



TENDER NO. NMB002 OF 2023/2024

REQUEST FOR TENDER

FOR

SUPPLY AND DELIVERY OF MOTOR VEHICLES

OPEN TENDER

ISSUE DATE	AUGUST 2023
CLOSING DATE	26 SEPTEMBER 2023 @10:00AM

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INVITATION LETTER

RFT NO. NMB002 OF 2023/2024 FOR SUPPLY AND DELIVERY OF MOTOR VEHICLES

The National Agricultural Marketing Board hereby invites tenderers from eligible local companies for the Supply and Delivery of Motor Vehicles.

Completed tenders should be delivered in a sealed envelope to the Tender Box at the NAMBoard Head Office Reception in Manzini clearly marked: RFT NMB002 of 2023/2024 For Supply and Delivery of Motor Vehicles.

A non-refundable tender fee of Three hundred and fifty Emalangeni only (E350.00) should be made to the below bank account:

Bank name: Standard Bank Swaziland

Account Number: 9110003896814

Branch: 660564

Account type: Current Account

The closing date for submission is **26 September 2023 at 10h00**. Late submissions will not be considered as well as telephonic, telegraphic, facsimile, and emailed submissions.

All clarifications sought by prospective tenderers on the document must be in writing and must be sent on email to: procurement@namboard.co.sz not later than close of business, 19 September 2023.

Mr. Bhekizwe Maziya

NAMBoard CEO

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SECTION A

Introduction

NAMBoard is the Kingdom of Eswatini's National Agricultural Marketing Board which is enabled by Act No. 13 of 1985 and charged with regulating and facilitating markets for farmers and assisting them with the production, processing, storage, transportation, distribution, and sale of schedule products. NAMBoard is also tasked with registering wholesale distributors, importers and exporters of scheduled products as well as advising Government on availability and demand of scheduled products. To achieve optimum import regulation, significant import substitution and maximum export sales NAMBoard's mission is to maximize its own organizational performance effectiveness and, in collaboration with farmers and other stakeholders in the agricultural community, build an efficient commercialized Swazi production and distribution agri-business value chains in accordance with sustainable farming best practices that meet international GAP and SPSS standards.

SECTION B

Objective

Suitably qualified local companies are hereby invited to submit Tenders required under the Supply and Delivery of Motor Vehicles.

Tendering will be conducted through the tendering procedures specified in the Eswatini Public Procurement Act 7, 2011 and policies laid down by the Eswatini Public Procurement Regulatory Agency (ESPPRA). The Tender document can be downloaded from the ESPPRA website, www.esppra.co.sz or from our website www.namboard.co.sz.

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SECTION C INSTRUCTIONS

1. Submissions

The bids should be submitted in one (1) sealed outer envelope:

Each envelop submitted by tenderers, shall have two (2) separate inner envelopes; one envelope containing the Technical Bid and the other containing the Financial Bid. For the Technical bid, the tenderers shall provide an original and two (2) copies which shall be marked "Original", "Copy 1" and "Copy 2" and collectively wrapped, sealed, and labelled "Supply and Delivery of Motor Vehicles, TENDER NUMBER: RFT-NMB002 OF 2023/2024"

The tenders must be addressed to:

The Entity Tender Board

National Agricultural Marketing Board

Cnr. Masalesikhundleni & Mbhabha Street

Plot No 1A Lot 165

P.O Box 4261

Manzini

2. Tender opening & submission

The tenders should be deposited into the Tender Box situated at NAMBoard Manzini Reception, latest by 10:00 AM (as per visible NAMBoard reception clock) 26 September 2023.

Tender opening will be on 26 September 2023 at 10:10AM, at the same submission address.

Late, telephonic, telegraphic, facsimile, and emailed submissions will not be considered.

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Submissions should include the following documents, which will form part of the preliminary evaluation. Tenderers must submit one (1) original and two (2) copies of these documents. Tenders without these documents may be disqualified at the evaluation stage:

No.	Document	Submitted: Yes or No
1	Company Profile	
2	Original & Valid Tax compliance certificate	
3	Certified Copy of Valid trading license	
4	ENPF Compliance Certificate	
5	Certified copy of Certificated of Incorporation	
6	Certified Copy of Form J & Form C	
7	Copy of Valid Labour Compliance Certificate	
8	Police clearance for directors listed in Form J	
9	Copies of National IDs of Company Directors	
10	Bank Confirmation Letter of good standing	
11	Price and Completion Schedule (FORM-F2)	
12	Tender Submission Form (FORM-F3)	
13	Declaration Of Eligibility (FORM-F4)	
14	Similar assignments in the last 5 years (FORM-F5)	
15	Manufacturer's authorisation (FORM- F6)	
16	Fully signed document providing power of attorney (FORM-F7)	
17	Three reference letters for similar supplies	

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3. Tenderers Requesting for Clarifications

All clarifications sought by prospective tenderers on the document must be in writing and must be sent on email to: procurement@namboard.co.sz not later than close of business, 19 September 2023.

