

SCHEDULE 7 PERFORMANCE BOND

[●]

Beneficiary: Engro Polymer & Chemicals Limited
12th Floor, Ocean Tower, G-3
Block-9, Clifton,
Khayaban-E-Iqbal, Karachi, Pakistan

Dear Sirs,

RE: OUR PERFORMANCE BOND NO.: [●] FOR PKR [●] AND USD [●] (THE “PERFORMANCE BOND”)

1. We, [insert name of issuing bank], refer to:

- (i) the Engineering, Procurement and Construction Contract dated [insert date of onshore EPC contract] (the “**Onshore EPC Contract**”) by and between Engro Polymer & Chemicals Limited, a company duly organized and existing under the laws of Pakistan, with its office located at 12th Floor, Ocean Tower, G-3, Block-9, Clifton Khayaban-E-Iqbal, Karachi (the “**Beneficiary**”) and Gasco Engineering (Private) Limited, a company incorporated under the laws of Pakistan, with its registered office at [insert address of Contractor] (the “**Contractor**”); and
- (ii) Offshore Supply Contract dated [insert date of offshore EPC contract] (the “**Offshore Supply Contract**”) by and between the Beneficiary and Canopis Canada, a company incorporated under the laws of Canada, with its registered office at 1004 Knotty Pine Grove, Mississauga ON, L5W 1J8, Canada (the “**Offshore Supplier**”).

(The Onshore EPC Contract and the Offshore Supply Contract shall collectively be referred to as the “**Contracts**”).

2. This Performance Bond is being issued by the Contractor in connection with:

- (i) the Works (as defined in the Onshore EPC Contract) or any other obligation of the Contractor to the Beneficiary under the Onshore EPC Contract for a contract price of the aggregate of USD 174,000 and PKR 240,000,000; and
- (ii) the Supply (as defined in the Offshore Supply Contract) or any other obligation of the Offshore Supplier under the Offshore Supply Contract for a contract price of USD 686,000,

in respect of the establishment of a high temperature direct chlorination project outside battery limits at the Beneficiary’s existing VCM Plant located at Port Qasim, Karachi (the “**Project**”).

The aggregate of the contract prices for the Onshore EPC Contract and the Offshore Supply Contract is referred to as the “**Contract Price**”, as further amended, modified and supplemented and in effect from time to time.

3. All capitalised words not otherwise defined herein shall have the meaning ascribed to them in the Contracts.

4. We have been informed that the Contractor is required to obtain a performance bond under the Contracts in favour of the Beneficiary.
5. At the request of the Contractor, we the undersigned bank, *[insert name of bank]*, (the “**Bank**”), a bank organised under the laws of Pakistan, with its registered office at *[insert bank’s address]* hereby irrevocably and unconditionally undertake to pay you, the Beneficiary, on demand as primary obligor and not as surety, any sum or sums not exceeding in total the amount of PKR *[insert amount in digits]* (Pakistani Rupees *[insert amount in words]*) and USD *[insert amount in digits]* (United States Dollar *[insert amount in words]*), or equivalent thereof to be converted into PKR on the exchange rate as determined by the National Bank of Pakistan, on the day that the amounts are to be paid by the Bank to the Beneficiary under this Performance Bond) (collectively, the “**Guaranteed Amount**”), wholly or partially, forthwith, upon receipt by us of your first demand in writing, and/ or pursuant to one or more demands (provided that such demands and any prior demands do not in the aggregate exceed the Guaranteed Amount) substantially in the form of the payment certificate set out in Schedule I (*Demand of Payment*) hereto, specifying that the Contractor or the Offshore Supplier is in breach of its obligations towards the Beneficiary without any further proof of documents and notwithstanding any objection by the Contractor or by any other party of whatever capacity and without being entitled to enquire whether or not such payment is lawfully due and payable by the Contractor. The Bank is required to accept any demand given to it by the Beneficiary of this Performance Bond from time to time, as conclusive evidence of the amount stated in the demand and the Bank shall not be required or permitted to make any other investigation or enquiry as to the amount stated in the demand. This Performance Bond is intended to be executed as a deed.
6. This Performance Bond shall come into force and automatically become effective (without any further action) from the date of issuance by the Bank.
7. The Guaranteed Amount shall be adjusted upwards in the event that the Contract Price is required to be changed by the addition or deduction of PKR [●]/- or more, or the equivalent thereof. *If the Contract Price is so increased, the Guaranteed Amount shall be increased by an amount so that the Performance Bond equals 15% of the revised Guaranteed Amount.* *[The Bank shall, within seven (7) working days of receipt of such written notification from the Contractor increase the Guaranteed Amount [by way of issuing an amendment to this Bond].*
8. Any payment under this Performance Bond shall be made within one (1) business day of the date of the Beneficiary’s written demand and shall be free of any set-off, counterclaim, taxes, deduction, withholding interest or charges whatsoever. Such demand must be received by the Bank on or before the [●] (as extended pursuant to the terms hereof, the “**Expiry Date**”). Any demand made by the Beneficiary under this Performance Bond shall be deemed to have been received by the Bank: (A) if delivered by hand on the day on which it is delivered to the Bank’s address, (B) if delivered by express courier, on the day on which it is delivered to the Bank’s address and a delivery confirmation is signed by an officer, representative or employee of the Bank, or (C) if sent by swift, upon the generation of a receipt notice by the Bank’s server or, if no such notice is generated, upon delivery to the Bank’s server.
9. We have been informed that if the Contractor has not been entitled to receive the Taking-Over Certificate by the date fourteen (14) days prior to the Expiry Date, the Contractor is required to extend the Expiry Date to the date twenty-eight (28) days after the new scheduled date for issuance of the Taking-Over Certificate. We undertake to immediately pay you the full Guaranteed Amount upon receipt by us of your demand in writing and your written statement that the Taking-Over Certificate has not been issued by the Beneficiary to the Contractor and that the Expiry Date of this Performance Bond has not been extended, without any further proof or documents and notwithstanding any objection by the Contractor or by any other party of whatever capacity and without being entitled to enquire whether or not the Contractor has become entitled to receive the Taking-Over Certificate.

