out of the Works on Site. They shall be fluent in the language for day to day communications. Their names shall be communicated in writing to the Engineer for the Engineers approval before work on Site begins.

Any instruction or notice which the Engineer gives to the Contractor's representatives shall be deemed to have been given to the Contractor.

Objection to Contractor's Employees

- 13.2 The Contractor shall, upon the Engineer's written instruction, remove from the Works any person employed by him in the execution of the Works, who misconducts himself or is incompetent or negligent or who in the opinion of the Employer or the Engineer is otherwise unsuitable for his position or for employment on the Contract.

Contractor's Equipment

- 14.1 The Contractor shall provide all Contractor's Equipment necessary to complete the Works.

All Contractor's Equipment shall, when brought on to the Site, be deemed to be exclusively intended for the

execution of the Works. The Contractor shall not remove from the Site any such equipment, except when he has established to the satisfaction of the Employer that it is no longer required for the Completion of the Works or has received the Employer's written approval to remove the same.

Safety Precautions

14.2 The Contractor shall observe all applicable regulations regarding safety on the Site.

The Contractor shall take full responsibility for the adequacy, stability and safety (including the provision of temporary fire-fighting equipment) of all Site and Works operations (including temporary works) and methods of erection and for the design and specification of the Works (other than any design or specification provided by the Employer or the Engineer for which the Contractor has disclaimed responsibility in writing within 28 days after receipt) and shall from the commencement of work on Site until taking over provide:

- (a) fencing, lighting, guarding and watching of the Works, and
- (b) temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of owners and occupiers of adjacent property, the public and others.

The contractor must ensure that all his personnel and sub-contractors are suitably trained, experienced and skilled for the work required.

The Employer may insist on the removal of any Contractor's worker who fails to comply with the La Calera Works' Safety standards.

In addition to legal requirements, The Contractor must supply his employees with Personal Safety Equipment and clothes according to the La Calera Works' Safety regulations. Safety clothes and equipment include at least:-

- Hard Hats
- Safety boots and Gloves
- Overalls or other suitable work clothes
- Eye protection
- Ear protection
- Appropriate masks, aprons and gloves for welding and cutting
- Identification

The Contractor must ensure that his employees pay particular care when working on and around Cemento Melon's existing equipment. In certain circumstances as determined by the Engineer it may be necessary to suspend work if the work required interferes with the safety of either the Contractor's or La Calera Works personnel. If the suspension is required through no fault of

the Contractor and lasts more than 24 hours the Contractor will be entitled to claim costs and /or an extension of time in accordance with these Conditions.

The Contractor will be responsible for the cleanliness and hygiene of his workers and their working area, including changing rooms, offices and access ways to site. The Contractor will be responsible for providing chemical sanitation convenient to his working areas in accordance with legal requirements.

**Electricity,
Water and Gas**

14.3

The Contractor shall be entitled to use free of charge such supplies of electricity and water services on site necessary for the construction and installation of the Plant of which details are given in the preamble, however should, for any reason other than the Employer's fault, these services not be available then it is the Contractor's responsibility to provide a replacement source and the Employer shall not accept any delay in the programme or claim by the Contractor for failure to provide such a service. Any related works (such as the connection and disconnection from supply sources) shall be the Contractor's responsibility and at the Contractor's cost. The Contractor, if required to do so by the Engineer, shall fit metering systems for the measurement of these services. The Employer retains the right to limit any of these services if he considers that they are being misused or wasted by the Contractor or any of his Sub-Contractors.

*Conexiones y desconex. →
son costo del contratista.*

*El empleador se reserva el
derecho de limitar los servicios*

14.4

Void

Clearance of Site

14.5

The Contractor shall from time to time during the progress of the Works clear away and remove all surplus materials and rubbish. On completion of the Works the Contractor shall remove all Contractor's Equipment and leave the whole of the Site and the Works clean and in a workmanlike condition, to the satisfaction of the Engineer.

**Opportunities for
Other Contractors**

14.6

The Contractor shall, in accordance with the Engineer's instructions, afford to other contractors engaged by the Employer to work on the Site and persons lawfully upon the Site all reasonable opportunities for carrying out their work provided that the same shall not obstruct or disturb the progress of the Works. The Contractor shall also afford such opportunities to the employees of the Employer.

If the Contractor, on the written request of the Engineer, makes available any Contractor's Equipment or provides any other service, the Employer shall pay the Contractor accordingly. The amount to be paid shall be certified by the Engineer and added to the Contract Price.

Authority for Access

14.7

No persons other than the employees of the Contractor and his Subcontractors shall be allowed on the Site except with the consent of the Engineer.
Facilities to inspect the Works shall at all times be afforded by the Contractor to the Engineer and his representatives, the Employer's representatives, authorities and officials

**Information for
Import Permits
and Licences**

- 14.8 The Contractor shall also obtain any permits or licenses required for export of the equipment from the source country.

The Contractor shall be responsible for the payment of all import duties and taxes with respect to all imported equipment for the Project.

The Contractor shall obtain all import permits or licenses required for any part of the Plant or Works in reasonable time having regard to the time for delivery of the plant and for completion of the works. The Contractor shall remain fully responsible for all customs clearance operations and administrative formalities relating to the transport of the plant and Contractor's equipment to site and also for any demurrage charges that may be incurred. The Contractor will also be solely responsible for arranging of any re-export licences for Contractor's equipment.

- 14.9 All operations necessary for the execution of the Works shall, so far as compliance with the requirements of the Contract permits, be carried out so as not to interfere unnecessarily or improperly with the continued operation of the plant in La Calera, the users of the Plant, or the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or any other person. The Contractor shall defend, save harmless and indemnify the Employer in respect of all justifiable and duly supported claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any action or omission which a diligent contractor could have avoided.

- 14.10 (a) The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to and from site, or the areas within the La Calera plant from being blocked, damaged or injured by any traffic of the Contractor or any of his sub-contractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any extraordinary traffic as will inevitably arise from the moving of the Plant and materials to and from site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such highways and bridges.

- (b) Should it be found necessary for the Contractor to move one or more loads of Contractor's Equipment, machinery or pre-constructed units or parts of units of work over part of a highway or bridge, the moving whereof is likely to damage any highway or bridge unless special protection or strengthening is carried out, then the Contractor shall before moving the load on to such highway or bridge give notice to the local highway authority or other appropriate body the weight and other particulars of the load to be moved

and his proposals for protecting or strengthening the said highway or bridge. The Contractor shall be responsible for obtaining all necessary consents and approvals for the transport of special loads and oversized consignments and for paying all relevant dues and charges, and/or executing any repairs requested by the Authorities.

- (c) Where the nature of the Works is such as to require the use by contractor of waterborne transport the foregoing provisions of this Sub-Clause shall be construed as though "highway" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included a seagoing vessel, and shall have effect accordingly.

- 14.11 The Employer shall be responsible for obtaining all local permits and environmental permits for the Works. The Contractor shall actively assist the Employer to obtain these permits including the timely provision of plans and specifications of equipment to be installed. Should any delay in the works occur as a result of the Contractor's failure to provide the necessary information in a reasonable time scale, then the Contractor shall be fully responsible for the resultant delay and his own cost of such delay. The Contractor shall continue to be responsible for all breaking ground Certificates (if applicable), work permits for non-Chilean personnel, work visas and any legal permissions concerning its presence in Chile. The Contractor shall provide to the Employer adequate evidence thereof upon request, and, upon completion of the Works, shall deliver to the Employer a full set of those Permits or approvals for which he was responsible.

Compliance with Statutes, Regulations

- 15.1 The Contractor shall, in all matters arising in the performance of the Contract, comply in all respects with, give all notices and pay all fees and impositions required by the provisions of any national or state statute, ordinance or other law or any regulation or bye-law of any duly constituted authority.

Compliance with Laws

- 15.2 The Contractor shall comply with the laws of the country of manufacture concerning the manufacture of the Plant, and the laws of the country where the Plant is to be erected so far as such laws concern the manufacture, erection and operation of the Works.

Patent Rights

- 16.1 The Contractor shall indemnify the Employer against all claims of infringement of any patent, registered design, copyright, trade mark or trade name or other intellectual property right provided that all of following conditions are satisfied:

- (a) The claim or proceedings arise out of the design, construction, manufacture or use of the Works or any Plant supplied by the Contractor.

- (b) The right was protected at the date of the Contract in the Contractor's country or the country in which the Plant is to be manufactured or erected.
- (c) The infringement or allegation of infringement was not caused by any use of the Works otherwise than for the purpose indicated by or reasonably to be inferred from the Specification.
- (d) The infringement or allegation of infringement was not caused by the use of any plant in association or combination with any plant not supplied by the Contractor, unless such association or combination was disclosed to the Contractor prior to the date of tender.
- (e) The infringement or allegation of infringement was not caused by the Contractor following the design or instruction of the Employer or the Engineer.

**Claims in respect of
Patent Rights**

16.2 The Contractor shall be promptly notified of any claim under this Clause made against the Employer. The Contractor may at his own cost conduct negotiations for the settlement of such claim, and any litigation that may arise therefrom.

The Employer shall not except as forced by a local law or regulation make any admission which might be prejudicial to the Contractor unless the Contractor has failed to take over the conduct of the negotiations or litigation within a reasonable time after having been so requested.

The Contractor may not, however, conduct such negotiations or litigation before he has given the Employer such reasonable security as the Employer may require. The security shall be for an amount which is an assessment of the compensation, damages, expenses and costs for which the Employer may become liable and which are the subject of the indemnity under Sub-Clause 16.1.

The Employer shall, at the request of the Contractor, provide all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable costs incurred in so doing.

Obligations of the Employer

**Access to
and Possession
of the Site**

17.1 Subject to any requirement in the Contract as to the order in which parts of the Site may be made available or work to be carried out, the Employer shall give to the Contractor access to and possession of so much of the Site, which may, however, not to be exclusive to the Contractor, shown on the drawings as may be required to enable the Contractor to commence and proceed with the carrying out of the Works in accordance with the programme provided always that the Contractor shall have given to the Employer at least fourteen (14) days notice in writing requesting access to the Site or parts thereof.

- 17.2 Void
- Civil Works on Site** 17.3 Any building, structure, foundation or means of access on the Site to be provided by the Employer shall be in a condition suitable for the reception, movement, installation and maintenance of the Works within the time or times indicated in the Programme.

Labour

- Engagement of Labour** 18.1 The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all labour and for their payment, housing, feeding and transport.

- Returns of Labour** 18.2 The Contractor shall submit detailed returns showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor and Subcontractors on the Site. The returns shall be submitted in such form and at such intervals as the Engineer may prescribe.

- Working Hours** 18.3 On the Site the Contractor shall observe the normal working hours stated in the Preamble. The Employer shall allow the Contractor to carry out work on the Site continuously during such working hours.
The Engineer may after consulting the Employer and the Contractor direct that work shall be done at other times if it has become necessary in his opinion for the completion of the Works within the time for completion and this is due to the default of the Contractor. All extra costs shall be borne by the Contractor.

- Restriction on Working Hours** 18.4 No work shall be carried out on the Site outside normal working hours or on the locally recognised days of rest, unless:
- (a) the Contract so provides, or
 - (b) the work is unavoidable or necessary for the saving of life or property or for the safety of the Works in which case the Contractor shall immediately advise the Engineer, or
 - (c) the Engineer gives his consent.

Workmanship and Materials

- Manner of Execution** 19.1 All Plant to be supplied shall be manufactured and all work to be done shall be executed in the manner set out in the Contract.
Where the manner of manufacture and execution is not set out in the Contract, the work shall be executed in a proper and workmanlike manner in accordance with recognised good practice.

The Contractor warrants that the work and services :

- 1) Shall be developed, performed, supervised, evaluated and controlled in a careful manner according to the

standard and good practices applicable to the nature of the works and/or services required under the Contract and generally used for the first class Contractors and generally accepted for this type of works and services.

- 2) Shall be timely performed by skilful, trained and experienced personnel.
- 3) Shall comply with the requirements and conditions specified in the Contract .

The Contractor warrants that the goods to be provided under the Contract either directly or by a sub-supplier shall comply with the requirements set forth in the Contract and in particular:

- 1) Shall be of good quality, made with appropriate materials and without defects of workmanship.
- 2) Shall be timely delivered in accordance with the Programme.

In the event that the Contractor fails to take or diligently continue an appropriate corrective action and comply with these warranties within a reasonable term as specified by the Engineer, the Employer may withhold payment of any amount then, or in the future, due to the Contractor under the Contract.

Covering up Work

- 19.2 The Contractor shall give the Engineer full opportunity to examine, measure and test any work on Site which is about to be covered up or put out of view.
The Contractor shall give due notice to the Engineer whenever such work is ready for examination, measurement or testing.

The Engineer shall then, unless he notifies the Contractor that he considers it unnecessary, without unreasonable delay carry out the examination, measurement or testing.

Uncovering Work

- 19.3 If so instructed by the Engineer, the Contractor shall expose any parts of the Works. The Contractor shall reinstate and make good such parts to the Engineer's satisfaction.

If any parts of the Works have been covered up or put out of view by the Contractor after complying with Sub-Clause 19.2 and are found to be in accordance with the Contract the cost, including profit, incurred by the Contractor in complying with the Engineer's instructions shall be certified by the Engineer and added to the Contract Price.