4. Amendments of documents

At any time prior to the deadline for submission of tenders, NAMBoard may amend the Tender Document by issuing an addendum.

Any addendum issued shall be part of the Invitation to Tender and shall be communicated in writing to all who have obtained the ITT from NAMBoard.

To give prospective tenderers reasonable time to take the addendum into account in preparing their tenders, NAMBoard may, at its discretion, extend the deadline for the submission of applications.

Where a tenderer wishes to substitute or modify a tender, he/she shall do so in writing addressed to procurement@namboard.co.sz. Modified/replaced tenders shall be clearly marked and submitted before the closing date of the tender.

5. Language of Application

The tenders prepared by the tenderers, as well as all correspondence and documents relating to the tender exchanged by the tenderers and NAMBoard shall be written in English.

6. Confidentiality And Ownership of The Document

All documents, statistics, reports, data, and other information provided, created, obtained, or made available to the tenderer in connection with or by virtue of the present Contract, shall be treated as confidential by the tenderer, and the tenderer shall not be entitled to use or make copies of them for any purpose that is not related to the present Contract.

The documents, statistics, reports, and data under the preceding paragraph shall, upon the completion of Services or termination of this Contract, be promptly returned to NAMBoard.

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Any study, report, or other material, graphic, software or otherwise, prepared by the tenderer for NAMBoard under the Contract shall belong to and remain the property of NAMBoard. The tenderer may retain a copy of such documents.

7. Contacting NAMBoard

No tenderer shall contact NAMBoard on any matter relating to its tenders, from the time of tender opening to the time of shortlisting. Any effort by a tenderer to influence NAMBoard in its decisions on the evaluation, pre-qualification comparison, or award may result in the rejection of the tenderer's submission.

8. Terms and Conditions for tenderers

- a) This Invitation to Tender document is executed in English. All correspondence exchanged between NAMBoard and the tenderer as well as any documentation relating to it, shall be written in English.
- b) Tenderers are urged to ensure that their tenders are complete and the required compliance documents are submitted as stipulated.
- c) Company directors who are public servants and Politicians are prohibited from participating in this tender.
- d) Late telephonic, telegraphic, facsimile, and emailed submissions, will not be considered.
- e) Prospective tenderers must ensure that all tenders are adequately signed by authorised representatives.
- f) Costs of preparing the document submissions shall be borne by the tenderer.
- g) To assist in the examination, evaluation, and comparison of the bids, the company may at its discretion, ask the tenderer for a clarification on any part of its document. The request for clarification and the response shall be in writing and no change in the prices or substance of the bid shall be sought, offered, or permitted.
- h) NAMBoard does not bind itself to accept any tender nor give any reason for the acceptance or rejection of a tender. NAMBoard may accept a tender for a part of the quantity offered or reject any tender without assigning any reason.

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- i) Tenderers will not be permitted to change the substance of their offers after the tender box has been opened.
- j) NAMBoard shall, if deemed necessary, conduct due diligence search of the businesses of the tenderer.
- k) All monetary/financial information furnished, must be quoted in Eswatini Lilangeni (SZL).

9. Evaluation Committee

- a) Tenders' completeness and responsiveness to the basic instructions and requirements of the tender document will be on a pass or fail basis against each criteria.
- b) The tenders will be evaluated by an evaluation committee, appointed by NAMBoard, comprising varied skills making the team suitably qualified for such a process. The evaluation committee will review all reports and suggest any modifications/changes considered necessary within 15 days of receipt.

