

HỢP ĐỒNG XÂY DỰNG BẰNG TIẾNG ANH

AGREEMENT CONTRACT

Of CIVIL WORKS

Between

And

Project:

Location: August 2010

Withregarding to Commerce Law of The Socialist Republic of Vietnam issued on June14, 2005 by National Assembly of The Socialist Republic of Vietnam;

Withregarding to Construction Law issued on December 10, 2003 by The President ofThe Socialist Republic of Vietnam

Thiscontract of Agreement is signed on date

Inaddress:

Between

ProjectOwner:

Address :

Investment license : Phone :

AccountNo :

Bankname :

Taxcode :

Representative :

Title :

(Hereinreferred to as Owner)

And

Address :

Phone :

Email :

AccountNo. :

Bankname :

Taxcode :

Representative :

Title :

(Hereinreferred to as Contractor)

WHEREAS:

(A) The Ownershall develop its factory

(B) TheContractor is a company specializing in construction works.

(B) The Ownerwishes to appoint the Contractor as its construction company to provide

the Project on the terms and conditions hereafter set forth.

Nowit is hereby agreed as follows:

Article 1: Works to be done by the Contractor.

1.1 The contractor shall have responsibilityto carry out the building works for

Project :

Location :

1.2 The projectshall include the following civil works:

-
-

Content of scope of works and agreement on revision/ addition/ omission of design drawings are listed in Annex 1 and Annex 3 of this contract.

(Design and construction license is not in the scope of this contract. Their content and price of those works will be agreed in another contract signed by both sides. Contract for design and construction license must be finalised within 2 (two) weeks after the date of signing this contract).

Based on the design drawings which have been agreed between both of party and the accepted date for the basis of building works.

1.3 Application of standards:

The contractor shall carry out the building works for this project on the complied basis with:

Ø Construction Law issued on Dec 10, 2003

Ø Vietnam Construction stipulation promulgated in the Decision 682/BXD-CSXD dated 14-12-1996 of Minister of Ministry of Construction of Socialist Republic of Vietnam,

Ø current Vietnam Construction Standards and other technical required by the Owner and accepted by Contractor.

Article 2 – Schedule of Construction Works.

The civil works of this project shall be completed in accordance to the schedule agreed between The Owner and The Contractor as follows:

Commencement date : within 3 days since the date of receipt of Design drawings approved by project owner's representative.

Completion date :

The above schedule is calculated on detailed drawings issued and approved by Owner for construction.

The detail of Work in this project is to be attached in this contract (Annex 2 – Schedule of Works

The schedule of works will not be renewed due to reason of badweather except force majeure or delays caused by Owner or third parties.

This schedule does not cover for additional works required by Owner or caused by other parties during construction. Schedule for additional works will be discussed and agreed by authorised representatives nominated by both sides in writing documents.

In case of irresistible which cause to the delay of the work for the Contractor, the time of completion will be automatically extended in correlative with the delayed time since the force majeure which is announced officially by Authorities. In case of extension of construction schedule since force majeure or other reasons, extended schedule must be approved by Owner by written documents.

Circumstances, situations are beyond the reasonable control of the Owner and/or the Contractor, such as war, rebellion, flood or long-term raining, break-down of neighboring buildings which causes to the congestion or effects directly to the project, the post-pone of customer formalities, the changes of Government/ Authorities's policies which cause directly to the project ... will be deemed as cases of the Force Majeure.

Coordination between The Contractor and other contractors nominated by The Owner:

The Contractor has to cooperate with other contractors such as M&E contractor, machinery installation contractor, etc... during construction. The Owner has to coordinate works done by The Contractor and other contractors nominated by the Contractor to keep good progress of works at site for all contractors participated in the project. The Contractor will not ask the Owner to pay additional costs or expenses caused by coordination between contractors if there is no any reasonability. In case of delay caused by Owner or other contractors nominated by the Owner, the Contractor will notice to the Owner in written documents to ask for extend schedule or additional costs (if any) then both sides will discuss and finalise in written agreements for such notices.

Article 3 – Variation/Modification of Construction Works.

The Contractor shall not make any modification to, addition to or omission to any Construction Works in accordance to the design drawing which has been approved by the Owner. Any variation, addition or omission the works have to be in the Owner's written consent except in the following circumstances.

- (i) to comply with any written requirement of the Competent Authorities; or

(ii) In case of emergency has to settle promptly to avoid any serious break-down.

In the above cases, the Contractor shall inform the Owner promptly.