Commented [AM1]: Inserted in line with the LOI.

Commented [HZ2R1]: Ok

Commented [AM3]: No such language in the LOI or the EPC contracts. CPF team to advise.

Commented [HZ4R3]: Correct this needs to be mentioned in EPC contract

10. Any demand made by the Beneficiary under this Performance Bond shall be given (A) in writing, purportedly signed by a duly authorised officer of the Beneficiary and sent by express courier or by hand addressed to our registered office along with a copy of this Performance Bond or (B) in case of a demand transmitted through swift, it shall be transmitted by authenticated swift through your bank.
11. The Bank shall not in any way be released or discharged from any liability under this Performance Bond by any invalidity, illegality or unenforceability of the Contracts or any arrangements in relation to the Contracts nor by any alteration, amendment or variation in the terms of the Contracts nor by any allowance of time by the Beneficiary under the Contracts nor by any forbearance or forgiveness or indulgence in respect of any matter or thing concerning the Contracts on the part of the Beneficiary nor by the insolvency, bankruptcy, winding up or reorganization of the Contractor or the Beneficiary (or any analogous event or the exercise of any power of disclaimer arising in such circumstances) nor by any dispute or disagreement whatsoever between the Beneficiary and the Contractor under or in relation to the Contracts. The validity of the Performance Bond and the Bank's liability hereunder will not be affected in any manner by any change in the Bank's constitution and the Performance Bond will be legally valid, enforceable and binding on the Bank and its successors and assignees.
12. We hereby agree that any amendment, renewal, extension, modification, compromise, release or discharge by mutual agreement by the Beneficiary, the Contractor or any other entity of any document, agreement, instrument or deed shall not in any way impair or affect our liabilities hereunder and maybe undertaken without notice to us and without the necessity for any additional endorsement, consent or guarantee by us.
13. All references to any contract, agreement, deed or other instruments or documents are by way of reference only and shall not affect our obligations to make payment under the terms of this Bond and shall not discharge us from our liability under this Bond.
14. We hereby declare and confirm that under our constitution and applicable laws and regulations, we have the necessary power and authority, and all necessary authorizations, approvals and consents thereunder to enter into, execute, deliver and perform the obligations we have undertaken under this Performance Bond, which obligations are valid and legally binding on and enforceable against us under the laws of Pakistan. Further, that the signatory(ies) to this Performance Bond is/are our duly authorized officer(s) having necessary powers to execute this Performance Bond.
15. If at any time one or more of the provisions of this Performance Bond is or becomes illegal, invalid or otherwise unenforceable, in any respect neither the legality, validity or enforceability of the remaining provisions of this Performance Bond, nor the legality, validity or enforceability of the remaining provisions, under the law shall in any way be affected or impaired as a result.
16. This Performance Bond and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Pakistan. The parties irrevocably agree that the courts of Pakistan shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Performance Bond or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF, this Performance Bond has been executed and delivered by the Bank as a deed on the date first above written.



SIGNED, SEALED AND DELIVERED
for and on behalf of [Name of Bank]

[Name]
[Designation]

In the presence of:

Witness 1:
Name: [●]
Passport/CNIC No: [●]

Witness 2:
Name: [●]
Passport/CNIC No:[●]

FORM OF DEMAND

[●]

Attention: Trade Operation Division

Dear Sirs,

We refer to the Performance Bond dated [insert date] issued by the Bank with reference number [insert reference number] (the “**Bond**”). Capitalized terms used herein shall have the meanings given to them in the Bond.

1. Demand is hereby made for payment of the amount of [insert amount in numbers] (amount in words) to the Beneficiary in immediately available funds to the following account:
[Specify account information]
2. [Specify ground(s)], and the amount specified in paragraph 1 is the amount the Beneficiary claims to be entitled to as a result thereof.

Yours faithfully,

(Authorised Signatory)