10. Clarification of Applications

- a) During evaluation of the tenders, NAMBoard may, at its discretion, ask the tenderers for clarification of its tenders. A request for clarification shall be signed and sent to a tenderer by the chairperson of the evaluation committee and all requests for clarifications shall be copied to all tenderers for information purposes only and noted in the evaluation report.
- b) A tenderer shall be instructed to reply to clarifications in writing within a specified time, addressing their responses to the Procurement Officer.
- c) The head of the procurement unit shall ensure that all replies are promptly forwarded to the chairperson of the evaluation committee.
- d) Failure of a tenderer to respond to a request for clarification may result in the rejection of its tender.

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SECTION D ELIGIBILITY

1. Evaluation Criteria

All tenderers are requested to submit one outer envelope with two separate inner envelopes one marked Technical and the other marked Financial. shall be evaluated using the Quality and Cost Based Selection. The evaluation criteria will be based on both the technical as well as the financial score of the tenders submitted in accordance with the following criteria:

a) Preliminary Examination

NAMBoard will examine the tenders to determine whether they are complete i.e., whether required documents have been furnished, whether the documents have been properly signed and authorised, the correct number of copies of the tender have been submitted, the tender is valid for at least the period required, the required samples have been submitted.

Prior to the technical evaluation, NAMBoard will determine the substantial responsiveness of each tender to the tender request. For purposes of this paragraph, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender document without material deviations. NAMBoard's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence. If a tender is not substantially responsive, it will be rejected by NAMBoard and may not subsequently be made responsive by the Tenderer by correction of the nonconformity.

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b) Technical Criteria

The technical bids shall be evaluated on its responsiveness to technical specifications requirements and will be assessed and scored according to the evaluation criteria stated below which is on a PASS/FAIL basis. A Tender shall be scored a Pass if it substantially meets the specification requirements, and it shall be scored Fail if it fails to meet same.

No.	CRITERIA	MAXIMUM FACTOR	WEIGHING
TECHNICAL EVALUATION			
1.	Relevant Experience of tenderer -Must have more than 5 years in the industry -Trade references (reference letter from at least 3 clients within the last 5 years of similar contracts, assignments of similar nature successfully completed) -Reputation/Brand/Size of Company		Pass/Fail
2.	Responsiveness to Technical specification - The technical assessment will establish whether the tender meets the requirements set out in the specification and, if not, the significance of any variation from that specification.		Pass/Fail
3	After Sales Service -Supplier must be a local dealer, should have a local servicing workshop & local supply of parts - Supplier should provide after sales service		Pass/Fail

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4	Swazi Business Promotion -At least 60% of shares are owned by citizens of Eswatini -Management is more that 60% of Emaswati -The business employs citizens of Eswatini for its general staff Participation by national/ locals among proposed team	Pass/Fail
The price/cost of each of the technically compliant tender shall be considered only after evaluation of the above technical criteria for the Tenderer who meets the minimum requirements		
FINANCIAL EVALUATION - LEAST COST SELECTION		
5	The lowest evaluated Financial Tender will be considered for award having met all the minimum requirements.	

c) Financial Evaluation Criteria

The lowest evaluated financial bid will be considered for award having met all the minimum requirements. All bids shall be ranked according to their evaluated price. The bid with the lowest evaluated price shall be the best evaluated bid and shall be recommended for award of contract.

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SECTION E

1. Intention to Award

All Tenderers are required to provide their e-mail addresses (in company profile) to NAMBoard, which they will be notified on the intention to award on the day that the intention is sent to ESPPRA. A notice of Intention to Award shall be sent to all Tenderers and published to the ESPPRA website at least 10 working days before the contract award.

2. Award of contract

Qualifications and experience of the tenderers shall be considered as the paramount requirement.

3. Tender validity

Tenderers are requested to hold their bids valid for 120 days from the deadline for submission of tenders during which period will be maintained without change, of the proposed price. NAMBoard will make its best efforts to finalize the agreement within this period.

4. Tax Liability

- a) Tenderers should note that the remuneration, to be received from this contract, will be subject to normal tax liability in Eswatini. Tenderers, other than Eswatini nationals, shall be subject to local taxes (such as: value added tax, social charges or income taxes on non-resident Foreign Personnel, duties, fees, levies) on amounts payable by NAMBoard under the Contract.

Note: With respect to temporary admissions, the temporary admission regime under the Customs and Excise Act of 1971 will apply.

- b) We commit ourselves to maintain the highest standard of integrity and ethical principles during all stages of the procurement cycle.