Independent Inspection

- 20.1 The Employer and the Engineer may delegate inspection and testing of plant to an independent inspector. Any such delegation by the Employer and Engineer shall be effected in the manner required by Sub-Clause 2.3, and for this purpose such independent inspector shall be considered as



an Engineer's Representative. Notice of such appointment (being not less than 14 days) shall be given by the Engineer to the Contractor.

Any failure of the independent inspector or Engineer to disapprove any plant or workmanship not in accordance with the Contract shall not prejudice the right of the Employer to disapprove such plant or workmanship and to give instructions for the rectification thereof.

Inspection and Testing During Manufacture

- 20.2 The Independent Inspector or the Engineer shall be entitled during manufacture to inspect, examine and test the materials and workmanship and check the progress of manufacture of all Plant to be supplied under the Contract. This shall take place on the Contractor's premises during working hours. If Plant is being manufactured on other premises, the Contractor shall obtain permission for the Independent Inspector or the Engineer to carry out such inspection, examination and testing on those premises.

None of these inspections, examinations, or testing by the Employer, Engineer or Independent Inspector or lack thereof shall be construed as relieving or diminishing Contractor's obligations under the Contract.

Dates for Inspection and Testing

- 20.3 The Contractor shall agree with the Independent Inspector or the Engineer the time and place for the testing of any Plant as provided in the Contract. The Independent Inspector or the Engineer shall give the Contractor 24 hours notice of his intention to attend the tests.

If the Independent Inspector or the Engineer does not attend on the date agreed, the Contractor may, unless the Independent Inspector or the Engineer instructs the Contractor not to do so, proceed with the tests, which shall be deemed to have been made in the Independent Inspector or the Engineer's presence.

The Contractor shall forthwith forward to the Independent Inspector or the Engineer duly certified copies of the test results. If the Independent Inspector or the Engineer has not attended the test, he shall accept the validity of the test readings.

Facilities for Testing

- 20.4 Where the Contract provides for tests on the premises of the Contractor or of any Sub-contractor, the Contractor shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be necessary to carry out the tests efficiently. The costs incurred by the Employer or his delegated representative shall be to the Employer's account.

Certificate of Testing

- 20.5 When Plant has passed the tests referred to in this Clause, the Independent Inspector or the Engineer shall furnish to the Contractor a certificate or endorse the Contractor's test certificate to that effect.

Rejection

21.1 If, as a result of the inspection, examination or testing referred to in Clause 20, the Engineer decides that any Plant is defective or otherwise not in accordance with the Contract, he may reject such Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Engineer shall not reject any Plant for minor defects which do not affect the commercial operation of such Plant.

The Contractor shall then with all speed make good the defect or ensure that any rejected Plant complies with the Contract.

If the Engineer requires such Plant to be re-tested, the tests shall be repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall be deducted from the Contract Price.

Permission to Deliver

22.1 The Contractor shall apply in writing to the Engineer for permission to deliver any Plant or Contractor's Equipment to the Site. No Plant or Contractor's Equipment may be delivered to the Site without the Engineer's written permission.

The Contractor shall be responsible for the reception on Site of the Plant and Contractor's Equipment.

Suspension of Works, Delivery or Erection**Order to Suspend**

23.1 The Engineer may with the Employer's approval at any time instruct the Contractor to:

- (a) suspend progress of the Works, or
- (b) suspend delivery of Plant or Contractor's Equipment which is ready for delivery to the Site at the time for delivery specified in the Programme, or if no time is specified, at the time appropriate for it to be delivered, or
- (c) suspend the erection of Plant which has been delivered to the Site.

The Contractor shall during suspension protect and secure the Works or Plant affected at the Contractor's works or elsewhere or at the Site, as the case may be, against any deterioration, loss or damage and shall keep such contemporary records and documents as may reasonably be necessary to support and substantiate any claim he may subsequently make in respect of such suspension.

Cost of Suspension

24.1 The additional cost incurred by the Contractor in protecting, securing and insuring the Works or Plant and in following the Engineer's instructions under Sub-Clause 23.1 and in resumption of the work and which is substantiated by the contractor's records and documents required to be kept under Sub-clause 23.1 shall be added to the Contract Price.

The Contractor shall not be entitled to be paid any additional costs if such suspension is necessary by reason of a default on the part of the Contractor.

The Contractor shall not be entitled to additional costs unless he notifies the Engineer of his intention to make such claim, within 28 days after receipt of the order to suspend progress or delivery or of the date of deemed suspension under Sub-Clause 23.1.

Payment in Event of Suspension

- 24.2 The Contractor shall be entitled to payment for Plant which has not been delivered to Site if the work on Plant or delivery of Plant has been suspended for more than 28 days. After 28 days of suspension, the Contractor shall be entitled to payment of the value of such Plant as at the date of suspension.

A certificate of payment shall be issued on condition that:

- (a) the Contractor has marked the Plant as the Employer's property in accordance with the Engineer's instructions, and
- (b) the suspension is not due to the Contractor's fault.

Prolonged Suspension

- 24.3 If suspension under Clause 23.1 has continued for more than 84 days, and the suspension is not due to the Contractor's default, the Contractor may by notice to the Engineer require permission to proceed within 28 days.

If permission is not granted within that time, the Contractor may treat the suspension as an omission under Clause 31 of the Section it affects, or if the suspension affects the whole of the Works, terminate the Contract and the provisions of Clause 46 shall apply.

Resumption of Work

- 24.4 If the Contractor chooses not to treat prolonged suspension as an omission or termination under Sub-Clause 24.3, the Employer may upon the request of the Contractor, take over the responsibility for protection, storage, security and insurance of the suspended Works and risk of loss or damage thereto shall thereupon pass to the Employer.

After receipt of permission or an order to proceed, the Contractor shall, after due notice to the Engineer, examine the Works and the Plant affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant that may have occurred during the suspension. Cost properly incurred by the Contractor which would not have been incurred but for the suspension shall be added to the Contract Price together with profit.

The Contractor shall not be entitled to payment for costs incurred in making good any deterioration, defect or loss caused by faulty workmanship or materials or by the Contractor's failure to take the measures specified in Sub-Clause 23.1.

If the Employer has taken over risk and responsibility for the suspended Works under this Sub-Clause, risk and responsibility shall revert to the Contractor 14 days after receipt of the permission or order to proceed.

Completion

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| Time for Completion | 25.1 | The Works shall be completed and shall have passed the Tests on Completion within the Time for Completion. |
| Extension of time for completion | 26.1 | The Contractor may only request an extension to the Time for Completion grounded on delays caused by the Employer's fault, extra or additional work ordered in writing under Clause 31, unforeseen ground conditions as per Clause 11.3 or Force Majeure, provided that there has been no fault or negligence by the Contractor and that the Contractor has made every effort to overcome the situation and minimise the delays. The request for an extension in the Time for Completion must be submitted by the Contractor to the Engineer in writing within ten days following the commencement of the delay in question. |
| Delays by Sub-Contractors | 26.2 | The Contractor shall be entitled to claim an extension of time if delay on the part of a Subcontractor is due to a cause mentioned in Clause 26.1, and such delay prevents the Contractor from meeting the Time for Completion. |
| Delay in Completion | 27.1 | If the Contractor shall fail to complete the whole of the Works in accordance with the Contract (save as regards his obligations under Clause 30) within the Time for Completion (or any extension of such time granted under Sub-Clause 26.1) the Contractor shall pay the Employer liquidated damages/penalties at the rate stated in the preamble between the end of the Time for Completion and the date of actual completion as certified by the Engineer. |

The Employer may without prejudice to any other method of recovery, deduct the amount of any such liquidated damages from any cash in his hand due or which may become due to the Contractor and each such payment or deduction shall be by way of liquidated damages for such delay and penalty.

Except as provided in Sub-Clause 27.2, such reduction shall be to the exclusion of any other remedy of the Employer in respect of the Contractor's failure to complete within the Time for Completion.

If the cement grinding system consistently produces over a seven day period 90% of the warranted output of 130 tph. Of Especial Cement at the Time for Completion, notwithstanding that the Tests on Completion have not been completed the Contractor's liability for liquidated damages/penalties in respect of delay shall be waived.

Prolonged Delay

- 27.2 If the Employer has become entitled to the maximum liquidated damages/penalties under Clause 27.1 for any part of the Works, he may by notice require the Contractor to submit for the agreement of the Engineer a programme for completing the Works and to complete the Works. Such notice shall fix a time for the completion which shall be reasonable and in accordance with the programme. If the Contractor fails to comply with the programme and this is not due to Force Majeure or a cause for which the Employer or some other contractor employed by him is responsible, then the Employer shall have right to recourse to remedies available elsewhere in these Conditions.

Tests on Completion

- 28.1 The Performance Tests shall be carried out in accordance with the Contractor's Tender section Performance Warranties and Liquidated Damages revision 02 dated 20th January 1997.
- 28.2 The Contractor shall give to the Engineer 21 days notice of the date after which he shall be ready to make the Tests. Unless otherwise agreed, the Tests shall take place within 14 days after the said date on such day or days as the Engineer shall notify the Contractor.
- 28.3 Following the erection of the Works the Contractor, at his own cost, shall carry out no load tests in the presence of the Employer and the Engineer. The no load tests shall cover a continuous period of controlled operation of each section of the Works as agreed between the Engineer and the Contractor and upon completion of such tests a test report shall be drawn up and signed by the contractor, the Engineer and the Employer or his appointed representative. If no faults are referred to in the report, the section shall be deemed to be fully erected and no load tested. Any defect which has no effect on Commissioning of the Works being put into production shall be corrected or repaired by the Contractor at his own cost as soon as possible after the tests have been carried out.
- 28.4 Void
- 28.5 Void
- 28.6 If the Tests are being unduly delayed by the Contractor the Engineer may by notice require the Contractor to make the Tests within 21 days after the receipt of such notice. The Contractor shall make the Tests on such days within that period as the Contractor may fix and of which he shall give notice to the Engineer.
- 28.7 During commissioning the Employer shall be provided free of charge such operators, raw materials, electricity, water, fuel, grease and lubricants as may be reasonably required and will hold available the recommended spare parts for the operation of the Plant and the Contractor shall replace

free of charge any spares used during the commissioning. The Contractor shall specify in writing at least three (3) months prior to commissioning his detailed requirements for operators, raw materials, electricity, water, fuel, grease and lubricants to enable the Employer to make arrangements for the provision of the same.

28.8 The Contractor may at any time during Commissioning after consultation with the Engineer, make under the Contractor's own supervision and responsibility, such changes, modifications or additions to the Plant, as the Contractor deems desirable in order to eliminate any defects and achieve the specified Performance Guarantees subject to the Contractor bearing all costs and expenses in relation thereto.

28.9 The first Performance Test must be held within three (3) months of Completion of Erection. In the event that any section of the Works fails to pass its Performance Test(s) the Contractor shall take such measures as may be necessary to remedy such failure at his own cost and expense (including the repair and replacement of defective parts and equipment) and shall repeat the Performance Test(s). The Contractor may hold up to three repeat Performance Test provided that they are held within three (3) months of the original Performance Test and provided that, subject to Sub-Clause 28.13 such repeat tests are held within six (6) months of the Completion of Erection.

28.10 The Contractor shall pay for the costs of one (1) expatriate engineer of the Employer to monitor repeated Performance Tests after the Time for Completion, each party shall otherwise bear his own costs for repeated Performance Tests.

28.11 Void

28.12 Void

28.13 If despite any changes, modifications, alterations or repairs undertaken by the Contractor, any of the Performance Guarantees set out in the Contractor's Tender section referred to in Sub-Clause 28.1 are not achieved within six (6) months after Completion of Erection, or any extended time granted under Sub-Clause 26, the Contractor shall (unless Sub-Clause 29.4 applies or the Employer waives any such Performance Guarantees) pay the Employer liquidated damages in the sums and at the rates specified in the Contractor's tender section referred to in Sub-Clause 28.1.

28.14 Void

28.15 Void



Taking Over

- Taking-Over** 29.1 The Works or such section thereof as the Employer may at his discretion decide shall be taken over by the Employer when they have been completed in accordance with the Contract, except in minor respects (hereinafter referred to as "outstanding work") that do not affect the use of the Works for their intended purpose, have passed the Tests on Completion and a Taking-Over Certificate has been issued or deemed to have been issued in accordance with Sub-Clause 29.2
- Taking-Over Certificate** 29.2 The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will in the Contractor's opinion be complete and ready for taking over under Sub-Clause 29.1.
- The Engineer shall within 28 days after the receipt of the Contractor's application either :
- (a) issue the Taking-Over Certificate to the Contractor with a copy to the Employer stating the date on which the Works were complete and ready for taking over, or
 - (b) reject the application giving his reasons and specifying the works required to be done by the Contractor to enable the Taking-Over Certificate to be issued.
- If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days he shall be deemed to have issued the Taking-Over Certificate on the last day of that period.
- Use Before Taking-Over** 29.3 The Employer shall not use any part of the Works unless a Taking-Over Certificate has been issued in respect thereof. If nevertheless the Employer uses any part of the Works, that part shall be deemed to have been taken over at the date of such use. The Engineer shall on request of the Contractor issue a Taking-over Certificate accordingly. If the Employer uses any part of the Works before taking over the Contractor shall be given the earliest opportunity of taking such steps as may be necessary to carry out the Tests on Completion.
- The provisions of Sub-Clause 27.1 shall not apply to any part of the Works while being so used by the Employer. Clause 30 shall apply as if the part had been taken over on the date it was taken into use.
- Interference with Tests on Completion** 29.4 If the Contractor is prevented from carrying out the Tests on Completion within 6 months after the Completion of Erection by a cause for which the Employer or the Engineer or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly.

The Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

If the Works are taken over under this Clause the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests on Completion to be carried out by 14 days notice and in accordance with the relevant provisions of Clause 28.

Any additional costs to which the Contractor may be put in making the Tests on Completion during the Defects Liability Period, shall be added to the Contract Price.

Defects after Taking Over

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| Defects Liability Period | 30.1 | Where any part of the Works is taken over separately from the Works the Defects Liability Period for that part shall commence on the date it was taken over. |
| Making Good Defects | 30.2 | <p>The Contractor shall, subject to Sub-Clause 30.9, be responsible for completing any outstanding work and making good any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arises from, either:</p> <p>(a) any defective materials, workmanship or design, or</p> <p>(b) any act or omission of the Contractor during the Defects Liability Period.</p> <p>The Contractor shall make good the defect or damage within such time as may be specified by the Engineer and at the Contractor's own cost.</p> |
| Notice of Defects | 30.3 | If any such defect appears or damage occurs, the Employer or the Engineer shall forthwith notify the Contractor thereof. |
| Extension of Defects Liability Period | 30.4 | <p>The provisions of this Clause shall apply to all replacements or renewals carried out by the Contractor as if the replacements and renewals had been taken over on the date they were completed.</p> <p>The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected the Defects Liability Period shall be extended only for that part.</p> <p>In neither case shall the Defects Liability Period be extended by more than one year.</p> |
| Failure to Remedy Defects | 30.5 | <p>If the Contractor fails to remedy a defect or damage within the time specified by the Engineer, the Employer may fix a final time for remedying the defect or damage.</p> <p>If the Contractor fails to do so, the Employer may:</p> <p>(a) carry out the work himself or by others at the Contractor's risk and cost, provided that he does so in</p> |

a reasonable manner. The costs properly incurred by the Employer in remedying the defect or damage shall be deducted from the Contract Price, but the Contractor shall have no responsibility for such work, or

(b) require the Contractor to grant the Employer a reasonable reduction in the Contract Price to be agreed or fixed by arbitration under Clause 50, or

(c) if the defect or damage occurs in a major item of Plant and is such that the Employer has been deprived of substantially the whole of the benefit of the Works, he may terminate the Contract in respect of such major items of Plant as cannot be put to the intended use in accordance with clause 45 of these Conditions.

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| Removal of Defective Work | 30.6 | If the defect or damage is such that repairs cannot be expeditiously carried out on the Site, the Contractor may with the consent of the Engineer or the Employer remove from the Site for the purpose of repair any part of the Works which is defective or damaged. |
| Further Tests on Completion | 30.7 | If the replacements or renewals are such that they may affect the performance of the Works, the Employer may request that Tests on Completion be repeated to the extent necessary. The request shall be made by notice at any time within the Defect Liability Period. The Tests shall be carried out in accordance with Clause 28. |
| Right of Access | 30.8 | <p>Until the Final Certificate of Payment has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the working and performance of the Works.</p> <p>Such right of access shall be during the Employer's normal working hours at the Contractor's risk and cost. Access shall also be granted to any duly authorised representative of the Contractor whose name has been communicated in writing to the Engineer.</p> <p>Subject to the Engineer's approval, the Contractor may also at his own risk and cost make any tests which he considers desirable.</p> |
| Defects in Employer's and Engineer's Designs | 30.9 | The Contractor shall not be liable for any defects resulting from designs furnished by the Employer or the Engineer. |
| Contractor to Search | 30.10 | The Contractor shall, if required by the Engineer in writing, search for the cause of any defect, under the direction of the Engineer. Unless the defect is one for which the Contractor is liable under this Clause, the cost of the work carried out by the Contractor in searching for the cause of the defect shall be added to the Contract Price. |
| Defects Liability Certificate | 30.11 | When the Defects Liability Period for the Works or any part thereof has expired and the Contractor has fulfilled all his obligations under the Contract the Engineer shall issue within 28 days to the Employer and the Contractor a Defects Liability Certificate to that effect. |

Exclusive Remedies 30.12 Except in the case of Gross Misconduct, the Employer's remedies under this Clause shall be in place of and to the exclusion of any other remedy in relation to defects whatsoever.

Variations

Engineer's Right to Vary 31.1 The Engineer subject to the approval of the Employer may by Variation Order to the Contractor at any time before the Works are taken over, instruct the Contractor to alter, amend, omit, add to or otherwise vary any part of the Works.

The Contractor shall not vary or alter any of the Works, except in accordance with a Variation Order from the Engineer. The Contractor may, however, at any time propose variations of the Works to the Engineer.

The Contractor shall have no right to claim additional time to complete the works or additional payment on account of extra work which has not been authorised in writing by the Employer or the Engineer

Variation Order Procedure

31.2 Prior to any Variation Order under Sub-Clause 31.1 the Engineer shall notify the Contractor of the nature and form of such variation.

Within the time specified by the Engineer the Contractor shall submit to the Engineer:

- (a) a description of work, if any, to be performed and a programme for its execution, and
- (b) the Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 26.1 or to any of the Contractor's obligations under the Contract, and
- (c) the Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Engineer shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out.

If the Engineer decides that the variation shall be carried out, he shall issue a Variation Order clearly identified as such. The same, except as otherwise agreed in writing by the Contractor and the Engineer, shall be deemed to be:

- (1) for the work referred to in paragraph 31.2(a) hereof, and
- (2) an approval of the Engineer of the programme referred to in paragraph 31.2(a) hereof and of the modification of the Programme referred to in paragraph 31.2(b) hereof, and

(3) a modification of the Contractor's obligations under the Contract and whether or not the Employer shall have approved the same, notwithstanding anything contained in Sub-Clause 2.1

Disagreement on Adjustment of the Contract Price

31.3 If the Contractor and the Engineer are unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in the Schedule of Prices.

If the rates contained in the Schedule of Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Engineer reflecting the level of pricing in the Schedule of Prices.

Where rates are not contained in the said Schedule, the amount shall be such as is in all the circumstances reasonable. Due account shall be taken of any over or under recovery of overheads by the Contractor in consequence of the variation.

The Contractor shall also be entitled to be paid:

- (a) the cost of any partial execution of the Works rendered useless by any such variation, and
- (b) the cost of making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation, and
- (c) any additional costs incurred by the Contractor by the disruption of the progress of the Works as detailed in the Programme, and
- (d) the net effect of the Contractor's finance costs, including interest, caused by the variation.

The Engineer shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

Contractor to Proceed

31.4 On receipt of a Variation Order, the Contractor shall forthwith proceed to carry out the variation and be bound to these Conditions in doing so as if such variation was stated in the Contract.

The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause 31.3.

Records of Costs

31.5 In any case where the Contractor is instructed to proceed with a variation prior to the determination of the adjustment to the Contract Price in respect thereof the Contractor shall keep records of the cost of undertaking the variation and of time expended thereon. Such records shall be open to inspection by the Engineer at all reasonable times.

Ownership of Plant

- Ownership of Plant**
- 32.1 Plant to be supplied pursuant to the Contract shall become the property of the Employer at whichever is the earlier of the following times:
- (a) when Plant is delivered to Site, or
 - (b) when by virtue of Sub-Clause 24.2 the Contractor becomes entitled to payment of the value of the Plant
- 32.2 Where the property in Plant passes to the Employer prior to the physical delivery of such plant, the Contractor shall to the reasonable satisfaction of the Engineer:
- (a) Provide documentary evidence that the property in the Plant has vested in the Employer
 - (b) Suitably set aside the Plant and mark the Plant as to the property of the Employer; and
 - (c) Send to the Engineer a schedule listing and giving the value of every item of Plant so set aside and marked inviting him to inspect the same.
- 32.3 Neither the Contractor nor any Sub-Contractor nor any other person shall have any lien on any plant which has vested in the Employer under Clause 32 for any sum due to the Contractor, Sub-Contractor or any other person and the Contractor shall take all such steps as may reasonably be necessary to ensure that the title of the Employer and the exclusion of any such lien are brought to the notice of Sub-Contractors and other persons dealing with or claiming rights over any such plant.

Certificates and Payment

- 33.1 The Contract Price (as may be adjusted to give effect to such additions thereto and deductions there from as are provided in the Contract) shall be paid in UF (Unidades de Fomento) based on the 11th 1996 October value as follows:

Electrical and Instrumentation installation

- (a) Process Control Equipment and Engineering

20% advance payment on coming into force of the Contract against submittal of invoice and an on demand advance payment guarantee of the same value as the advance payment issued by a first class bank in favour of the Employer. The advance payment guarantee will be reduced pro-rata against delivery and will be valid until completion of delivery.

40% against installation of PC equipment in the Contractor's office in Santiago.

20% against factory acceptance test.

10% upon Completion of Erection.

10% upon issue of the Taking-Over Certificate (bond to cover retention as per Clause 10.1).

(b) Electrical equipment and engineering.

20% advance payment on coming into force of the Contract against submittal of invoice and an on demand advance payment guarantee of the same value as the advance payment issued by a first class bank in favour of the Employer. The advance payment guarantee will be reduced pro-rata against delivery and will be valid until completion of delivery.

60% of electrical engineering at the time of factory acceptance tests and progress payment payable pro-rata of the delivery/readiness for dispatch and pro-rata services rendered.

10% upon Completion of Erection

10% upon issue of the Taking-Over Certificate (bond to cover retention as per Clause 10.1).

(c) Erection

10% advance payment on coming into force of the Contract against submittal of invoice and an on demand advance payment guarantee of the same value as the advance payment issued by a first class bank in favour of the Employer. The advance payment guarantee will be reduced pro-rata against delivery and will be valid until completion of delivery.

80% against monthly certificates of progress at site.

10% upon issue of the Taking-Over Certificate (bond to cover retention as per Clause 10.1)

Construction and mechanical erection work

10% advance payment on coming into force of the Contract against submittal of invoice and an on demand advance payment guarantee of the same value as the advance payment issued by a first class bank in favour of the Employer. The advance payment guarantee will be reduced pro-rata the progress of the works and will be valid until completion of the works.

80% against monthly certificates of progress at site

10% upon issue of the Taking-Over Certificate (bond to cover retention as per Clause 10.1)

If for any reason due to the Employer's default and/or Force Majeure the Taking-Over Certificate has not been issued six months after Completion of Erection the 10% payments due in this Sub-Clause against the issue of the Taking-Over Certificate shall be made.

33.2 Applications by the Contractor for payment shall be made as follows:-

(a) In respect of the progress of the works accompanied by such evidence of the value of the work done as the Engineer may require, and

(b) In respect of plant delivered to site such documentation as the Engineer may require, and

(c) For additional payments in accordance with Clause 14

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

Issue of Certificate of Payment

33.3 Within 10 days after receiving an application for payment which the Contractor was entitled to make the Engineer shall issue a Certificate of Payment to the Employer showing the amount due, with a copy to the Contractor.

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

(a) defects of a minor character which are not such as to affect the use of the Works, or

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

Corrections to Certificates of Payment

33.4 The Engineer may in any certificate of payment make any correction or modification that should properly be made in respect of any previous certificate.

Payment

33.5 The Employer shall pay the amount certified within 20 days from the date of issue of each certificate of payment to the Contractor at his principal place of business, provided that the Contractor has delivered to the Employer a correct invoice no later than 10 days following the issue of the Certificate of Payment. Any Delay of submitting its correct invoice shall extend the time for the Employer to pay the Contractor by the same number of Days.

Delayed payment

33.6 If payment of any sum payable under Sub-Clause 33.5 is delayed, the Contractor shall be entitled to receive interest on the amount unpaid during the period of delay. The interest shall be at a nominal annual rate of 10%. The Contractor shall be entitled to payment without formal notice and without prejudice to any other right or remedy.

Remedies on failure to certify or make payment

33.7 The Contractor shall be entitled to stop the Works by giving 14 days notice to the Engineer and the Employer, if either :

- (a) the Engineer fails to issue a certificate of payment upon proper application by the Contractor, or
- (b) the Employer fails to make a payment as provided in this Clause.

The cost to the Contractor together with profit occasioned by the stoppage and subsequent resumption of work, shall be added to the Contract Price. The Contractor shall also be entitled to terminate the Contract by giving 28 days notice to the Engineer and the Employer in any case where the Engineer has failed to issue a certificate of payment upon proper application by the Contractor.

Payment by measurement

33.8 For any part of the works which is to be paid according to work done, measurement shall be against quantities given in the priced schedules.

Application for Final Certificate of Payment for Release of the Performance Bond

33.9 The Contractor shall make application to the Engineer for the Final Certificate of Payment for release of the Performance Bond within 28 days after the issue of the Defects Liability Certificate, or if more than one, the last Defects Liability Certificate.

The application for the final Certificate of Payment shall be accompanied by a final account prepared by the Contractor. The final account shall give full details of the value of all plant supplied and work done under the Contract together with:

- (a) such additions to or deductions from the Contract price as have been agreed, and
- b) a sworn statement by the Contractor's legal representative declaring that:-
 - (1) All Social and Labour benefits of its workers and all payments for Materials, Equipment and Suppliers related to the Works have been timely paid in full.
 - (2) There are no Claims, lawsuits, liens, or actions related to payments mentioned in (1) above, pending or threatening against the Contractor and/or the Employer
- c) Documentary evidence of the statements made under letter (b), if and when requested by the Employer.
- d) A Close-out statement (Finiquito) in the form provided by the Employer executed by the Contractor's legal representative before a public notary stating that upon payment of the amounts specified therein, the Contractor shall have no pending claims against the Employer."