The Contractor shall be deemed to be in breach of this Agreement and shall not be entitled to any additional payment for carrying out any Works arising out of such variation, additions or omissions without the Owner's consent.

In case, the Owner has the intention of variation, addition or omission the works shown in the Designs which has been agreed by both of party, the Owner has to inform in written document to the authorized representatives of the Contractor (General Director or nominated Project Manager) with 30 day notice period. With such period, the Contractor will have sufficient time to prepare materials, labors and notice to subcontractors or suppliers. In case, the contractor has the intention of variation of works agreed in the contract and design, the Contractor has to inform in written document to the authorised persons of the Owner with 30 day notice period.

After discussion and coming up with the unity of implementation and the additional cost (if any) in written documents, the Contractor shall perform following the instruction of the Owner about the variation, addition or omission of the above mentioned works.

In case of addition or omission for works same work title and technical specifications shown in the annex 3 of the contract, the Contractor will keep same unit prices in the Contract for the quantity of works under 20% of total quantities of those works (except works relating to rebar (reinforcement) or steel/ metal products). If quantities of additional or omission works are 20% higher than total quantities of those works shown in the contract or works not shown in the contract, unit prices for those works will be agreed by both sides in written appendix and approved by authorised representatives nominated by both sides.

Both sides will finalise variation, addition or omission of works one time in each end of month and sign contract appendixes for those works. The Contractor will commence as after signing contract appendixes. The payment for additional works or omission works will be paid within 30 days after completion of works and approved by Owner.

Article 4 – Contract value

1.1 Contract value:

The Owner hereby agrees to pay the Contractor for the construction fee of

Value Added Tax (10%):

Total contract value including VAT:

(In writing:

The above price does not consist of fees for design and construction license.

The above contract price is the lump sum price computed in accordance with the design drawings issued and details of construction fees agreed by both sides. After contract signed between both sides, the contract value will not change due to fluctuation in prices of materials or labor fees in the market except cases in Article 3.

In case of The Government correct rate of Value Added Tax for construction, the contract

value will be revised in an appendix of Agreement Contract which will be signed between both of

party.

Details of construction fees are shown in the Annex 3 in the Construction Estimation.

4.2 The payments are included in the Contract value as follows:

- The Fee shall be all costs for all materials for Building Works;
- Labor fees of the Contractor for completion of the Works stated in Article 1;
- Administration expenses and Management fees of the Contractor;
- Insurance fees for the staff and labor of the Contractor work in this project;
- The value added tax and other taxes in which the Contractor has to pay in accordance to the Vietnam Law stipulations. The Contractor shall not pay any taxes for the Works performed by other Contractors who rent from the Owner.

Article 5 – Term of Payment

5.1 The Owner shall carry out the payment for the construction fees into the Contractor's account following the schedule of payment:

- Advance Payment : of contract value. Advance payment will be paid to the Contractor within 3 days after signing this Contract and the Owner receives bank guarantee for the advance payment with amount of

- 1st part of advance payment:

- 2nd part of advance payment:

- 3rd part of advance payment: (within 3 days after receiving advance payment guarantee issued by

Total advance payment:

- Total interim payment: of final contract value (The detail interim payment term shown in Annex 4- Payment Term). Interim payment will be paid to the Contractor within 7 days after approved date of invoice submitted by the Contractor.

The Contractor will submit Invoice for interim payment to Owner and other necessary documents such as minute on partial inspection signed by authorised representatives of both sides, quantities of main materials used in the period of such interim payment, certificates of materials, testing reports for works. After checking on suitability of invoice and attached documents submitted by the Contractor and payment term in contract, the Owner will inform the Contractor on planned date to transfer payment.

- 1st Final Payment after engineering inspection between the Owner and the Contractor and temporary handing over (item by item) to the Project Owner: of Contract Value. This 1st Final Payment will be paid to the Contractor within 7 (seven) days after the date of minute of engineering inspection signed by both sides.

- 2nd Final Payment after final inspection between Authorities and the Owner and the Contractor and getting as-built license: of Contract Value. This 2nd Final Payment will be paid to the Contractor within 7 (seven) days after date of getting as-built license.

If other contractors nominated by Owner will not provide sufficient certificates or licenses for their works on or before 30 (thirty) days after completion date, therefore the Contractor is not able to submit sufficient documents to Authorities for as-built licence. In that case, the Owner will pay 3% of Contract value to the Contractor within 7 (seven) days after 30 days since completion date. The remaining of 2nd final Payment (2%) will be paid to the Contractor within 7 (seven) days after getting as-built license.

