

उत्तर प्रदेश UTTAR PRADESH

CONTRACT

This Contract made and entered into this day of 14<sup>TH</sup> July 2006 by and between M/s Dwarikesh Sugar Industries Ltd, having its registered Office at Dwarikesh Nagar, Tehsil Nagina, District Bijnor and Corporate Office at 511, Maker Chambers V, 221, Nariman Point, Mumbai-400 021, (hereinafter referred to as the "PURCHASER" which expression will unless repugnant to the context or contrary to the meaning thereof, include its executors, administrators, successors and permitted assigns) of the one part.

AND

M/s ISGEC John Thompson, (a Unit of The Saraswati Industrial Syndicate Ltd, having their registered Office at Yamuna Nagar-133001, Haryana) and corporate office situated at A-4, Sector - 24, Noida - 201301 (Uttar Pradesh), (hereinafter called as the "SELLERS", which expression will unless repugnant to the context or contrary to the meaning thereof include its executors, administrators, successors and permitted assigns) of the other part.

**WHEREAS** the PURCHASER has a Sugar Plant at Dwarikesh Puram, Tehsil - Dhampur, District Bijnor and proposes to install one no. new Bi-drum, natural circulation, balanced draft top supported water tube bagasse fired traveling grate, spreader stoker boiler suitable for steam output capacity of 120 tons per hour and 86 Kg/cm<sup>2</sup> of pressure and steam temperature of 515+/- 5° C in the Sugar Plant at Dwarikesh Puram, village - Bahadarpur, Tehsil - Dhampur, District Bijnor in the State of Uttar Pradesh for which they had invited offers.

**AND WHEREAS** the SELLER having agreed to design, manufacture and supply one no. new Bi-drum, natural circulation, balanced draft top supported water tube bagasse fired traveling grate, spreader stoker boiler suitable for steam output capacity of 120 tons per hour and 86 Kg/cm<sup>2</sup> of pressure and steam temperature of 515+/- 5° C had submitted their offer vide Letter Ref. JS:C:100/47-20/SH/R2 dated 03<sup>rd</sup> April 2006 which after final discussions on 22<sup>nd</sup> April 2006 has been accepted by the PURCHASER on the terms and conditions hereinafter appearing.



AND WHEREAS the parties are deemed to have noted that time is the essence of the Contract.

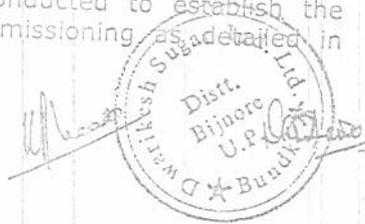
Now, therefore the parties have agreed as follows:-

### ARTICLE 1

#### EXPRESSION & MEANING FOR THE CONTRACT

In constructing the contract, the following words will have the meanings herein assigned to them unless there is something in the subject or context inconsistent with such meaning.

1. "The SELLER" shall mean M/s ISGEC John Thompson, (a unit of The Saraswati Industrial Syndicate Ltd. having their registered Office at Yamuna Nagar, Haryana) having their corporate office situated at A-4, Sector - 24, Noida - 201301 (Uttar Pradesh) and include their legal representatives, successors and permitted assigns.
2. "The PURCHASER" will mean Dwarikesh Sugar Industries Ltd, having its registered Office at Dwarikesh Nagar, District Bijnor, and include their legal representatives, successors and permitted assigns.
3. "Consultants" will mean the PURCHASER's authorised representative who have been appointed as consultants or such other agency as may be appointed from time to time.
4. "Sub-contractor" will mean the person, body or organization to whom any part of the work has been sublet by the SELLER.
5. "Site" will mean the site of Dwarikesh Sugar Industries Ltd., at Dwarikesh Puram, Tehsil - Dhampur, District Bijnor, UP.
6. "Contract" will mean this agreement read together with all enclosures as detailed in Clause No.36 including any amendments thereto and minutes of meetings signed between the authorized representatives of the PURCHASER and the SELLER.
7. "Plant" will mean and include equipments, machinery and materials to be supplied by the SELLER as detailed in Annexure-I forming part of this contract.
8. "Delivery" will mean the delivery of the materials by the SELLER to the PURCHASER.
9. "Specification" will mean the specification referred to in the contract and such other schedules and drawings as may be mutually agreed upon.
10. "Inspector" will mean the person or persons as may be duly authorised and appointed in writing by the PURCHASER at their cost to act as inspector for the purpose of contract.
11. "Tests" will mean such test, as are prescribed by statute or by mutual agreement between PURCHASER and SELLER which need to be carried out before the materials are dispatched from SELLERs/Vendors works and also in the installation site as the case may be.
12. "Commissioning" will mean floating of safety valves.
13. "Performance Test" will mean the test to be conducted to establish the guaranteed performance of the Boiler after commissioning as detailed in Annexure-V.