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ANNEXURES

Enclosures:

Annexure 1: Schedule of Requirements

Annexure 2: General Conditions of Contract

Annexure 3: Special Conditions of Contract

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SCHEDULE OF REQUIREMENTS

The purpose of this RFT is to procure company motor vehicles for the operations of NAMBoard.

The delivery schedule expressed as 30 days stipulates hereafter a delivery date which is the date of delivery to the destination when the contract is placed on DDP – NAMBoard terms.

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MOTOR VEHICLES REQUIREMENTS

MINIMUM REQUIREMENTS FOR TWO (2) LIGHT DUTY VANS

Type of vehicle	Single Cab Light Duty Van
Ground Clearance	Not less than 200mm
Wheels and tyres and size	Not less than 16 inch tyres
Drive train	Four-wheel drive
Year of Manufacture	2022 or later
Type of fuel	Diesel
Engine	<ul style="list-style-type: none">• Size: 1900 – 2500 cc• Turbo diesel• The engine should be standard water cooled with heavy sump guard
Transmission	<ul style="list-style-type: none">• Four-wheel drive with a Diff Lock (4x4)• Manual transmission, floor mounted gear stick• Five or six forward gears plus reverse• Traction control, optional
Fuel tank Capacity	<ul style="list-style-type: none">• At least 80 litres
Airbags	<ul style="list-style-type: none">• At least 2 airbags
Number of Passengers	<ul style="list-style-type: none">• 2 including the driver
Windows	<ul style="list-style-type: none">• Electronic
Security	<ul style="list-style-type: none">• Alarm system, immobilizer
Brakes	ABS braking system

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Additional features	<ul style="list-style-type: none"> • Power steering • Rubber mats • Air conditioning • Nudge bar • Rubberised cabin • Rear step and tow bar • Colour – standard white
Miscellaneous equipment	<ul style="list-style-type: none"> • Fitted with radio and music accessories. • Manufacturers approved jack and tool kit • Two reflector warning triangles • Owner's manual in English language • One full size spare wheel and tyre secured by a lockable device outside the vehicle
Warranty and Services Plan	<ul style="list-style-type: none"> • Full warranty with a minimum of 36 months. • Free service for the duration of service plan or kilometres
Service availability	Vendor or manufacturer should be able to provide manufactures certificate and immediate service (including ability to service and supply parts) to the vehicle within the Mbabane – Manzini corridor.

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MINIMUM REQUIREMENTS FOR A SEDAN (HATCHBACK)

Type of vehicle	Hatchback
Ground Clearance	Not less than 160mm
Wheels	Alloy wheels
Year of Manufacture	2022 or later
Type of fuel	Petrol or Diesel
Engine	<ul style="list-style-type: none">• Size: 1.0l – 1,5l• The engine should be standard water cooled with sump guard
Transmission	<ul style="list-style-type: none">• 5 speed, automatic transmission, floor mounted gear stick• Automatic transmission.
Fuel tank Capacity	<ul style="list-style-type: none">• Not more than 60 litres
Airbags	<ul style="list-style-type: none">• At least 2 airbags
Number of doors	<ul style="list-style-type: none">• 5 doors
Number of Passengers	<ul style="list-style-type: none">• 5 including the driver
Windows	<ul style="list-style-type: none">• Electronic
Security	<ul style="list-style-type: none">• Alarm system, immobilizer, and central locking
Brakes	ABS braking system
Additional features	<ul style="list-style-type: none">• Power steering• Rubber mats• Air conditioning• Colour – standard white
Miscellaneous equipment	<ul style="list-style-type: none">• Fitted with radio and music accessories.• Manufacturers approved jack• Two reflector warning triangles• Owner's manual in English language• One spare wheel

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Warranty and Services Plan	<ul style="list-style-type: none"> • Full warranty with a minimum of 36 months. • Free service for the duration of service plan or kilometres
Service availability	Vendor or manufacturer should be able to provide manufactures certificate and immediate service (including ability to service and supply parts) to the vehicle within the Mbabane - Manzini corridor.

Note:

[Tenderer shall state the lead time for the delivery of the item to NAMBoard Encabeni Offices, MATSAPHA]

Authorised Signature:.....

Name of Signatory:.....