· Payment after liability period (12 months from date of handing over): **5%** of Final Contract Value (The retention will pay to ACSC within 7 (seven) days after ACSC provides Bank Warranty bond of 12 –month liability period.)

5.2 The payment of additional works: referring to article 3/

5.3 The Owner shall pay all the fees for the Contractor in accordance to the Contract in US Dollar currency (all unit prices in agreed quotation will be converted into US dollar).

Article 6 – Postponement and Abandonment of the Project

6.1 In the event of postponement or abandon the Project, the Owner shall notify the Contractor in writing of the postponement or abandonment of the Project at least 30 (thirty) working day prior to the date of such postponement or abandonment.

6.2 In the event that the Project is postponed or abandoned in whole or in part by the Owner;

(i) the Contractor shall be paid for the Works performed up to the date of such postponement or abandonment together with any disbursement then due, and

(ii) If the Contractor suffer any loss, liability (e.g. penalty payable to its

suppliers) from the preparation for any Works to be carried out following to the Works performed up to the date of such postponement or abandonment, the Owner shall indemnify the Contractor against such loss, liability based on the presentation of adequate document/evidence for such loss, liability by the Contractor.

6.3 In the event that the postponed or abandoned Project or any part thereof shall again proceed within [6 (six)] months after the date of such postponement or abandonment, then any relevant payment made under this Article shall rank payment on account towards the total fee actually payable to the Contractor under this Agreement.

6.4.1 In the event that the Project or any part thereof is postponed for a period exceeding [6(six)] months, the Project or any part thereof shall be deemed to be permanently abandoned.

Article 7 – Indemnity

The Contractor shall be liable for and against any damage, expense, liability, loss, claim or proceeding whatsoever:

- (i) in respect of personal injury to or the death of any person in the construction site of the Project which is not complied and administered the safety regulations from the Owner; or
- (ii) due to injury or damage of any kind to any real or personal property (including the property of the Owner) arising out of the course of or by reason of the works of the Contractor, sub-contractors, employees and/or staff.
- (iii) The Contractor shall provide the Owner copies of all risks insurance and worker insurance that are purchased by Contractor after signing this contract.

Article 8 – Defects Liability & Maintenance of the Contractor

8.1 The defects Liability & Maintenance Period for each building item shall commence from the temporary Handing-over Date and last for different parts of the Projects as follows: 1 (One) year since the Handing – Over day.

The provisional hand-over date of the project for the Owner is deemed to be the date in which the Contract provisionally hands – over to the Owner and the Owner will approve this date for the production assembly installation and the other technical equipments of the Owner. Both of the parties shall make the provisional acceptance and together confirm the point of time for provisional handing-over for basis of defect liability warranty.

8.2 After the respective Defects Liability & Maintenance Period for part of the Projects, the parties may further agree on the maintenance of such parts.

8.3 During defects liability period the Contractor has to remedy all defects and errors caused by the Contractor during construction with his own expenses. The remedying works must be started within 3 days as after receiving written notice from Owner to authorised representatives nominated by Contractor for defects liability period. If beyond this time limit the Contractor does not start the remedying works for such defects/ errors, the Owner has right to hire another contractor (third party) to execute these works and all expenses for remedying works executed by third party will be paid by the Contractor. The Contractor shall pay to third party within 7 days after receiving written notice from the Owner for such payments. In case, after being out of date the Contractor still does not pay these expenses the Owner shall perform the Article 11 in this Contract to require the Contractor has to pay.

Article9 – Contractor’s General Responsibility and Obligation

9.1 The Contractor shall perform the Works which relate to construction of all elements of the Project to achieve the Completion of the Project.

9.2 During the course of performing the Works, the Contractor shall:

(i) Authorised representative nominated by Contractor: project manager.

(ii) The Contractor shall appoint their experienced and skilled supervisors who will be responsible for the administration of the schedule of the project, works quality has to be complied with the design requirements. The appointment or change of supervisor of the Contractor shall be informed in writing to the Owner. The Contractor shall not change his supervisors appointed for the project until receiving written approval from the Owner. The Owner has right to require the Contractor to change a supervisor of the Contractor if his/ her work does not suit to position.