The Employer shall have the right to withhold payment of any amount then or in the future due to the Contractor in any of the following cases:-

- (i) If claims or liens are made against the Employer, its employees, officers or directors derived from the Contractor's or any of its Sub-Contractor's non-compliance with their labour, social security, workers compensation insurance, tax, safety or hygiene obligations or any contractual or legal obligation connected with suppliers, subcontractors, consultants, etc.
- (ii) If the Contractor, Sub-Contractors or any of their employees or invitees cause damage to the Plant, Works, Facilities or Assets of the Employer or of third parties.
- (iii) If the Contractor does not comply with any of his obligations under the Contract.

The Employer may withhold and apply the amounts so withheld to repair and cover the damages incurred by reason thereof. The value of the amounts to be withheld or the value of the Performance Bond shall be adjusted to the value of the claim.

Issue of Final Certificate of Payment

- 33.10 Within 28 days after receiving an application in accordance with Sub-Clause 33.9, the Engineer may either issue to the Employer with copy to the Contractor, the Final Certificate of Payment or, request the Contractor for additional information and/or rectification of its application, as the case may be.

If the Contractor has not applied for a Final Certificate of Payment within the time specified in sub-clause 33.10 or has not submitted the information or amended application within 28 days as of the Engineer's instructions, the Engineer shall request the Contractor to do so within a further period of 28 days. If the Contractor fails to comply with the Engineer's requirements within this new term of 28 days, the Engineer shall issue the Final Certificate of Payment for such amount as he deems correct.

Final Certificate of Payment Conclusive

- 33.11 A Final Certificate of Payment shall be conclusive evidence of the value of the Works, that the Works are in accordance with the Contract and that the Contractor has performed all his obligations under the Contract.
- The release of the Performance Bond and payment of any amount certified in the Certificate of Payment shall be conclusive evidence that the Employer has performed all his obligations under the Contract.
- A Final Certificate of Payment or payment shall not be conclusive:

- (a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the certificate, or

(b) if any arbitration or court proceedings under the Contract have been commenced by either party before the expiry of 84 days after the issue of the Final Certificate of Payment.

Claims

Procedure

34.1 In any case where under these Conditions there are circumstances which the Contractor considers entitle him to claim additional payment, the Contractor shall:

(a) if he intends to make any claim for additional payment give to the Engineer notice of his intention to make such claim within 28 days after the said circumstances become known to the Contractor stating the reasons for his claim, and

(b) keep such contemporary records and documents as may reasonably be necessary to support and substantiate any claim he may subsequently make, and

(c) as soon as reasonably practical after the date of such notice submit to the Engineer full and detailed particulars of his claim but not later than 182 days after such notice unless otherwise agreed by the Engineer. In any event such particulars shall be submitted not later than the application for the Final Certificate of Payment. The Contractor shall thereafter promptly submit such further particulars as the Engineer may reasonably require to assess the validity of the claim.

Assessment

34.2 When the Engineer has received full and detailed particulars of the Contractor's claim in accordance with Sub-Clause 34.1 and such further particulars as he may reasonably have required he shall after due consultation with the Employer and the Contractor determine whether the Contractor is entitled to additional payment and notify the parties accordingly.

The Engineer may reject any claim for additional payment which does not comply with the requirements of Sub-Clause 34.1.

Foreign Currency and Rates of Exchange

Payment in Foreign Currencies

35.1 Arrangements for payment in foreign currencies shall be as stated in the Preamble.

36 Void

Risk and Responsibility

Allocation of Risk and Responsibility

37.1 The Risks of loss of or damage to physical property and of death and personal injury which arise in consequence of the performance of the Contract shall be allocated between the Employer and the Contractor as follows:

(a) the Employer: the Employer's Risks as specified in Sub-Clause 37.2

(b) the Contractor: the Contractor's Risks as specified in Sub-Clause 37.3.

Employer's Risks

37.2 The Employer's Risks are:

- (a) war and hostilities (whether war be declared or not), invasion, act of foreign enemies, insofar as it relates to the country in which the works are to be located;
- (b) rebellion, revolution, insurrection, military or usurped power or civil war insofar as it relates to the country in which the Works are located.
- (c) ionising radiation or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof insofar as it relates to the country in which the works are to be located;
- (d) pressure waves caused by aircraft travelling at sonic or supersonic speed, insofar as it relates to the country in which the works are to be located;
- (e) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his sub-contractors insofar as it relates to the country in which the works are to be located;
- (f) use or occupation of the Works or any part thereof by the Employer;
- (g) fault, error, defect or omission in the design of any part of the Works by the Engineer, Employer or those for whom the Employer is responsible, and insofar as responsibility for the design has been disclaimed by the Contractor in accordance with Sub-clause 14.2;
- (h) the use or occupation of the site by the Works or any part thereof, or for the purposes of the Contract, or interference whether temporary or permanent with any right of way, light, air or water or with any easement, wayleaves or right of a similar nature on the site which is the inevitable result of the construction of the Works in accordance with the Contract;
- (i) the right to construct the Works or any part thereof on, over, under, in or through any land;
- (j) damage (other than that resulting from the Contractor's method of construction) which is the inevitable result of the construction of the works in accordance with the Contract;
- (k) the act, neglect or omission or breach of contract or of statutory duty of the Engineer, the Employer or other contractors engaged by the Employer or of their respective employees or agents;

and all risks in the country the site is to be located, which an experienced contractor could not have foreseen or if foreseeable, against which measures to prevent loss, damage or injury from occurring could not reasonably have been taken by such contractor.

Contractor's Risks 37.3 The Contractor's Risks are all risks other than those identified as the Employer's Risks.

Care of the Works and Passing of Risk

Contractor's Responsibility for the Care of the Works 38.1 The Contractor shall be responsible for the care of the Works or any Section thereof from the Commencement Date until the Risk Transfer Date applicable thereto under Sub-Clause 38.2

The Contractor shall also be responsible for the care of any part of the Works upon which any outstanding work is being or is to be performed by the Contractor during the Defects Liability Period until completion of such outstanding work.

Risk Transfer Date 38.2 The Risk Transfer Date in relation to the Works of a Section thereof is the earliest of either:

- (a) the date of issue of the Taking-Over Certificate, or
- (b) the date when the Engineer is deemed to have issued the Taking-Over Certificate or the Works are deemed to have been taken over in accordance with Clause 29 or
- (c) the date of expiry of the notice of termination when the Contract is terminated by the Employer or the Contractor in accordance with these Conditions.

Passing of Risk of Loss of or Damage to the Works 39.1 The risk of loss of or damage to the Works or any Section thereof shall pass from the Contractor to the Employer on the Risk Transfer Date applicable thereto.

Loss or Damage Before Risk Transfer Date 39.2 Loss of or damage to the Works or any Section thereof occurring before the Risk Transfer Date shall:

- (a) to the extent caused by any of the Contractor's Risks, be made good forthwith by the Contractor at his own cost, and
- (b) to the extent caused by any of the Employer's Risks, be made good by the Contractor at the Employer's expense if so required by the Engineer. The price for making good such loss and damage shall be in all circumstances reasonable and shall be agreed by the Employer and the Contractor, or in the absence of agreement, shall be fixed by arbitration under Clause 50.

Loss or Damage After Risk Transfer Date 39.3 After the Risk Transfer Date, the Contractor's liability in respect of loss of or damage to any part of the Works shall, except in the case of Gross Misconduct, be limited:

- (a) to the fulfilment of the Contractor's obligations under Clause 30 in respect of defects therein, and

(b) to making good forthwith loss or damage caused by the Contractor during the Defects Liability Period.

Damage to Property and Injury to Persons

Contractor's Liability

40.1 The Contractor shall hold harmless, defend and indemnify the Employer including its employees, officers and directors from and against all and any liability, claim, lawsuit, proceedings, action, lien, fines, condemnatory awards, injunctions and the like, including legal costs and attorney's fees caused and arising out of :-

- a) Any actual or assessed breach or non-compliance by the Contractor, its Sub-Contractors, their employees, agents or invitees of any law, statute, regulation, decree, ordinance or order or any public authority or any safety regulations of the Employer.
- b) Any actual or assessed breach of any copy rights industrial property patents, licenses and trade marks by the Contractor, sub-contractors, suppliers or any employee, agent or officer thereof.
- c) Inadequate safety or hygiene conditions in the Contractor's or Subcontractor's work place.
- d) Injury, sickness or death of any person and loss or damage to any third party or Employer's property caused or arising out of actions or omissions of the Contractor, its sub-contractors, suppliers and any employee, invitee, agent or officer thereof.
- e) Loss or damage to the Contractor's or sub-contractor equipment or vehicles.
- f) Operation or Ownership by the Contractor or sub-contractor including their respective employees, agents, invitees or officers of any type of equipment or vehicles.
- g) Non compliance in due time with labour, social security, worker's compensation, legal insurance, taxation and other legal or contractual obligations with its workers, suppliers or sub-contractors.
- h) The indemnification obligations provided for in this clause shall not be limited by any insurance coverage required under the Contract as outlined in the Preamble.

The Employer may withhold payment due to the Contractor to secure the performance of the Contractor's indemnification obligations hereunder.

The indemnification obligations provided for in this Clause shall be due and enforceable from the moment when the Employer is summoned in a lawsuit, proceeding, etc or,

as the case may be, as soon as the Employer is required to make any payment as result of any of the reasons stated in this clause, notwithstanding the right of the Contractor to recover from the Employer any amount that may returnable as a result of any favourable resolution of pending remedies.

Employer's Liability 40.2 The Employer shall be liable for and shall indemnify the Contractor against all losses, expenses or claims in respect of loss of or damage to any physical property or of death or personal injury whenever occurring, to the extent caused by any of the Employer's Risks.

Accidents 41.1 The Contractor shall be liable for and shall indemnify the Employer against all losses, expenses or claims arising in connection with the death of or injury to any person employed by the Contractor or his Subcontractors for the purpose of the Works, unless caused by any acts or defaults of the Engineer, the Employer or other contractors engaged by the Employer or by their respective employees or agent. In the latter cases the Employer shall be liable for and shall indemnify the Contractor against all losses, expenses and claims arising in connection therewith.

Limitations of Liability

Liability for Indirect or Consequential Damage 42.1 Neither party shall be liable to the other for any loss of profit, loss of use, loss of production, loss of contract or for any other indirect or consequential damage that may be suffered by the other, except:

- (a) as expressly provided and limited to in Clause 27, and
- (b) those provisions of these Conditions whereby the Contractor is expressly entitled to receive profit.

Maximum Liability 42.2 The liability of the Contractor to the Employer under these Conditions shall in no case exceed the Contract Price.

Liability after Expiration of Defects Liability Period 42.3 The Contractor shall have no liability to the Employer for any loss of or damage to the Employer's physical property which occurs after the expiration of the Defects Liability Period unless caused by Gross Misconduct of the Contractor.

Exclusive Remedies 42.4 The Employer and the Contractor intend that their respective rights, obligations and liabilities as provided for in these Conditions shall alone govern their rights under the Contract and in relation to the Works.

Accordingly, the remedies provided under the contract in respect of or in consequence of:

- (a) any breach of contract, or
- (b) any negligent act or omission, or
- (c) loss or damage to any property

are, save in the case of Gross Misconduct, to be to the exclusion of any other remedy that either may have against the other under the law governing the Contract or otherwise.

Mitigation of Loss or Damage 42.5 In all cases the party claiming a breach of Contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur.

Foreseen Damages 42.6 Where either the Employer or the Contractor is liable in damages to the other these shall not exceed the damage which the party in default could reasonably have foreseen at the date of the Contract.

The liquidated damages/penalty payable by the Contractor under Clause 27 are a genuine attempt to estimate the loss the Employer will suffer in such circumstance and the Employer shall be under no obligation to provide evidence or substantiate any loss damage suffered

Insurance

The Works 43.1 The Contractor shall insure the Works in the joint names of the Contractor and the Employer to their full replacement value with deductible limits not exceeding those stated in the Preamble.

(a) from the Commencement Date until the Risk Transfer Date against any loss or damage caused by any of the Contractor's Risks and any other risks specified in the Preamble, and

(b) during the Defects Liability period against any loss or damage which is caused either:

(i) by the Contractor in completing any outstanding work or complying with his obligations under Clause 30, or

(ii) by any of the Contractor's Risks which occurred prior to the Risk Transfer Date.

Contractor's Equipment 43.2 The Contractor shall insure Contractor's Equipment for its full replacement value whilst in transit to the Site, from commencement of loading until completion of unloading at the Site and while on the Site against all loss or damage caused by any of the Contractor's Risks.

Third Party Liability 43.3 The Contractor shall insure against liability to third parties for any death or personal injury and loss of or damage to any physical property arising out of the performance of the Contract and occurring before the issue of the last Defects Liability Certificate.

Such insurance shall be effected before the Contractor begins any work on the Site. The insurance shall be for not less than the amount specified in the Preamble.

Employees 43.4 The Contractor shall insure and maintain insurance against his liability under Sub-Clause 41.1.