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PRICE AND COMPLETION SCHEDULE*[>>> Name of Tenderer, Address, and Date>>>]*

Item Description	Duration (in weeks)	Quantity and physical unit	Total (VAT Excl.)	VAT @ 15%	Total price (VAT inclusive)
<i>[insert full specification]</i>	<i>[insert actual number of weeks needed to deliver]</i>	<i>[insert total number of units to be supplied and name of physical unit]</i>	<i>[insert unit price per item]</i>	<i>[insert VAT amount]</i>	<i>[insert total price per item VAT inclusive]</i>
Light Duty Vans					
Sedan (Hatchback)					
Total bid price (SZL)					

Signature _____, _____ *[insert date of signing]*

TENDER SUBMISSION FORM

[Tenderers must provide a signed Tender Form on their company letterhead in the following unedited format. If the tender is being presented by a joint venture or consortium all members must sign the declaration]

To: The National Agricultural Marketing Board

- i. We, the undersigned, offer to Supply and Deliver Motor Vehicles in conformity with the said Invitation to Tender documents for the sum of E _____ *[sum in figures and in writing]* or such other sums as may be ascertained in accordance with the schedule of prices attached herewith and made part of this Tender and are inclusive of all taxes.
- ii. We undertake, if our Tender is accepted, to deliver the goods in accordance with the delivery schedule specified in the Schedule of Requirements.
- iii. If our tender is accepted, we will obtain the guarantee of a reputable bank or insurance company in a sum equivalent to 5% (five percent) of the contract price for the due performance of the contract, in the form prescribed by the Procuring Entity in the Invitation to Tender document.
- iv. We agree to abide by this tender for a period of **120 days** from the date fixed for Tender opening under section C of the instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of the period.
- v. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

Yours sincerely,

Authorized Signature *[In full and initials]*:

Name and Title of Signatory:

Name of Firm:

Address:

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DECLARATION OF ELIGIBILITY

(In Company Letterhead)

[The Tenderer must provide a signed declaration on its company letterhead in the following format. If the Tender is being presented by a joint venture or consortium all members must each sign their own declaration.]

[>>>Name of Company, Address, and Date>>>]

**The Entity Tender Board Chairperson
National Agricultural Marketing Board
Cnr. Masalesikhundleni & Mbabha Street
Plot No 1A Lot 165
P.O Box 4261
Manzini**

Dear Sir,

RE: RFT NMB002 OF 2023/2024 FOR SUPPLY AND DELIVERY OF MOTOR VEHICLES

In accordance with the eligibility requirements of the Procurement Regulations and the tender documents we hereby declare that: -

- a) I/We, including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract.
- b) I/We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended, and we are not the subject of legal proceedings for any of the foregoing.
- c) I/We have fulfilled our obligations to pay taxes and social security contributions.
- d) I/We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements

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- or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- e) I/We do not have a conflict of interest in relation to the procurement requirement.
- f) I/We are not subject to suspension in accordance with section 55 of the Act, and none of our directors or officers have been involved in a tenderer or supplier currently subject to suspension.

Signed

Authorized Representative

Date

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ASSIGNMENTS OF SIMILAR NATURE SUCCESSFULLY COMPLETED DURING LAST 5 YEARS

1. Outline of recent experience on assignments of similar nature:

No.	Name of Project	Name of client	Cost of Project (SZL)	Start date	Completion date	Was assignment satisfactorily completed
a)						
b)						
c)						
d)						

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Manufacturer's Authorization Form

[The Tenderer shall fill in and complete all the blank spaces in the Manufacturer's Authorization form in accordance with the instructions indicated here] [This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Tenderer in its Tender shall include it, if so, indicated in the TDS.]

Date: ***[insert date (as day, month, and year) of Tender Submission]***

Invitation for Tender No: ***[insert Tender No]***

To: ***[insert complete name of Procuring Entity]***

WHEREAS:-

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of Tenderer]* to submit a Tender in relation to the Invitation for Tenders indicated above, the purpose of which is to provide the following Goods, manufactured by us *[insert name and or brief description of the Goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions of Contract, with respect to the Goods offered by the above firm in reply to this Invitation for Tenders.