(iii) exercise all reasonable skill, care and diligence expected of a contractor for the proper development and completion of a project similar in nature, size, complexity and all respects to the Project;

(iv) provide all expert and technical advice and skills which are normally required for the Works;

(v) comply with the directions and/ or instructions of the Owner and/ or its representatives and shall always protect the interest of the Owner in accordance with generally recognized international construction standards of design and construction;

(vi) Comply with all relevant laws, decrees, circulars, regulations, directives, orders and guidelines of the Competent Authorities.

(vii) Before executing the Works, the Contractor shall submit the construction method to get the Owner’s approval.

(viii) Compliance with the design approved by the Owner, and assure of the agreed schedule and quality.

(ix) If the work done by the Contractor is not suitable with technical requirement of the Owner or quality of materials is not meeting agreed specifications/ standards, the Owner shall send written requirement to Contractor to require removal

of unqualified works or materials and change of materials. The Contractor has to do such works with his own expenses.

(x) In case of any delay of the whole Project or any part thereof in comparison with the Schedule approved, then the Contractor should pay the Owner liquidated damages (the "Liquidated Damages") at the rate of 0.1% (point one percent) per day over the value of delayed works from after of practical completion date. Liquidated Damages is limited with total of 6 % of contract value.

9.2. Licenses done by the Contractor:

The Contractor shall execute licenses and certificates relating to construction with his own expenses except following licenses and certificates: design and construction permit, approval of Fire Police for design of M&E works, licenses relating to environmental issues, certification for completed M&E works and fire protection system; safety certificates for boilers and cranes and lifts.

9.3 Site management:

(i) The Contractor is responsible for management of his own workers and enforcing discipline and safety regulation on site. The Contractor is responsible for unrighteous behaviors of his worker that violates security regulations of locality. If there is any accident or injury caused by the mistake of the Contractor on site, the Contractor has to notice immediately to the Owner and Authorities and the Contractor shall deal with such accident or injury with his own expenses. In case accident or injury not caused by mistake of the Contractor, the Contractor shall cooperate with other parties concerned with his best effort.

(ii) If there is any roadblock caused by the Contractor during construction, the Contractor shall prepare a temporary access to the site and keep it in safety. However the Contractor has to get approval from the Owner, traffic police and in prior to do such work. The Contractor shall clean roads next perimeter fences of the site. All trucks must be cleaned before going out of the site.

(iii) The Contractor shall conform strictly to safety regulations on site. The Contractor shall compensate for all damages and accidents caused by his violation in safety regulations.

(iv) The Contractor shall clean working areas before inspections and handing over buildings to the Owner. If the Owner notices to the Contractor in writing but the

Contractor does not clean working areas in adequate manners or cleaning works is out of time limit, the Owner has right to hire a third party to do cleaning works and all expenses for such works will be paid by the Contractor.

9.4 Quality assurance:

Quality of works done by the Contractor shall be achieved national standards. If there is any inconformity of good practice issued by the Government which causes poor quality and affect to use of the Owner for living or production, the Owner shall impose a fine of 3% on value of work on the Contractor, and the Owner requires the Contractor to improve such work until conformity of standards. All expenses for improvement works shall be paid by the Contractor.

9.5 Responsibility for preservation of site

The site shall be kept in a state of fair preservation by the Contractor until completion and handing over to the Owner. If there is any delivery of materials or goods from the Owner to the Contractor and the Contractor agrees to be responsible for such materials/ goods with written documents signed by both sides, the Contractor shall be responsible to preserve them. If there is any loss or damage for such materials or goods, the Contractor shall be responsible for compensation.

9.6. Security: The Contractor shall have security measures for all design drawings, assembly lines and photos taken by the Contractor during factory visit in Taiwan invited by the Owner. After completion and final inspection, all data and drawings must be returned to the Owner. If there is any violation in security for these data caused by the Contractor which damage to the Owner, the Contractor shall be responsible for compensation for such loss or damage.

9.7. Supply of materials

(i) All the essential materials using in the construction have to be submitted the sample and technical characteristics to the Owner and be approved before transporting and using in the site. If materials supplied to site are not suitable to specifications agreed in the contract, the Contractor shall be responsible for reconstruction and supply of new materials which satisfy standards and manufacturers/brands agreed in the Contract.

(ii) In case, the Contractor has intention of variation of manufacturer or brand for materials, he must notice in written document to the Owner in a time of 30 days minimum in prior to date of using such material for approval. The Contractor shall not

purchase such material until getting written approval from Owner. If the Contractor purchases material without Owner's approval which causes damage to Owner or reconstruction of work, the Contractor shall pay all expenses caused;

9.8 As built drawings:

After completion, the Contractor shall deliver the Owner 2 sets of as built drawings and electronic files for such drawings.