**General
Requirements of
Insurance Policies**

43.5 The Contractor shall:

- (a) whenever required by the Employer produce the policies or certificates of any insurance which he is required to effect under the Contract together with receipts for the premiums,
- (b) effect all insurances for which he is responsible with an insurer and in terms approved by the Employer, and
- (c) make no material alterations to the terms of any insurance without the Employer's approval. If an insurer makes any material alteration to the terms the Contractor shall forthwith notify the Employer, and
- (d) in all respects comply with any conditions stipulated in the insurance policies which he is required to place under the Contract.

**Permitted
Exclusions from
Insurance Policies**

43.6 The insurance cover effected by the Contractor may exclude any of the following:

- (a) the cost of making good any part of the Works which is defective or otherwise does not comply with the Contract provided that it does not exclude the cost of making good any loss or damage to any other part of the Works attributable to such defect or non-compliance,
- (b) indirect or consequential loss or damage including any reductions in the Contract Price for delay,
- (c) wear and tear, shortages and theft,
- (d) risks relating to vehicles for which third party or other insurance is required by law.

**Remedies on the
Contractor's Failure
to Insure**

43.7 If the Contractor fails to produce evidence of insurance cover as stated in Sub-Clause 43.5(a) then the Employer may effect and keep in force such insurance. Premiums paid by the Employer for this purpose shall be deducted from the Contract Price.

**Amounts not
Recovered**

43.8 Any amounts not recovered from the insurers shall be borne by the Employer or Contractor in accordance with their responsibilities under Clause 37.

43.9 The parties to the Contract shall obtain waiver of subrogation for the other parties including employees, directors and agents.

Force Majeure

44.1 If either of the parties hereto fails to comply with any of its obligations under an Agreement by reason of Force Majeure, such failure shall not be regarded as a breach of its obligations. Force Majeure shall be deemed to include any act and event which is unforeseeable and irresistible and outside the control of either of the parties having a direct influence on the performance and obligations under

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the Contract and which, in particular, results from Acts of God, revolution, war, mobilisation for war, or other hostilities, political disturbance, public disorders, fires, floods, explosions, epidemics, quarantine, riot, commotion or disorder (except when solely restricted to employees of the Contractor) and earthquake arising after the coming into force of the Contract and which prevent the fulfilment of a party's obligation either in whole or on part. Either party claiming Force Majeure shall inform the other in writing within thirty (30) days of its commencement. Insofar as one or the other parties is prevented from carrying out its obligations under an Agreement because of Force Majeure, its obligations shall be provisionally suspended, but any party which is prevented from or delayed in carrying out its obligations shall keep the other party fully advised and shall resume its obligations as soon as possible after the cause of Force Majeure has lapsed. Whenever Force Majeure occurs the parties shall use their best endeavours to minimise its effects on the performance of the agreement but if one or other of the parties is prevented from performing its obligations for a continuous period of four consecutive months, any of the parties shall be at liberty to terminate this Contract by written notice to the other.

44.2 If the Contract shall be terminated under the provisions of the last preceding Sub-Clause the Contractor shall with all reasonable despatch remove from the site all Contractor's Equipment and shall give similar facilities to enable his Sub-Contractors to do same.

44.3 If the Contract shall be terminated as aforesaid, the Contractor shall be paid by the Employer (in so far as such amounts or items shall not have already been covered by payments on account made to the Contractor) for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:-

The cost of Plant and materials supplied to or ordered for the works for which the Contractor has already paid or is legally bound to pay (and such Plant and materials shall, if not already vested in the Employer become the property of the Employer upon payment being made therefor pursuant to this Sub-Clause);

Provided always that, against any payment due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of plant and materials, and any sum previously paid by the Employer to the Contractor in respect of the execution of the Works

Default

Notice of Default

45.1 If the Contractor is not executing the Works in accordance with the Contract or is neglecting to perform his obligations thereunder so as seriously to affect the

carrying out of the Works, the Engineer may give notice to the Contractor requiring him to make good such failure or neglect.

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| Contractor's Default | 45.2 | <p>If the Contractor:</p> <p>(a) has failed to comply within the time specified by the Engineer with a notice under Sub-Clause 45.1, or</p> <p>(b) assigns the Contract or subcontracts the whole of the Works without the Employer's written consent, or</p> <p>(c) becomes bankrupt or insolvent, has a receiving order made against him or compounds with his creditors or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation,</p> <p>the Employer may, after having given 7 days notice to the Contractor, terminate the Contract and expel the Contractor from the Site or take immediate possession of all Contractor's equipment, facilities materials and tools at that time on site, for the purposes of finishing the work.</p> <p>Any such expulsion and termination shall be without prejudice to any other rights or powers of the Employer or the Engineer or the Contractor under the Contract.</p> <p>The Employer may upon such termination complete the Works himself or by any other contractor.</p> |
| Valuation at Date of Termination | 45.3 | <p>The Engineer shall, as soon as possible after such termination, certify the value of the Works and all sums then due to the Contractor as at the date of termination in accordance with Clause 33.</p> |
| Payment after Termination | 45.4 | <p>The Employer shall not be liable to make any further payment to the Contractor until the Works have been completed. When the Works are so complete, the Employers shall be entitled to recover from the Contractor the extra costs, if any, of completing the Works after allowing for any sum due to the Contractor under Sub-Clause 45.3. If there is no such extra cost the Employer shall pay any balance due to the Contractor.</p> |
| Effect on Liability for Delay | 45.5 | <p>The Contractor's liability under Clause 27 shall immediately cease when the Employer expels him from the Site without prejudice to any liability thereunder that may have already occurred.</p> |
| Termination for Convenience | 46.1 | <p>The Employer shall have the right to unilaterally terminate all or part of this Contract for reasons of convenience and in such case shall pay the Contractor the costs correctly incurred and legally committed for the work, goods and services correctly provided up to the termination date plus 10 % of the price for the remaining portion of the work not yet undertaken as final indemnification (Termination fee). All these amounts shall be set-off against any other amounts due to the Employer by the Contractor and the Employer shall have the right to make the appropriate deductions. Termination shall take place by means of a</p> |

written notice delivered within 30 days advance from the termination date as set forth therein. Such notice shall indicate the effective date, scope and other instructions relating to the termination. Upon receiving such notice, the Contractor shall, unless instructed otherwise in writing by the Employer, stop the Works terminating on a date determined by the Employer and shall further comply with other instructions given by the Employer. Payment of the Termination fee and any other payments for work correctly performed up to the date of termination shall be applied for in a Final Payment Application which shall be subject to Section 33.9

Employer's default

46.2 The Contractor may, by giving 14 days notice to the Employer and the Engineer, terminate the Contract if the Employer :

(a) fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the amount became payable, or

(b) becomes bankrupt or insolvent, has a receiving order made against him, compounds with his creditors or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation, or

(c) consistently fails to meet his contractual obligations.

Any such termination shall be without prejudice to any other rights of the Contractor under the Contract.

Removal of Contractor's equipment

46.3 On such termination the Contractor shall be entitled to remove immediately all Contractor's equipment which is on the site.

Payment on termination for Employer's default

46.4 In the event of such termination the Employer shall pay the Contractor an amount calculated in accordance with Sub-Clause 46.1.

Changes in Cost and Legislation

Labour, Materials and Transport

47.1 No allowance or adjustment to the Contract price will be accepted for any increase or decrease in cost to the Contractor in carrying out the Works by reason of any alteration in the rates of wages or allowances payable to labour or change in the cost of materials (whether forming part of the Works or not) consumable stores, larding charges or demurrage charges, or as a result of any variation in the cost of any other matter or thing of whatsoever nature subsequent to the date of Tender.

Statutory and other regulations

47.2 The Contract Price shall be adjusted to take account of any increase or decrease in cost resulting from changes in legislation, excluding labour related legislation, of the country where the site is located or its generally accepted interpretation.

Legislation means any law, order, regulation or bye-law having the force of law, which affects the Contractor in the performance of his obligations under the Contract, made after the date of signature of the Contract.

The Engineer shall certify the amount of the resulting increase or decrease in cost, which shall be added to or deducted from the Contract Price.

Customs

- Customs and Import Duties** 48.1 The Contractor is required to include in the contract price such customs, import duties and taxes in consequence of the importation of plant. On the Employer's request the Contractor shall arrange for the Employer to obtain deferred payment of Import Duties

Notices

- Notices to Contractor** 49.1 All certificates, notices or written orders to be given to the Contractor by the Employer or the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose, or may be handed over to the Contractor's representative.
- Notices to Employer and Engineer** 49.2 Any notice to be given to the Employer or to the Engineer under these Conditions shall be sent by airmail post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in the Preamble, or handed over to the Engineer's or the Employer's representative authorised to receive it.
- Minutes of Meetings** 49.3 Instructions or notices to the Contractor and notices from the Contractor to the Engineer or the Employer recorded in a minute of protocol signed by the authorized representatives of the giver and recipient of such notice or instruction shall be valid notice or instruction for the purposes of the Contract.

Disputes and Arbitration

- Disputes concerning Engineer's Decisions** 50.1 If either party is dissatisfied with a decision or instruction of the Engineer as confirmed, reversed or varied in accordance with Clause 2 he may refer the matter to arbitration pursuant to Sub-Clause 50.2.

Unless the dissatisfied party has notified the other party and the Engineer within 56 days of such decision or instruction of his intention to refer the matter to arbitration, he shall be deemed to have accepted the decision as final.

Reference to arbitration shall not relieve the Contractor of his obligation to proceed with the Works in accordance with the Engineer's decision or instruction, nor relieve the Employer of any of his obligations under the Contract.

The Contractor shall in any such arbitration be at liberty to rely on reasons additional to the reasons stated in the notice given under Sub-Clause 2.7.

Arbitration

50.2 All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said rules.

Each party shall nominate one arbitrator. These arbitrators shall then agree on the third arbitrator who will act as Chairman of the arbitration court. The third arbitrator shall be appointed within 90 days from a list of persons proposed by the International Chamber of Commerce (ICC) and such list shall consist of individuals from neutral countries, meaning not from Chile, Germany or the United Kingdom. In case of failure to agree to such terms, the appointment of the third arbitrator shall be made by the ICC.

The arbitral award shall be primarily rendered according to the Conditions of the Contract and the underlying General Conditions thereof. In case the Contract will not provide a provision for a certain issue or an applicable provision has to be constructed or interpreted, the general principles of the Chilean Law shall apply.

Any appeal and/or recourse to the ordinary Courts of Law, including for the purposes of injunctions and other pre-trial or temporary measures which are to be issued by the Arbitration Court only, is ruled out, except for the "Recurso de Queja" (a remedy before the Superior Courts of Chile grounded in fault or abuse incurred by the arbitrators) or a mandatory recourse in case of enforcement of an arbitral award.

The final Arbitration Award may be enforced in any jurisdiction or country where the defendant is domiciled or has business or assets.

The arbitration proceedings shall take place in Santiago, Chile in the English language.

The arbitration proceedings and the award may only be disclosed to the extent it is necessary.

Works to Continue

50.3 Performance of the Contract shall continue during arbitration proceedings unless the Employer shall order suspension. If any such suspension is ordered the reasonable costs incurred by the Contractor and occasioned thereby shall be added to the Contract Price.

No payments due or payable by the Employer shall be withheld on account of pending reference to arbitration.

- Validity of Provisions** 51.1 In the event that any provision, part or portion of this Contract is held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portion of that provision or any other provision hereof.
- Waiver** 51.2 Any failure by the Employer to insist on the performance of any term, condition or instruction or failure to exercise any right or privilege or its waiver of any breach, shall not be considered as a waiver of any term, condition, instruction, right or privilege nor as the acceptance of any other future breaches.
- Confidential Information** 51.3 Documents and all other information related to this Contract shall be the property of the Employer and shall be deemed confidential. The Contractor shall not disclose such information to any third party nor use such information for other purposes outside of the Contract, even after termination.

ANEXO 6



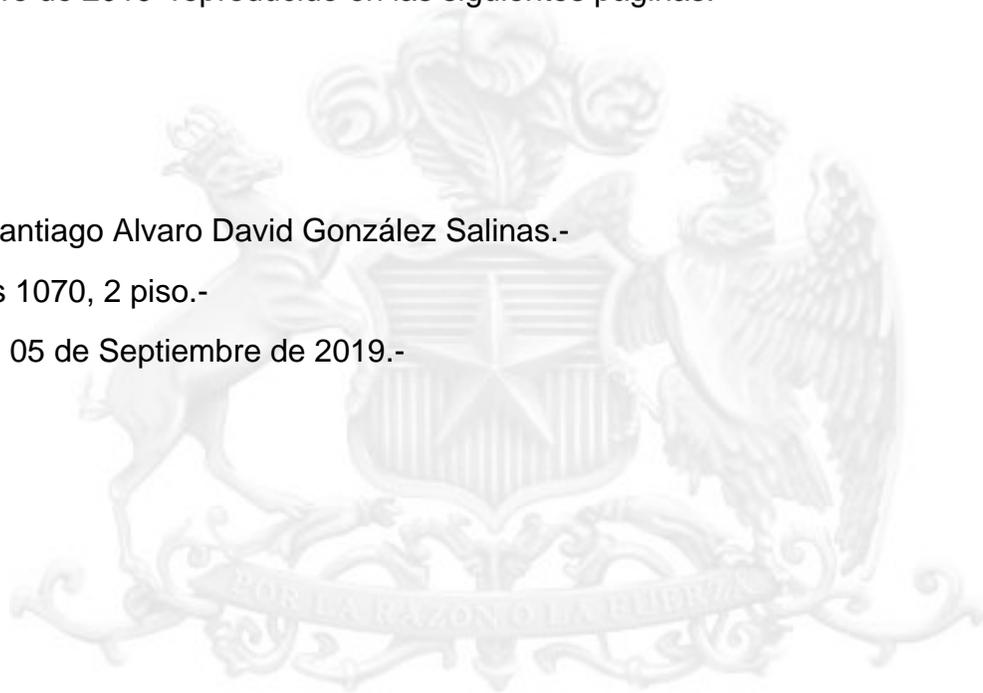
Notaria Santiago Alvaro David González Salinas

Certifico que el presente documento electrónico es ACTA otorgado el 05 de Septiembre de 2019 reproducido en las siguientes páginas.