[insert complete name of person]

[insert legal capacity of person]

Signed _____ *[insert signature of person name and capacity are shown]*

Duly authorized to sign the authorization for and on behalf

of _____ *[insert complete name of Manufacturer]*

Dated on _____ day of _____, _____ *[insert date of signing].*

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Power of Attorney

Signatories for companies must establish their authority by attaching a copy of the relevant resolution of the board of directors, duly signed by the chairman of the board, and dated, to this form. An example is shown below:

"By resolution of the Board of Directors at a meeting held at _____

on: _____ 20,

Mr. /Mrs. /Ms.: _____ has been duly authorized to sign all documents in connection with contract NMB/ on behalf of

(Name of tenderer):

(Block capitals)

Signed on behalf of Board of Directors (chairman):

Date: _____

Name and designation of person authorized to sign any documents relating to this tender:

Name: _____

Designation: _____

Signature of assignee: _____

Date: _____

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SUBMISSION CHECKLIST

No.	Document	Submitted: Yes or No
1	Company Profile	
2	Original & Valid Tax compliance certificate	
3	Certified Copy of Valid trading license	
4	ENPF Compliance Certificate	
5	Certified copy of Certificated of Incorporation	
6	Certified Copy of Form J & Form C	
7	Copy of Valid Labour Compliance Certificate	
8	Police clearance for directors listed in Form J	
9	Copies of National IDs of Company Directors	
10	Bank Confirmation Letter of good standing	
11	Technical Brochures (these should be clearly marked of the vehicle on offer)	
12	Price and Completion Schedule (FORM-F2)	
13	Tender Submission Form (FORM-F3)	
14	Declaration Of Eligibility (FORM-F4)	
15	Similar projects in the last 5 years (FORM-F5)	
16	Manufacturer's authorisation (FORM- F6)	
17	Fully signed document providing power of attorney (FORM-F7)	
18	Three reference letters for similar supplies	

NB: All the documents listed above must be submitted in the listed order.

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Annexure 2: General Conditions of Contract

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

“Contract” means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.

“Contract Documents” means the documents listed in the Agreement, including any amendments thereto.

“Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

“Day” means calendar day.

“Delivery” means the transfer of ownership of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.

“Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.

“Eligible Countries” means the countries and territories eligible as listed in Section V.

“GCC” means the General Conditions of Contract.

“Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.

“Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.

“Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.

“SCC” means the Special Conditions of Contract.

“Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.

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“Supplier” means the natural person, private or government entity, or a combination of the above, whose Tender to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement and includes the legal successors or permitted assigns of the Supplier.

“The Site,” where applicable, means the place named in the SCC.

2. Contract Documents

Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

3. Corrupt Practices

3.1 The Government of Eswatini (GoE) requires that all Procurement Entities as well as Tenderers, Suppliers, Contractors and Consultants participating in contracts financed from the public funds of the Government of Eswatini, adhere to the highest ethical standards, both during the tendering process and throughout the execution of such contracts. The list of definitions set forth below involves the most common types of corrupt practices but is not exhaustive. For this reason, the Public Procurement Board will also consider claims of similar nature involving alleged acts of corruption, in accordance with the established procedure.

(a). “Bribery” means the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring goods or services, selecting consultants, or executing contracts.

(b). “Extortion” or “Coercion” means the act attempting to influence the process of procuring goods or services, selecting consultants, or executing contracts by means of threats of injury to person, property or reputation.

(c) “Fraud” means the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, selecting consultants, or executing contracts, to the detriment of the Procurement Entity/Purchaser or other participants.

(d). “Collusion” is an agreement between tenderers designed to result in tenders at artificial prices that are not competitive.

3.2 If, in accordance with the administrative procedures of the Public Procurement Board, it is demonstrated that a government/public official, or anyone acting on his or her behalf, and/or a Tenderer in a procurement process or supplier/contractor during the execution of the contract carried out in connection with a project financed from the public funds of the Government of Eswatini has committed corrupt practices, the Public Procurement Board or the appropriate Tender Board will:

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- (a) reject a proposal to award a contract in connection with the respective procurement process; and/or
- (b) declare a firm and/or its personnel directly involved in corrupt practices, temporarily or permanently ineligible to be awarded future contracts financed from the public funds of the Government of Eswatini.

3.3 The Tenderer shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the tendering process or execution of the contract. The information disclosed must include at the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee. The information must be included in the Tender Submission Sheet. Furthermore, Tenderers shall be aware of the provision stated in Sub-Clause 3.2 and Sub-Clause 35.1 (c) of the General Conditions of Contract.

3.4 Any communications between the Tenderer and the Purchaser related to matters of alleged fraud or corruption must be made in writing

4. Interpretation If the context so requires it, singular means plural and vice versa.

Incoterms

Unless otherwise specified in the SCC, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

The terms EXW, FOB, FCA, CIF, CIP, and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Tenders or as specified in the SCC.

Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

Nonwaiver

Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the

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Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5. Language

The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, this translation shall govern.

The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

6. Joint Venture, Consortium or Association

If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

7. Eligibility

The Supplier and its Subcontractors shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

All Goods and Related Services to be supplied under the Contract and financed from the public funds of the Government of Eswatini shall have their origin in Eligible Countries.

For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components

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- 8. Notices** Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.
- A notice shall be effective when delivered or on the notice’s effective date, whichever is later.
- 9. Governing Law** The Contract shall be governed by and interpreted in accordance with the laws of Eswatini, unless otherwise specified in the SCC.
- 10. Settlement of Disputes** The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC. These mechanisms may include, but are not restricted to, conciliation mediated by a third party, adjudication in an agreed national or international forum, and/or international arbitration.
- 11. Scope of Supply** 11.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.
- 11.2 Unless otherwise stipulated in the Contract, the Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.
- 12. Delivery and Documents** 12.1 Subject to GCC Sub-Clause 32.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.
- 13. Supplier’s Responsibilities** 13.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.
- 14. Contract Price** 14.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.
- 14.2 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the SCC.

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15. Terms of Payment

15.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.

15.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfilment of all the obligations stipulated in the Contract.

15.3 Payments shall be made promptly by the Purchaser, no later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and the Purchaser has accepted it.

15.4 The currency in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed.

15.5 In the event that the Purchaser fails to pay the Supplier any payment by its respective due date or within the period set forth in the SCC, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgement or arbitrage award.

16. Taxes and Duties

16.1 For goods supplied from outside Eswatini, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside Eswatini.

16.2 For goods supplied from within Eswatini, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

16.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Eswatini, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

17. Performance Security

17.1 The Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the due performance of the Contract in the amount specified in the SCC.

17.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

17.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the following forms:

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a bank guarantee or an irrevocable letter of credit issued by a reputable located in Eswatini or abroad, acceptable to the Purchaser, in using the form included in Section IX Contract Forms; or

a cashier's certified check.

17.4 The performance security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

18. Copyright

18.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party

19. Confidential Information

19.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 19.

19.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.

19.3 The obligation of a party under GCC Sub-Clauses 19.1 and 19.2 above, however, shall not apply to information that:

the Purchaser or Supplier need to share with the Public Procurement Board of the Government of Eswatini or other institutions participating in the financing of the Contract;

now or hereafter enters the public domain through no fault of that party;

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can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

19.4 The above provisions of GCC Clause 19 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

19.5 The provisions of GCC Clause 19 shall survive completion or termination, for whatever reason, of the Contract.

20.Subcontracting

20.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

20.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

21.Specifications and Standards

Technical Specifications and Drawings

21.1 The Supplier shall ensure that the Goods and Related Services comply with technical specifications and other provisions of the Contract.

21.2 The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

21.3 The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the goods' country of origin.

21.4 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 32.

22.Packing and Documents

The Supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into

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consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.

23. Insurance Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.

24. Transportation Unless otherwise specified in the SCC, responsibility for arranging transportation of the Goods shall be in accordance with the Incoterms specified in the Schedule of Requirements.

25. Inspections and Tests The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the Schedule of Requirements.

The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in Eswatini as specified in the SCC. Subject to GCC Sub-Clause 25.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 25.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications' codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price.

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Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 25.4.

The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 25.6, shall release the Supplier from any warranties or other obligations under the Contract.

26. Liquidated Damages

Except as provided under GCC Clause 31, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 34.

27. Warranty

The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

Subject to GCC Sub-Clause 21.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

Unless otherwise specified in the SCC, the warranty shall remain valid for 36 months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment or loading in the country of origin, whichever period concludes earlier.

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The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

Upon receipt of such notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

28. Patent Indemnity

The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 28.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and

the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 28.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.

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The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

29. Limitation of Liability

29.1 Except in cases of criminal negligence or willful misconduct,

(a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and

(b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the purchaser with respect to patent infringement

30. Change in Laws and Regulations

Unless otherwise specified in the Contract, if after the date of the Invitation to Tender, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated, or changed in the particular area of Eswatini where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 14.

31. Force Majeure

The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or

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other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

32. Change Orders and Contract Amendments

The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;

the method of shipment or packing;

the place of delivery; and

the Related Services to be provided by the Supplier.