14. "Sugar Season" shall mean sugarcane-crushing season not less than 90 days.
15. "Sugar off-season" shall mean a period between two successive crushing seasons and generally extending for the period June to October every year.
16. "Contract Price" will mean the total amount payable to the SELLER in accordance with the terms of this contract.
17. "Codes" will mean the applicable codes / rules of the Indian Boiler Regulation (IBR) for Boiler in particular and other standards like IS, BS etc. for various other equipments.
18. "Vendors" will mean the other suppliers on whom the SELLER shall place orders for bought out items.
19. Herein / Hereof, Hereto and any similar expression wherever used in the Contract will relate to the whole of the Contract and not to the particular paragraph alone where it is contained unless the context otherwise specifically states.

## ARTICLE - 2

### CONTRACT VALUE AND TERMS OF PAYMENT

#### 2.1 CONTRACT PRICE

2.1.1 Subject to other terms and conditions contained in these presents, the PURCHASER will pay to the SELLER following price:-

- Ex-works Basic Price of Boiler : **Rs. 2095 Lacs (Rupees two thousand ninety five lacs only)**

2.1.2 The contract price indicated above is inclusive of packing and forwarding charges, but exclusive of all taxes, duties and levies, which shall be reimbursed by the PURCHASER to the SELLER at actuals. Applicable statutory forms wherever required, will be issued by the PURCHASER to the SELLER. The PURCHASER shall within 45 days of completion of each quarter provide to the SELLER the Central Sales Tax Declaration Forms 'C' (and / or any other form / document as may be applicable), against processed/clear invoices, for the SELLER to avail concessional Sales Tax. In the event of PURCHASER's inability to provide Central Sales Tax Declaration Form 'C' or any other applicable declaration forms within the above stipulated period, the PURCHASER shall pay the differential Sales Tax, Penalty and Interest to the SELLER, if levied.

2.1.3 The above mentioned Contract Price shall remain firm and fixed till the scheduled date of Delivery under the Contract. However, in case the delivery period gets extended beyond 30 days of scheduled date of delivery due to reasons attributable to the PURCHASER, the SELLER shall be entitled to escalation in Contract Price as may be mutually settled between the PURCHASER and the SELLER.

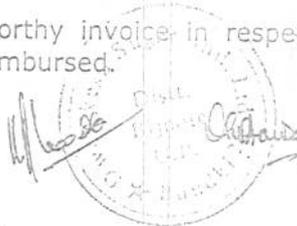
2.1.4 The Contract Price excludes transportation and Transit Insurance which shall be arranged by the PURCHASER at his cost.