Notaria Santiago Alvaro David González Salinas.-

Agustinas 1070, 2 piso.-

Santiago, 05 de Septiembre de 2019.-



Nº Certificado: 723456820183.-
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Emito el presente documento con firma electrónica avanzada (ley No19.799, de 2002), conforme al procedimiento establecido por Auto Acordado de 13/10/2006 de la Excm. Corte Suprema.-

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CUR Nº: F4808-723456820183.-

**ALVARO DAVID
GONZALEZ SALINAS**

Digitally signed by ALVARO DAVID GONZALEZ SALINAS
Date: 2019.09.05 13:10:49 -04:00
Reason: Notario Alvaro David Gonzalez Salinas
Location: Santiago - Chile

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ETH.-

REPERTORIO N° 37.223-16.-

O.T. N° 686.881.-

ACTA

SESIÓN DE DIRECTORIO N° 74

MELÓN S.A.

003663



EN SANTIAGO DE CHILE, a diecisiete días de Agosto del año dos mil dieciséis, ante mí, **JUAN IGNACIO CARMONA ZUÑIGA**, Abogado, Notario Público Interino de la Trigésimo Sexta Notaría de Santiago, con oficio en Paseo Ahumada número trescientos doce, oficina doscientos treinta y seis, Santiago, comparece: Doña **CAROLINA ORREGO CEBALLOS**, chilena, casada, abogado, cédula nacional de identidad número doce millones setecientos veintidós mil setecientos sesenta y seis quíen siete, domiciliada en Avenida Isidora Goyenechea número dos mil ochocientos, piso trece, comuna de Las Condes, Región Metropolitana; mayor de edad, quien acredita su identidad con la cédula mencionada y expone: Que debidamente facultada viene en reducir a escritura pública la **SESIÓN DE DIRECTORIO NUMERO SETENTA Y CUATRO MELÓN S.A.**, la que rola en dieciséis hojas sueltas debidamente firmada por los asistentes y que el Notario que autoriza ha tenido a la vista y es el siguiente tenor: "**SESIÓN DE DIRECTORIO NUMERO SETENTA Y CUATRO MELÓN S.A.**- En Santiago, a veinticinco de julio de dos mil dieciséis, siendo las once: cero cero horas, en las





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dependencias de la sociedad, ubicadas en Isidora Goyenechea número dos mil ochocientos Piso trece, Las Condes, se celebró la Sesión número setenta y tres del Directorio de Melón S.A., en adelante también denominada la "Sociedad", en carácter de ordinaria, con la asistencia de los directores señores don Alex Fort Brescia, don Jaime Araoz Medanic, don Juan Claro González, don Patricio de Solminihac Tampier y don Jorge Carey Tagle. Presidió la sesión el señor Alex Fort Brescia. Se encontraban también presentes el Gerente General Corporativo, señor Jorge Eugenio Ulloa, el Gerente de Finanzas y Estrategia don Antonio Lira, el Gerente General de Hormigones don Patricio Merello Hirschfeld y la secretaria titular, señora Carolina Orrego Ceballos. Por videoconferencia participó don Alex Fort Brescia, don Jaime Araoz Medanic y don Patricio de Solminihac Tampier. Toma la palabra el señor Lira, quien señala que se hace necesario ordenar la estructura de poderes, dado que se ha designado como nuevo Gerente de Tesorería a don Mauricio Soto González, lo que es aceptado por el Directorio. El Directorio, luego de un breve análisis respecto de la necesidad de refundir en una sola acta la que será reducida a escritura pública oportunamente, todos los apoderados y sus facultades para la administración de la Sociedad, ha acordado unánimemente revocar a contar de la fecha en que se reduzcan a escritura pública el todo o parte de esta Acta, únicamente los poderes otorgados con fecha treinta de diciembre de dos mil quince, mediante escritura pública otorgada en la Notaría de Santiago de don Juan Ignacio Carmona Zúñiga. Expresamente se deja constancia que se mantienen plenamente vigentes: todos los demás poderes y delegaciones de facultades que se





hubieren otorgado por los apoderados individualizados en la escritura mencionada en el párrafo anterior.

Otorgamiento de Poderes. Los señores Directores, luego de un breve debate acuerdan mantener la Estructura de Poderes vigente, determinando que los poderes de los apoderados que se designen en Melón S.A., se estructurarán en cuatro categorías diferentes de Apoderados designadas: "Gerente General", "Apoderado Clase A"; "Apoderado Clase B", y "Apoderado Clase C", con las facultades que para cada una de ellas se señalan a continuación:

I. Gerente General: El Gerente General de la Sociedad, actuando individualmente, en representación de Melón S.A., tendrá las siguientes atribuciones y facultades:

A) Mandato especial de conducción y organización. Dé cumplimiento y vigile se dé cumplimiento a las directivas, normas, resoluciones e instrucciones del Directorio y a las que le confieren o imponen los estatutos sociales; Organice la administración y conduzca los negocios y servicios de la Sociedad, sometiéndose a los estatutos y a las normas de organización que existan o se establezcan por el Directorio, pudiendo realizar todos los actos y gestiones necesarias y adecuadas a este objeto; Nombre al personal y fije sus remuneraciones, de acuerdo con los estatutos; Reducir a escritura pública los acuerdos del Directorio, firmar las escrituras de los actos o contratos que acuerde el Directorio, todo ello sin perjuicio de la facultad del Directorio para designar a otra persona para tal efecto.

B) Mandato especial de Representación. Represente a la Sociedad ante cualquier persona natural o jurídica, pública o privada, nacional o extranjera, en todos los asuntos en que tenga o tuviere interés de cualquier naturaleza. Asimismo represente a la Sociedad ante toda clase de autoridades





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administrativas y de Gobierno y especialmente ante el Banco Central de Chile, Superintendencia de Valores y Seguros, Comité de Inversiones Extranjeras, Servicios de Impuestos Internos, Tesorería General de la República, Servicio Nacional de Aduanas, y ante cualquier otra autoridad o corporación pública, semifiscal, autónoma, administrativa, municipal, servicios, reparticiones y empresas del Estado pudiendo hacer toda clase de presentaciones, peticiones, declaraciones, modificarlas o desistirse de ellas; Represente judicialmente a la Sociedad ante todos los tribunales ordinarios, especiales y arbitrales de la República de Chile, con todas las facultades de ambos incisos del artículo séptimo del Código de Procedimiento Civil y, en especial, las facultades de desistirse en primera instancia de la acción deducida, aceptar la demanda contraria, absolver posiciones, renunciar los recursos o los términos legales, transigir, comprometer, otorgar a los árbitros facultades de arbitadores, aprobar convenios y percibir. Podrá también otorgar poderes especiales para la representación de la Sociedad ante cualquier tribunal ordinario, especial o administrativo con las facultades de cobrar, percibir y transigir. Podrá asimismo nombrar abogados patrocinantes y apoderados con todas las facultades que en este numeral se le confieren, pudiendo delegar este poder y reasumirlo según lo estime conveniente. C) Mandato especial en materias de propiedad intelectual e industrial. Solicitar el registro de patentes, marcas y nombres comerciales, deducir oposiciones, nulidades, prórrogas, reconsideraciones y en general intervenir en todas aquellas cuestiones relacionadas con la Propiedad Industrial e Intelectual. D) Mandato especial constitución de concesiones, pertenencias y otras.





Constituir concesiones mineras, concesiones marítimas, concesiones municipales o cualquier otro tipo de concesión, permiso o autorización, como también derechos de aprovechamiento de aguas, sea ante las autoridades gubernamentales, civiles o navales; tribunales competentes y/o particulares, como también suscriba o firme todos los documentos, presentaciones, peticiones e instrumentos públicos o privados que fueren conducentes y necesarios para constituir dichas concesiones. E) Mandato especial en asuntos laborales individuales. Suscribir, en representación de la Sociedad, contratos de prestación de servicios personales, contratos individuales de trabajo y contratos de honorarios, renovarlos o prorrogarlos, desahuciarlos, o ponerles término por cualquier causa legal, todo de acuerdo a las directivas generales y normas de organización de la Sociedad, las que no serán necesarias acreditar ante terceros; Suscribir finiquitos y/o transacciones que se deriven de la terminación de la relación laboral individual, en aplicación de las normas legales que regulen la materia; Representar a la Sociedad ante las Mutuales de Seguridad, Cajas de Compensación, Administradoras de Fondos de Pensiones, Instituto de Normalización Previsional, Instituciones de Salud Previsional, Fondo Nacional de Salud, Superintendencias de Salud, Isapres y de AFP, Comisión de Medicina Preventiva e Invalidez y Dirección del Trabajo y/o Inspecciones Provinciales del Trabajo, con las facultades especiales de transigir, conciliar o avenir. F) Mandato especial en materia de Quiebra. Solicitar declaraciones de quiebra y celebrar convenios judiciales y extrajudiciales. G) Correspondencia Firmar la correspondencia de la Sociedad; Retirar toda clase de correspondencia certificada o no, giros y encomiendas de

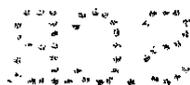
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las oficinas postales y telegráficas; Retirar de las Aduanas, estaciones de ferrocarriles, puertos marítimos y aéreos, toda clase de mercaderías. Delegación de Facultades. Actuando individualmente, podrá delegar cualquiera, algunas o todas las facultades señaladas anteriormente, pudiendo revocar dichas delegaciones a su arbitrio. II. Gerente General y Apoderado Clase A, actuando conjuntamente. El Gerente General, actuando necesariamente en conjunto con uno cualquiera de los Apoderados Clase A, en representación de Melón S.A., tendrá las siguientes atribuciones y facultades: A) Mandato especial para celebrar Actos y Contratos Suscribir los instrumentos necesarios para los efectos de otorgar créditos a clientes; abrir y cerrar líneas de crédito a clientes, ampliar o renovar líneas existentes; Constituir y aceptar la constitución de fianzas, codeudas solidarias, indivisibilidad, prendas, hipotecas, y cualquiera clase de garantías personales o reales y daciones en pago; alzar, posponer, limitar y cancelar las mismas; Comprar, vender, adjudicar, permutar y en general, adquirir y enajenar a cualquier título, toda clase de bienes corporales o incorporales, muebles o inmuebles; Dar y tomar en arrendamiento, concesión u otra forma de goce toda clase de bienes corporales o incorporales, muebles o inmuebles; Celebrar contratos de cuenta corriente mercantil, imponerse de sus movimientos y aprobar o rechazar sus saldos; Celebrar contratos de seguros para la Sociedad y para terceros, pudiendo acordar primas, fijar riesgos, estipular plazos y demás condiciones, cobrar indemnizaciones, endosar y cancelar pólizas, aprobar o impugnar liquidaciones de siniestro; Celebrar contratos de comodato, de depósito, de transacción, de transporte, de fletamento, de censo, de renta vitalicia, de avío, de





igualada, anticresis, donación y en general cualquier otro contrato o acto jurídico, nominado o no; Cobrar y percibir cuanto se adeude a la Sociedad y otorgar recibos de dinero, cancelaciones, resguardos y finiquitos; Pagar, y en general, extinguir por cualquier medio las obligaciones de la Sociedad. En los contratos que la Sociedad celebre, los mandatarios quedan facultados para convenir y modificar toda clase de pactos y estipulaciones, estén contempladas o no especialmente por las leyes, sean ellos de su esencia, de su naturaleza o meramente accidentales. B) Mandato Especial de enajenación de concesiones, pertenencias y otras. Renunciar, enajenar y, en general, celebrar o ejecutar cualquier acto o contrato que signifique disposición o enajenación, en relación a concesiones mineras, concesiones marítimas, concesiones municipales o cualquier otro tipo de concesión, permiso o autorización, como también derechos de aprovechamiento de aguas, constituido o en trámite de constitución, sea ante las autoridades gubernamentales civiles o navales; tribunales competentes y/o particulares, pudiendo suscribir o firmar todos los documentos, presentaciones, e instrumentos públicos o privados que fueren conducentes y necesarios para renunciar, abandonar y/o enajenar dichas concesiones, permisos o autorizaciones. C) Mandato especial Bancario. Abrir, administrar y cerrar en el país o en el extranjero cuentas corrientes bancarias, de depósitos, a la vista, de ahorro o de cualquier otro tipo en bancos comerciales nacionales o extranjeros y en toda otra institución financiera, a nombre de la Sociedad; girar y sobregirar en dichas cuentas, requerir información, aprobar y/o impugnar y/o reconocer los saldos y estados de cuentas que presenten las correspondientes instituciones bancarias