If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

33. Extensions of Time

If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may

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at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

Except in case of Force Majeure, as provided under GCC Clause 31, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 33.1.

34.Termination Termination for Default

The Purchaser, without prejudice to any other remedy for breach of Contract, by notice of default sent to the Supplier, may terminate the Contract in whole or in part:

if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 33; or

if the Supplier fails to perform any other obligation under the Contract.

In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 34.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

if the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

Termination for Insolvency.

The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser

Termination for Convenience.

The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which

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performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

to have any portion completed and delivered at the Contract terms and prices; and/or

to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

35. Assignment

Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

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Annexure 3: Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

GCC 1.1	The Purchaser is: National Agricultural Marketing Board (NAMBoard)
GCC 1.1	The Delivery Site is: Encabeni Offices, Matsapha
GCC 12.1	The delivery term shall be DDP – Encabeni Offices, Matsapha.
GCC 5.1	The language shall be: English
GCC 8.1	For notices , the Purchaser's address shall be: Attention: Chief Executive Officer, NAMBoard P.O. Box 4261 Area: Matsapha Region: Manzini Country: Eswatini Telephone: 25055314 Email: For notices, the Supplier's address shall be: (To be filled at the time of award)
GCC 9.1	The governing law shall be the Laws of the Kingdom of Eswatini
GCC 10.2	The formal mechanism for the resolution of disputes shall be as follows: (a). For contracts entered into with Foreign Suppliers: In case of a dispute between the Purchaser and the supplier, the dispute shall be settled by arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration Rules. (b). For contracts entered into with suppliers from Eswatini In the case of a dispute between the Purchaser and a Supplier from Eswatini, the dispute shall be referred to adjudication or arbitration in accordance with the Laws of Eswatini.
GCC 11.1	The scope of supply for the Goods and Related Services to be supplied shall be as specified in: The Schedule of Requirements

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GCC 12.1**Delivery and Documents****For Goods supplied from abroad:**

Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by cable or email the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.

- (i) copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;
- (ii) delivery note;
- (iii) copies of the packing list identifying contents of each package;
- (iv) insurance certificate;
- (v) Manufacturer's or Supplier's warranty certificate;
- (vi) inspection certificate, issued by the nominated inspection agency, and the Supplier's factory inspection report; and
- (vii) certificate of origin.

For Goods from within the Purchaser's country:

Upon delivery of the Goods to the transporter, the Supplier shall notify the Purchaser and mail the following documents to the Purchaser:

- (i) copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;
- (ii) delivery note, railway receipt, or truck receipt;
- (iii) Manufacturer's or Supplier's warranty certificate;
- (iv) inspection certificate issued by the nominated inspection agency, and the Supplier's factory inspection report; and
- (v) certificate of origin.

The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.

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GCC 14.2	The prices charged for the Goods delivered and the related Services performed Shall Not be adjustable.
GCC 15.1	The method and conditions of payment to be made to the Supplier under this Contract shall be as follows: Payment of 100% of the contract sum shall be made within 30 days after delivery and acceptance
GCC 15.5	In the event that the Purchaser fails to make any payment to the Supplier within 30 days after its respective due date, the Purchaser shall pay to the Supplier interest at the annual rate: 2%
GCC 17.1	The amount of performance security, as a percentage of the Contract Price, shall be: 10% of the contract sum
GCC 17.4	After delivery and acceptance of the Goods, the performance security shall be reduced to two (2) percent of the Contract Price to cover the Supplier's warranty obligations in accordance with Clause GCC 27.3. The Performance Security shall be valid until the end of warranty period.
GCC 22.2	The packing, marking and documentation within and outside the packages shall be: To be decided at the time of award
GCC 23.1	Insurance It is in principle the Supplier's entire responsibility to ensure that the goods are duly received by the Purchaser under DDP, and therefore it is the Supplier's prerogative to decide whether to insure or not. Under this contract, however, the Supplier is required to arrange for an insurance policy for All Risk covering 110% of the DDP price, addressed to both the Supplier and the Purchaser.
GCC 26.1	The liquidated damage shall be: 0.05% per week
GCC 26.1	The maximum number of liquidated damages shall be: 10%
GCC 27.3	The period of validity of the Warranty shall be: 36 months For purposes of the Warranty, the place of final destination shall be: Encabeni Offices, Manzini Region
GCC 27.5	The period for repair or replacement shall be: Seven (7) days

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