#### 2.2 TERMS OF PAYMENT :

2.2.1 The PURCHASER will pay to the SELLER the Contract Price of Rs.2095.00 Lacs alongwith taxes, duties and levies as under:-



- a. Rs. 104.75 lacs being 5% of the Contract Price as interest free first installment of advance on signing of the Letter of Intent No. DSIL:DP:0740 dated 22nd April 2006 against the Bank Guarantee for the equivalent amount. If any token amount is given on signing of LOI due to absence of advance bank guarantee, the same will be adjusted and only the balance payment will be released against the advance bank guarantee of Rs 104.75 Lacs.
- b. Rs.104.75 lacs being 5% of Contract Price as interest free second installment of advance on signing of this Contract against the Bank Guarantee for the equivalent amount.
- c. Rs. 209.50 lacs being 10% of Contract Price as interest free third installment of advance against submission of Corporate Guarantee of the equivalent amount, billing schedule, delivery schedule and on submission of main Boiler Load data drawings, GA Drawings, P & I, time schedule for placement of orders for bought out items within 30 days of issue of first advance.
- d. Rs. 209.50 Lacs being 10% of the Contract Price as interest free fourth installment of advance against the Corporate Guarantee of an equivalent amount and on submission of un-priced copies of the Orders released by the SELLER for major bought-out items as listed below.
- i) Boiler Quality plates and tubes.
  - ii) ID,FD,SA & OF Fans
  - iii) Safety Valves
  - iv) High Pressure valves
  - v) Boiler Feed Pumps and BFP Motor
  - vi) Air Heater Tubes
  - vii) ESP
  - viii) Control Valves
  - ix) Blow down valves
- e. Rs. 1466.50 Lacs being 70% of the Contract Price on prorata basis along-with 100% taxes, duties and levies at actual shall be paid against submission of despatch documents (Invoices , Packing lists, copy of GRs) as per the approved billing schedule, within 7 days after receiving the material at site. The invoice must show the adjustment of advance. The SELLER shall submit performance Bank Guarantee for Rs.209.50 Lacs valid for two crushing seasons irrespective of duration of season before submitting their Invoice for the last lot of despatches amounting to Rs.209.50 Lac.
- 2.2.2 The liabilities under the aforesaid Advance Bank/Corporate Guarantees furnished by the SELLER shall get diminished in the same proportion in which the amount covered by the Advance Bank/Corporate Guarantees is adjusted by the SELLER in their invoices covering dispatches from time to time and shall get finally extinguished immediately on SELLER adjusting the full amount.
- 2.2.3 All Bank guarantees shall be submitted as per the format given / approved by the PURCHASER from any of the Scheduled Bank.
- 2.2.4 The SELLER shall provide CENVAT worthy invoice in respect of items on which Central Excise Duty is paid or reimbursed.



**ARTICLE - 18**

**ARBITRATION**

- 18.1 If at any time, any question, dispute or difference whatsoever, shall arise between the SELLER and the PURCHASER in relation to or in connection with or arising out of this Contract, both parties agree to resolve the same by mutual consultation. Failing resolution by mutual consultation, either party may give to the other a notice in writing of the existence of such question(s) / dispute(s) / difference(s) and the same shall be referred to the arbitration of a single Arbitrator, if agreed upon, otherwise to three Arbitrators, one each to be appointed by the PURCHASER and the SELLER and the third shall be appointed mutually by the two Arbitrators appointed by the parties. The third Arbitrator shall act as the Presiding Arbitrator. The award of the said single Arbitrator or the three Arbitrators, as the case may be, shall be final and binding on both the parties. The arbitration proceedings shall be governed by the provisions of The Arbitration and Conciliation Act, 1996 and the rules framed thereunder and read with all statutory amendments and modifications thereof.
- 18.2 The place of arbitration shall be in the District of Bijnor (U.P.) only. The arbitration language shall be English. The Contract shall be governed under Indian laws.
- 18.3 The Courts at Bijnor (U.P) alone shall have jurisdiction.

**ARTICLE - 19**

**SUB - CONTRACTING**

- 19.1 The SELLER may arrange at his discretion material and / or components from qualified foreign or Indian suppliers, and to sub contract any portion of the work or supply under this contract subject to the limitations of any applicable law, regulations and codes.