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comerciales; Suscribir, girar, aceptar, reaceptar, revalidar, prorrogar, cobrar, negociar, dar órdenes de no pago, cancelar y protestar cheques; endosar cheques en dominio o en garantía, endosar cheques para su depósito en cuentas bancarias de la Sociedad, endosar cheques para tomar vale vistas a favor y en nombre de la Sociedad, adquirir y retirar talonarios de cheques; y en general ejercer todas las acciones que a la Sociedad correspondan en relación con tales documentos; Suscribir, girar, aceptar, reaceptar, revalidar, prorrogar, cobrar, negociar, endosar en dominio, en garantía y en descuento, cancelar y protestar pagarés, letras de cambio, libranzas, y demás efectos de comercio en moneda nacional y extranjera, y en general ejercer todas las acciones que a la Sociedad correspondan en relación con tales documentos; Efectuar operaciones bancarias y transacciones electrónicas; Negociar y contratar préstamos con o sin interés en forma de mutuos, pagarés, avances contra aceptación, sobregiros, créditos en cuenta corriente; negociar y convenir las condiciones y cláusulas de tales contratos y suscribir, aceptar y firmar los pagarés y otros documentos o efectos de comercio que dejen testimonio de préstamos que se otorguen a la Sociedad; aceptar la aplicación de una legislación extranjera a las obligaciones que se deriven de préstamos hechos a la Sociedad y que se someta a la jurisdicción de tribunales extranjeros ordinarios o arbitrales; Operar con amplias facultades en el Mercado Cambiario, pudiendo comprar y vender divisas y celebrar contratos de cobertura de divisas; celebrar contratos de futuros, swaps, forwards, arbitrajes, celebrar contratos de cobertura de tasas de interés, celebrar contratos de factoring, con o sin responsabilidad, ceder y aceptar cesiones de créditos,





sean nominativos, a la orden o al portador; celebrar contratos de leasing financiero; y en general efectuar toda clase de operaciones con documentos mercantiles, valores mobiliarios, efectos públicos o de comercio. D) Mandato especial para operaciones de comercio exterior. Realizar operaciones relacionadas con comercio exterior, exportaciones e importaciones de toda clase de productos y/o bienes, maquinarias y equipos, pudiendo al efecto realizar toda clase de operaciones de cambio internacional, en cualquier tipo de monedas, pudiendo otorgar cualquier documento, registro, antecedente o solicitud que fuere necesario para estas operaciones o diligencias, incluso solicitudes de emisión de registros de importación, aperturas de cartas de crédito, órdenes de cobertura, contratación de cambios y demás operaciones de esta naturaleza; otorgar autorización a los Bancos Comerciales para debitar en moneda nacional en las respectivas cuentas corrientes bancarias el valor de las operaciones de importación que realice la Sociedad; retirar documentos de embarque, pólizas, documentos de aduana, constituir garantías para todas o algunas de estas operaciones; abrir, contratar, suscribir y retirar acreditivos, tomar boletas bancarias o endosar pólizas de garantía en los casos que tales cauciones fueren procedentes y pedir la devolución de dichos documentos; solicitar la modificación de las condiciones bajo las cuales se ha autorizado una determinada operación; retirar del Banco Central de Chile o de los bancos comerciales los certificados de cualquier naturaleza, cheques u otros documentos que puedan obrar en poder de dichos bancos y otorgar el correspondiente recibo; presentar y firmar registros de importación, solicitudes anexas, cartas explicativas y toda clase de documentación pública o privada que sea





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necesaria requerir, firmar y presentar relacionada con las importaciones y exportaciones que realice la Sociedad. E) Mandato especial Laboral Colectivo. Celebrar y suscribir, en representación de la Sociedad, contratos y convenios colectivos, renovarlos o prorrogarlos, desahuciarlos o ponerles término por cualquier causa legal, todo de acuerdo a las directivas generales y normas de organización de la Sociedad, las que no serán necesarias acreditar ante terceros. F) Facultades Societarias. Celebrar contratos para constituir o ingresar en asociaciones, corporaciones, comunidades, asociaciones o cuentas en participación; representar a la Sociedad en unas y otras, modificarlas y pedir o concurrir a su disolución o terminación; Constituir una o más sociedades de responsabilidad limitada, contando con amplias facultades para determinar su nombre, domicilio, duración, capital y la forma de su entero, administración, cláusulas arbitrales, cláusulas de liquidación y en general cualquiera otra estipulación, ya sea de la esencia, de la naturaleza o simplemente accidental que fuere necesaria o estimare pertinente al efecto de acuerdo a la legislación vigente; Adquirir acciones de sociedades anónimas existentes, constituir o incorporarse, en calidad de socio, a este tipo de sociedades, pudiendo asistir con derecho a voz y voto a las juntas ordinarias y extraordinarias que se celebren; Modificar sociedades en las que la Sociedad sea socio o accionista, pudiendo concurrir a la suscripción de escrituras de modificación de las mismas, convenir las estipulaciones del pacto social a que hubiere lugar y efectuar aportes de capital en ellas; En general, realizar todos los trámites que sean necesarios para la completa legalización de la o las sociedades que, en representación de la Sociedad





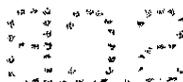
constituya en el país o a las cuales esta última se incorpore; Designar administradores o mandatarios de las sociedades que la Sociedad constituya y/o en que pase a ser socio o accionistas. Esta designación podrá recaer en los mismos apoderados o representantes legales de la Sociedad, incluso en aquel apoderado que efectúe tal designación; y se podrá otorgar a dichos administradores o apoderados todas o algunas de las facultades que correspondan a la Sociedad en dichas sociedades y removerlos o sustituirlos de su cargo, pudiendo a su vez facultar a los delegados para subdelegar las facultades que en cada caso se les otorguen; y Representar con amplias facultades, a todo tipo de juntas de accionistas y asambleas de aportantes, juntas de otras sociedades, de cualquier clase que todas ellas sean, juntas de tenedores de bonos, con derecho a voz y voto, pudiendo delegar esta facultad y revocar las delegaciones hechas. Delegación de Facultades. El Gerente General, actuando conjuntamente con uno cualesquiera de los Apoderados Clase A, podrá delegar cualquiera, algunas o todas las facultades anteriormente señaladas en otras personas, debiendo los apoderados así designados, actuar con las mismas limitaciones establecidas en este numeral, es decir, actuando conjuntamente dos de ellos. Estas delegaciones podrán ser revocadas por el Gerente General, actuando siempre en conjunto con uno cualquiera de los Apoderados Clase A. III. Apoderado Clase A. Los Apoderados Clase A, actuando de manera individual, podrán en representación de Melón S.A., ejercer la siguiente facultad: Mandato Especial de Representación Extrajudicial. Representar a la Sociedad ante cualquier persona natural o jurídica, pública o privada, nacional o extranjera, en todos los asuntos que tenga o tuviere interés de cualquier





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naturaleza. Asimismo representar a la Sociedad ante toda clase de autoridades administrativas y de Gobierno y especialmente ante el Banco Central de Chile, Superintendencia de Valores y Seguros, Comité de Inversiones Extranjeras, Servicios de Impuestos Internos, Tesorería General de la República, Servicio Nacional de Aduanas, y ante cualquier otra autoridad o corporación pública y ante cualquier otra autoridad o corporación pública, semifiscal, autónoma, administrativa, municipal, y servicios y reparticiones y empresas del Estado pudiendo hacer toda clase de presentaciones, peticiones, declaraciones, modificarlas o desistirse de ellas; IV. Apoderados Clase A, actuando conjuntamente. Actuando conjuntamente dos cualesquiera de los Apoderados Clase A en representación de Melón S.A., podrán ejercer las siguientes atribuciones y facultades: A) Mandato especial para celebrar Actos y Contratos. Suscribir los instrumentos necesarios para los efectos de otorgar créditos a clientes; abrir y cerrar líneas de crédito a clientes, ampliar o renovar líneas existentes; Constituir y aceptar la constitución de fianzas, codeudas solidarias, indivisibilidad, prendas, hipotecas, y cualquiera clase de garantías personales o reales y daciones en pago; alzar, posponer, limitar y cancelar las mismas; Comprar, vender, adjudicar, permutar y en general, adquirir y enajenar a cualquier título, toda clase de bienes corporales o incorporales, muebles o inmuebles; Dar y tomar en arrendamiento, concesión u otra forma de goce, toda clase de bienes corporales o incorporales, muebles o inmuebles; Celebrar contratos de cuenta corriente mercantil, imponerse de sus movimientos y aprobar o rechazar sus saldos; Celebrar contratos de seguros para la Sociedad y para terceros, pudiendo acordar primas,





fijar riesgos, estipular plazos y demás condiciones, cobrar indemnizaciones, endosar y cancelar pólizas, aprobar o impugnar liquidaciones de siniestro; Celebrar contratos de comodato, de depósito, de transacción, de transporte, de fletamento, de censo, de renta vitalicia, de avío, de iguala, anticresis, donación y en general, cualquier otro contrato o acto jurídico, nominado o no; Cobrar y percibir cuanto se adeude a la Sociedad y otorgar recibos de dinero, cancelaciones, resguardos y finiquitos; Pagar, y en general, extinguir por cualquier medio las obligaciones de la Sociedad. En los contratos que la Sociedad celebre, los mandatarios quedan facultados para convenir y modificar toda clase de pactos y estipulaciones, estén contempladas o no especialmente por las leyes, sean ellos de su esencia, de su naturaleza o meramente accidentales. B) Mandato especial constitución de concesiones, pertenencias y otras. Constituir concesiones mineras, concesiones marítimas, concesiones municipales o cualquier otro tipo de concesión, permiso o autorización, como también derechos de aprovechamiento de aguas, sea ante las autoridades gubernamentales, civiles o navales; tribunales competentes y/o particulares, como también suscribir o firmar todos los documentos, presentaciones, peticiones e instrumentos públicos o privados que fueren conducentes y necesarios para constituir dichas concesiones. C) Mandato Especial de enajenación de concesiones, pertenencias y otras. Renunciar, enajenar y, en general, celebrar o ejecutar cualquier acto o contrato que signifique disposición o enajenación, en relación a concesiones mineras, concesiones marítimas, concesiones municipales o cualquier otro tipo de concesión, permiso o autorización, como también derechos de aprovechamiento de aguas, constituido o en trámite de

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constitución, sea ante las autoridades gubernamentales civiles o navales; tribunales competentes y/o particulares, pudiendo suscribir o firmar todos los documentos, presentaciones, e instrumentos públicos o privados que fueren conducentes y necesarios para renunciar, abandonar y/o enajenar dichas concesiones, permisos o autorizaciones. D) Mandato especial Bancario. Abrir, administrar y cerrar en el país o en el extranjero cuentas corrientes bancarias, de depósitos, a la vista, de ahorro o de cualquier otro tipo en bancos comerciales nacionales o extranjeros y en toda otra institución financiera, a nombre de la Sociedad; girar y sobregirar en dichas cuentas, requerir información, aprobar y/o impugnar y/o reconocer los saldos y estados de cuentas que presenten las correspondientes instituciones bancarias comerciales; Suscribir, girar, aceptar, reaceptar, revalidar, prorrogar, cobrar, negociar, dar órdenes de no pago, cancelar y protestar cheques; endosar cheques en dominio o en garantía, endosar cheques para su depósito en cuentas bancarias de la Sociedad, endosar cheques para tomar vale vistas a favor y en nombre de la Sociedad, adquirir y retirar talonarios de cheques; y en general ejercer todas las acciones que a la Sociedad correspondan en relación con tales documentos; Suscribir, girar, aceptar, reaceptar, revalidar, prorrogar, cobrar, negociar, endosar en dominio, en garantía y en descuento, cancelar y protestar pagarés, letras de cambio, libranzas, y demás efectos de comercio en moneda nacional y extranjera, y en general ejercer todas las acciones que a la Sociedad correspondan en relación con tales documentos; Efectuar operaciones bancarias y transacciones electrónicas; Negociar y contratar préstamos con o sin interés en forma de





mutuos, pagarés, avances contra aceptación, sobregiros, créditos en cuenta corriente; negociar y convenir las condiciones y cláusulas de tales contratos y suscribir, aceptar y firmar los pagarés y otros documentos o efectos de comercio que dejen testimonio de préstamos que se otorguen a la Sociedad; aceptar la aplicación de una legislación extranjera a las obligaciones que se deriven de préstamos hechos a la Sociedad y se someta a la jurisdicción de tribunales extranjeros ordinarios o arbitrales; Operar con amplias facultades en el Mercado Cambiario, pudiendo comprar y vender divisas y celebrar contratos de cobertura de divisas; celebrar contratos de futuros, swaps, forwards, arbitrajes, celebrar contratos de cobertura de tasas de interés, celebrar contratos de factoring, con o sin responsabilidad, ceder y aceptar cesiones de créditos, sean nominativos, a la orden o al portador; celebrar contratos de leasing financiero; y en general efectuar toda clase de operaciones con documentos mercantiles, valores mobiliarios, efectos públicos o de comercio.

