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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

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.

<b>GCC 1.1</b>	The Purchaser is: <b>National Agricultural Marketing Board (NAMBoard)</b>
<b>GCC 1.1</b>	The Delivery Site is: <b>Encabeni Offices, Matsapha</b>
<b>GCC 12.1</b>	The delivery term shall be DDP – <b>Encabeni Offices, Matsapha.</b>
<b>GCC 5.1</b>	The language shall be: <b>English</b>
<b>GCC 8.1</b>	For <b>notices</b> , the Purchaser’s address shall be: Attention: <b>Chief Executive Officer, NAMBoard</b> <b>P.O. Box 4261</b> Area: <b>Matsapha</b> Region: <b>Manzini</b> Country: <b>Eswatini</b> Telephone: <b>25055314</b> Email:  For notices, the Supplier’s address shall be: <b>(To be filled at the time of award)</b>
<b>GCC 9.1</b>	The governing law shall be the Laws of the Kingdom of Eswatini
<b>GCC 10.2</b>	The formal mechanism for the resolution of disputes shall be as follows: <b>(a). For contracts entered into with Foreign Suppliers:</b> 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>(b). For contracts entered into with suppliers from Eswatini</b>  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.
<b>GCC 11.1</b>	The scope of supply for the Goods and Related Services to be supplied shall be as specified in: <b>The Schedule of Requirements</b>

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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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<b>GCC 14.2</b>	The prices charged for the Goods delivered and the related Services performed <b>Shall Not</b> be adjustable.
<b>GCC 15.1</b>	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 <b>within 30 days</b> after delivery and acceptance
<b>GCC 17.1</b>	The amount of performance security, as a percentage of the Contract Price, shall be: 10% of the contract sum
<b>GCC 17.4</b>	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.
<b>GCC 22.2</b>	The packing, marking and documentation within and outside the packages shall be: <b>To be decided at the time of award</b>
<b>GCC 23.1</b>	<b>Insurance</b> 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.
<b>GCC 26.1</b>	The maximum number of liquidated damages shall be 10%
<b>GCC 27.3</b>	The period of validity of the Warranty shall be: 36 months  For purposes of the Warranty, the place of final destination shall be: <b>Encabeni Offices, Manzini Region</b>
<b>GCC 27.5</b>	The period for repair or replacement shall be: <b>Seven (7) days</b>

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