**ARTICLE - 20**

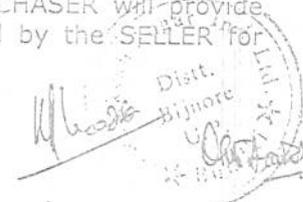
**RECORDS**

- 20.1 In addition to the data forms required by the India Boiler Regulations, radiographs, results of test, furnace charts of heat treatments and records of dimensional inspections will be made available to the PURCHASER. Radiograph film will be shown to the PURCHASER for inspection if required.
- 20.2 The SELLER shall arrange to submit the approvals under the IBR Regulations and Maker Certificates to the PURCHASER for the PURCHASER'S Erection Contractor to get the registration of the Boiler on behalf of the PURCHASER after completion of erection so that the Boiler can be commissioned in time.

**ARTICLE - 21**

**DELIVERY**

- 21.1 The SELLER will complete the delivery of Boiler and its auxiliaries covered under this contract in a manner so as to enable the PURCHASER or their nominated Erection Contractor to make the Boiler ready for commissioning by 31<sup>st</sup> August, 2007. The delivery is subject to Force Majeure and timely fulfilment of obligations by the PURCHASER. The PURCHASER will provide Road Permit Forms immediately as and when required by the SELLER for dispatches.



- 33.6 By signing this Contract both the parties, the PURCHASER and the SELLER, agree to abide by its clauses. Any alterations, amendments or changes in the Contract or its Annexures will be valid only if agreed to by and between the PURCHASER and the SELLER in writing.
- 33.7 In the event of any conflict between the various documents of the Contract as detailed in Clause 36, the Contract Agreement shall prevail over all other Annexures.

**ARTICLE 34**

**EFFECTIVE DATE OF THE CONTRACT**

- 34.1 This Contract shall become effective on its signing and on the date of receipt of full first advance by the SELLER from the PURCHASER.

**ARTICLE 35**

**RISK PURCHASE**

- 35.1 In case the SELLER fails or is unable to supply the machinery and equipments as per agreed delivery schedule and if in the opinion of the PURCHASER, due to the aforesaid reasons, the project may suffer, the PURCHASER, may after putting the SELLER, to notice detailing the delays and providing him opportunity to remedy the situation within reasonable time, may procure or repair/replace the balance/defective machinery/equipments from any other sources (third parties) at reasonable prices in order to complete the Project. In this event, the PURCHASER shall be entitled to recover the differential costs and expenses incurred by him from the SELLER.

**ARTICLE 36**

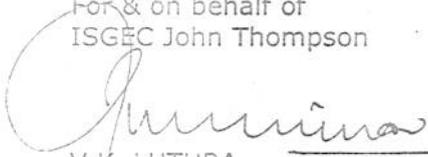
- 36.1 This Contract consists of 40 pages in all as detailed below:-

		<u>No. of Pages</u>
(a)	Contract Agreement	17
(b)	Scope of Supply	Annexure-I 06
(c)	Design Parameters	Annexure-II 03
(d)	Technical Schedules	Annexure-III 06
(e)	Terminal Points	Annexure-IV 02
(e)	Performance Parameters	Annexure-V 01
(f)	List of sub contractor/ Sub-vendors	Annexure-VI 02
(g)	Exclusions	Annexure-VII 03
<b>Total</b>		<b>40</b>



In witness whereof the parties hereto have hereunto signed this Contract on the date, month and year first above written.

For & on behalf of  
ISGEC John Thompson



V.K. LUTHRA  
GENERAL MANAGER

For & on behalf of  
DWARIKESH SUGAR INDUSTRIES Ltd



K.P. GADIA  
GENERAL MANAGER  
(COMMERCIAL)



M.N. AGARWAL  
GENERAL MANAGER  
(WORKS)

Witness:-

  
1. S. Raghunath  
ISGEC John Thompson  
A-4, Sector-24, Noida  
1. Saket Bansal  
Dwarikesh Sugar Industries Ltd.,  
Dwarikesh Dham,  
Faridpur, Bareilly  
2. Sudhir Kumar  
Dwarikesh Sugar Industries Ltd.,  
Dwarikesh Nagar,  
District - Bijnor