E) Mandato especial para operaciones de comercio exterior. Realizar operaciones relacionadas con comercio exterior, exportaciones e importaciones de toda clase de productos y/o bienes, maquinarias y equipos, pudiendo al efecto realizar toda clase de operaciones de cambio internacional, en cualquier tipo de monedas, pudiendo otorgar cualquier documento, registro, antecedente o solicitud que fuere necesario para estas operaciones o diligencias, incluso solicitudes de emisión de registros de importación, aperturas de cartas de crédito, órdenes de cobertura, contratación de cambios y demás operaciones de esta naturaleza; otorgar autorización a los Bancos Comerciales para debitar en moneda nacional en las respectivas cuentas corrientes





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bancarias el valor de las operaciones de importación que realice la Sociedad; retirar documentos de embarque, pólizas, documentos de aduana, constituir garantías para todas o algunas de estas operaciones; abrir, contratar, suscribir y retirar acreditivos, tomar boletas bancarias o endosar pólizas de garantía en los casos que tales cauciones fueren procedentes y pedir la devolución de dichos documentos; solicitar la modificación de las condiciones bajo las cuales se ha autorizado una determinada operación; retirar del Banco Central de Chile o de los bancos comerciales los certificados de cualquier naturaleza, cheques u otros documentos que puedan obrar en poder de dichos bancos y otorgar el correspondiente recibo; presentar y firmar registros de importación, solicitudes anexas, cartas explicativas y toda clase de documentación pública o privada que sea necesaria requerir, firmar y presentar, relacionada con las importaciones y exportaciones que realice la Sociedad. F) Mandato especial en asuntos laborales individuales. Suscribir, en representación de la Sociedad, contratos de prestación de servicios personales, contratos individual de trabajo y contratos de honorarios, renovarlos o prorrogarlos, desahuciarlos, o ponerles término por cualquier causa legal, todo de acuerdo a las directivas generales y normas de organización de la Sociedad, las que no serán necesarias acreditar ante terceros; Suscribir finiquitos y/o transacciones que se deriven de la terminación de la relación laboral individual, en aplicación de las normas legales que regulen la materia. Representar a la Sociedad ante las Mutuales de Seguridad, Cajas de Compensación; Administradoras de Fondos de Pensiones, Instituto de Normalización Previsional, Instituciones de Salud Previsional, Fondo Nacional de Salud,





Superintendencias de Salud, Isapres y de AFP, Comisión de Medicina Preventiva e Invalidez y Dirección del Trabajo y/o Inspecciones Provinciales del Trabajo, con las facultades especiales de transigir, conciliar o avenir. G) Mandato especial Laboral Colectivo. Celebrar y suscribir, en representación de la Sociedad, contratos y convenios colectivos, renovarlos o prorrogarlos, desahuciarlos o ponerles término por cualquier causa legal, todo de acuerdo a las directivas generales y normas de organización de la Sociedad, las que no serán necesarias acreditar ante terceros. H) Facultades Societarias. Celebrar contratos para constituir o ingresar en asociaciones, corporaciones, comunidades, asociaciones o cuentas en participación; representar a la Sociedad en unas y otras, modificarlas y pedir o concurrir a su disolución o terminación; Constituir una o más sociedades de responsabilidad limitada, contando con amplias facultades para determinar su nombre, domicilio, duración, capital y la forma de su entero, administración, cláusulas arbitrales, cláusulas de liquidación y en general cualquiera otra estipulación, ya sea de la esencia, de la naturaleza o simplemente accidental que fuere necesaria o estimare pertinente al efecto de acuerdo a la legislación vigente; Adquirir acciones de sociedades anónimas existentes, constituir o incorporarse, en calidad de socio, a este tipo de sociedades, pudiendo asistir con derecho a voz y voto a las juntas ordinarias y extraordinarias que se celebren; Modificar sociedades en las que la Sociedad sea socio o accionista, pudiendo concurrir a la suscripción de escrituras de modificación de las mismas, convenir las estipulaciones del pacto social a que hubiere lugar y efectuar aportes de capital en ellas; En general, realizar todos los trámites que

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sean necesarios para la completa legalización de la o las sociedades que en representación de la Sociedad constituya en el país o a las cuales esta última se incorpore; Designar administradores o mandatarios de las sociedades que la Sociedad constituya y/o en que pase a ser socio o accionista. Esta designación podrá recaer en los mismos apoderados o representantes legales de la Sociedad, incluso en aquel apoderado que efectúe tal designación; y se podrá otorgar a dichos administradores o apoderados todas o algunas de las facultades que correspondan a la Sociedad en dichas sociedades y removerlos o sustituirlos de su cargo, pudiendo a su vez facultar a los delegados para subdelegar las facultades que en cada caso se les otorguen; y Representar con amplias facultades, a todo tipo de juntas de accionistas y asambleas de aportantes, juntas de otras sociedades, de cualquier clase que todas ellas sean, juntas de tenedores de bonos, con derecho a voz y voto, pudiendo delegar esta facultad y revocar las delegaciones hechas. I) Mandato especial en materias de propiedad intelectual e industrial. Solicitar el registro de patentes, marcas y nombres comerciales, deducir oposiciones, nulidades, prórrogas, reconsideraciones y en general intervenir en todas aquellas cuestiones relacionadas con la Propiedad Industrial e Intelectual. V. Apoderados Clase A y Clase B, actuando conjuntamente. Actuando conjuntamente uno cualquiera de los Apoderados Clase A con uno cualquiera de los Apoderados Clase B, o dos cualquiera de los Apoderados Clase B, en representación de Melón S.A., podrán ejercer la siguiente atribución y facultad: Mandato especial Bancario. Abrir, administrar y cerrar en el país o en el extranjero cuentas corrientes bancarias, de depósitos, a la vista, de ahorro o de





cualquier otro tipo en bancos comerciales nacionales o extranjeros y en toda otra institución financiera, a nombre de la Sociedad; girar y sobregirar en dichas cuentas, requerir información, aprobar y/o impugnar y/o reconocer los saldos y estados de cuentas que presenten las correspondientes instituciones bancarias comerciales; Suscribir, girar, aceptar, reaceptar, revalidar, prorrogar, cobrar, negociar, dar órdenes de no pago, cancelar y protestar cheques; endosar cheques en dominio o en garantía, endosar cheques para su depósito en cuentas bancarias de la Sociedad, endosar cheques para tomar vale vistas a favor y en nombre de la Sociedad, adquirir y retirar talonarios de cheques; y en general ejercer todas las acciones que a la Sociedad correspondan en relación con tales documentos; Suscribir, girar, aceptar, reaceptar, revalidar, prorrogar, cobrar, negociar, endosar en dominio, en garantía y en descuento, cancelar y protestar pagarés, letras de cambio, libranzas, y demás efectos de comercio en moneda nacional y extranjera, y en general ejercer todas las acciones que a la Sociedad correspondan en relación con tales documentos; Efectuar operaciones bancarias y transacciones electrónicas; Negociar y contratar préstamos con o sin interés en forma de mutuos, pagarés, avances contra aceptación, sobregiros, créditos en cuenta corriente; negociar y convenir las condiciones y cláusulas de tales contratos y suscribir, aceptar y firmar los pagarés y otros documentos o efectos de comercio que dejen testimonio de préstamos que se otorguen a la Sociedad; aceptar la aplicación de una legislación extranjera a las obligaciones que se deriven de préstamos hechos a la Sociedad y que se someta a la jurisdicción de tribunales extranjeros ordinarios o arbitrales; Operar con amplias facultades



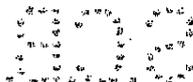


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en el Mercado Cambiario, pudiendo comprar y vender divisas y celebrar contratos de cobertura de divisas; celebrar contratos de futuros, swaps, forwards, arbitrajes, celebrar contratos de cobertura de tasas de interés, celebrar contratos de factoring, con o sin responsabilidad, ceder y aceptar cesiones de créditos, sean nominativos, a la orden o al portador; celebrar contratos de leasing financiero; y en general efectuar toda clase de operaciones con documentos mercantiles, valores mobiliarios, efectos públicos o de comercio.

VI. Apoderados Clase B actuando individualmente Los apoderados clase B, actuando individualmente, podrán uno cualquiera de ellos, representar a Melón S.A. ante el Servicio de Impuestos Internos, Tesorería General de la República, Municipalidades y cualquier otra entidad de carácter público estatal o gubernamental, pudiendo hacer toda clase de presentaciones, peticiones, declaraciones, modificarlas o desistirse de ellas, pudiendo por su parte delegar dichas facultades.

VII. Apoderados Clase C. Actuando individualmente uno cualquiera de los Apoderados Clase C, en representación de Melón S.A., tendrán la siguiente facultad: Mandato especial de representación judicial. Representar judicialmente a la Sociedad ante todos los tribunales ordinarios, especiales y arbitrales de la República de Chile, con todas las facultades de ambos incisos del artículo séptimo del Código de Procedimiento Civil y, en especial, las facultades de desistirse en primera instancia de la acción deducida, aceptar la demanda contraria, absolver posiciones, renunciar los recursos o los términos legales, transigir, comprometer, otorgar a los árbitros facultades de arbitradores, aprobar convenios y percibir. Podrá también otorgar poderes especiales para la representación de la Sociedad ante





cualquier tribunal ordinario, especial o administrativo con las facultades de cobrar, percibir y transigir. Podrá asimismo nombrar abogados patrocinantes y apoderados con todas las facultades que en este numeral se le confieren, pudiendo delegar este poder y reasumirlo según lo estime conveniente. VIII. Nombramiento de Apoderados. El Directorio acordó por unanimidad, designar para los efectos de la Estructura de Poderes acordada en el numeral VII de la presente Acta, como Apoderados Clase A, don Carlos Fonck Limann, don Iván Marinado Felipos y don Antonio Lira Belmar. Se acordó que esta designación tendrá efecto a contar de esta fecha. Asimismo, el Directorio acordó, por unanimidad, designar para los efectos de la Estructura de Poderes acordada en el numeral VII de la presente Acta, como Apoderados Clase B, a la señora María Elena Soto Vadillo, y a los señores Jaime Díaz Grassi, Mauricio Soto González y David Espinoza Navarro. Se acordó que esta designación tendrá efecto a contar de esta fecha. Finalmente, el Directorio acordó, por unanimidad, designar para los efectos de la Estructura de Poderes acordada en el numeral VII de la presente Acta, como Apoderados Clase C, a los señores Carolina Orrego Ceballos, Margarita Ferrada Carrasco y al señor Felipe López Arriaza. Se acordó que esta designación tendrá efecto a contar de esta fecha. El Directorio deja expresa constancia que el Gerente General de Melón S.A., es el señor Jorge Eugenin Ulloa, designado en el cargo por el Directorio de la Sociedad con fecha veinticinco de agosto de dos mil diez, y debidamente comunicada dicha designación como hecho esencial. El Directorio acuerda unánimemente que el ejercicio de las facultades señaladas en esta estructura de poderes, no se encuentra sujeta a remuneración por parte de los





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apoderados designados presentes o futuros. II. NOMBRAMIENTO DE APODERADOS REFERIDOS EN EL ARTÍCULO cuarenta y dos DEL REGLAMENTO DE SOCIEDADES ANÓNIMAS. Tras un breve debate, el Directorio por la unanimidad de sus miembros acordó que en ausencia del Gerente General, circunstancia que no será necesario acreditar frente a terceros, podrán representar válidamente a la Sociedad en todas las notificaciones que se le practiquen, a los señores Iván Marinado Felipe y Antonio Lira Belmar. Se acordó además que los referidos mandatarios podrán en ausencia del Gerente General, circunstancia que no será necesario acreditar ante terceros, firmar títulos emitidos por la Sociedad, como asimismo, suscribir todas las comunicaciones de carácter legal y/o oficial que sean requeridas en el curso ordinario de las actividades de la Sociedad, ya sea frente a autoridades o entidades públicas o privadas u organismos controladores. III. Poder para reducir a escritura pública. El Directorio, por unanimidad, acordó facultar a los abogados señores Felipe López Arriaza y Carolina Orrego Ceballos, para que, actuando individualmente uno cualquiera de ellos, en caso de ser necesario, reduzcan en todo o en parte a escritura pública la presente acta de Directorio. Por otra parte, se acordó facultar al portador de copia autorizada de la reducción a escritura pública de las partes de la presente acta para requerir las inscripciones, subinscripciones, y anotaciones marginales que se estimen convenientes en los registros conservatorios correspondientes y para realizar las comunicaciones que sean pertinentes. Por último, el Directorio decidió que los acuerdos adoptados en la presente sesión producirán sus efectos una vez que el acta sea firmada por todos los Directores asistentes, sin que sea necesaria su aprobación posterior.- Alex





Fort Brescia. Presidente. Jorge Eugenin Ulloa. Gerente General. Jorge Carey Tagle. Director. Juan Claro Gonzalez. Director. Patricio de Solminihac. Director. Jaime Araoz Medanic Director. Carolina Orrego Ceballos. Secretaria".- Conforme.- **EN COMPROBANTE** y previa lectura firma la compareciente.- Se anotó en el Repertorio de escrituras públicas bajo el número señalado.- Se da copia.- Doy fe.-

Carolina Orrego Ceballos
CAROLINA ORREGO CEBALLOS

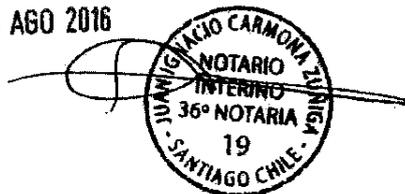
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SANTIAGO 25 AGO 2016



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04 SEP 2019

Alvaro González Salinas
 NOTARIO PUBLICO ETH
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