Article 10-Owner's Responsibility and Obligation

10.1 To provide full information regarding to the Owner's requirements for the Project.

10.2 To consider all documents submitted and/or questions rose to the Owner in connection with the Project and shall render decisions pertaining thereto as soon as practicable so as not to unreasonably delay the progress of the Works and/or the Project. If progress of the works is affected by delaying caused by the Owner, the Owner should consider to adjust additional time for the Contractor;

10.3 To allow the Contractor to access the Site for carrying out the Works;

10.4 To ensure payments to the Contractor in accordance with the Article 5 in this Agreement.

10.5 To appoint its representatives to examine the quality of the Works and to monitor the progress of the Project, and to give any direction and/or instructions to, and to reach any agreement as to alterations/ variations with the Contractor in connection with the Project.

10.6 To render any assistance as far as possible to the Contractor for Completion of the Project as and when necessary.

10.8 The Owner shall appoint the other contractor or the consultant to carry out the other essential works except the works performed in this Contract. The Contractor pledge to co-operate and create condition for other Contractors/consultants appointed by the Owner to complete their works on the site which is agreed in writing about the schedule of working of the other consultant/contracts.

10.9 The obligation of Owner's responsibility

- (i) To supervise the schedule of project based on the construction schedule of project.
- (ii) To bring out the decision about the concerned matters involving in the works and project; consisting of the critical ideas in writing about the variation of the design and construction which has issued and approved by the Contractor and The Owner respectively;
- (iii) To confirm of completion of the works mentioned in the Construction Schedule of the Project;
- (iv) To organize the acceptance of the quantity in parts, items in which the Contractor has completed to satisfy the quality requirements following the Design approved and with representative of the Owner and Contractor;
- (v) To co-ordinate the general supervision and management about the project layout consisting of combination of the works of Contractor in this Contract and other contractor/consultant appointed by the Owner;
- (vi) To enforce other works in accordance with the Owner's decision
- (vii) In case, other contractors appointed by the Owner damage works done by the Contractor, therefore the Contractor has to pay for remedying such works, the Contractor shall send written notice to the Owner to ask for expenses of remedying works and extension of time if such works are damaged seriously;

Article 11- Governing Law and Arbitration

11.1 This Contract shall be governed by and interpreted in accordance with the law of Vietnam.

11.2 The parties shall first attempt to settle all disputes arising in connection with this Agreement through amicable negotiation between the parties.

11.3 All disputes arising out of or relating to this contract shall be finally settled by the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry in accordance with its Arbitration Rules and location for arbitration will be Ho Chi Minh city.

Article 12-General provisions

12.1 This contract is deemed to have a validity from the last date among the following dates:

- (i) The date of signing contract;
- (ii) The date the Contractor receive the full advanced payment

12.2 Amendment of or additions to this Agreement shall only be effective upon written agreement signed by the parties.

12.2 All notices and communications made hereunder by one party to the other party shall be in writing and in English and shall be delivered by hand, sent by registered airmail, courier or facsimile (followed by registered letter) addressed to the other party.

12.3 All notices and communications hereunder shall be sent to the parties to the relevant correspondence details set out here below, unless such details are changed by notice given in writing by one party to the other party:

- (i) To the Owner:

Contact address :

Telephone No. :

facsimile No. :

Email :

Representative :

Title :

C/c :

- (ii) To the Contractor:

Contact address :

Telephone No :

Facsimile No :

Email: :

Representative :

Title :

Mobile phone:

Email:

And

Title :

Email :

Mobile phone :

12.5 This Agreement is made and signed in[4 (four)] copies in English, each party shall keep [2(two)] copies.

12.6 Both of parties pledge to carry out thiscontract.

IN WITNESSWHEREOF, the parties have hereunto affixed their signatures and seals on thedate first stated.

FOR AND ON BEHALF OF

FOR AND ON BEHALF OF

THE OWNER

THE CONTRACTOR

Name :

Name :

Jobtitle :

Job title :

Annexesof Contract:

Annex 1: Minutes onrevised specifications/ scope of works.

Annex 2: Masterschedule

Annex 3: Bill ofQuantities and List of main materials used for the project and their unit prices

Annex 4: Paymentterm- Detail of interim payments

Annex 5: Architectural,structural drawings signed between Owner and contractor.