

Appendix 8. Functional Guarantees

1. General

This Appendix sets out

- (a) the functional guarantees referred to in GCC Clause 46 (Functional Guarantees)
- (b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below
- (c) the minimum level of the functional guarantees
- (d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

2. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

The contractor gives notice to the PE on completion of the facility/facilities for commissioning and operational acceptance.

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

Performance of Individual equipment and Performance of Complete system/facilities as per Section 6: Procuring Entity's Requirements will be checked during Guarantee test.

The Guarantee Test run/Performance Test run of project site (facility) shall be carried out for 90 (Ninety) Days thereof without any trouble.

Necessary testing arrangement to carry out the Commissioning, final inspection, Guarantee Test / performance test shall be done by the Contractor within the contract price.

If any Test is not possible at site, then related document during FAT/Routine Test Report can be used.

PE may take over completed portions of the facility on the basis of Operational Acceptance after at least three (3) weeks of observation to the outcome of the work, prior to completion of the Contract, by written notice to the Contractor.

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GCC Sub-Clause 43.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Procuring Entity in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GCC Sub-Clause 46.3, then the Contractor shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete one percent

(1%) of the deficiency in the production capacity of the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

[To be specified in the appropriate wording for the type of facilities if there are consumption guarantee]

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GCC Sub-Clause 43.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Procuring Entity in lieu of making changes, modifications and/or additions to the Facilities pursuant to GCC Sub-Clause 46.3, then the Contractor shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete one percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%).

[The rate of liquidated damages specified in paras. 4.1 and 4.2 above shall be at least equivalent to the rate specified in Section 3 (General Conditions of Contract) for the comparison of functional guarantees provided by the Tenderers]

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GCC Sub-Clause 46.2:

- (a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity

and/or

- (b) average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures.

4.4 Limitation of Liability

Subject to para. 4.3 above, the Contractor's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed *[the percentage specified shall not exceed ten percent (10%)]*. percent (. . . %) of the Contract price

