















































Name of bidder \_\_\_\_\_ tender No. \_\_\_\_\_.

1	2	4	7	8	
Item	Description	Qty	Unit price	Delivery Lead Time	Total
<b>Any pertinent charges (specify charges)</b>					
<b>VALUE ADDED TAX</b>					
<b>TOTAL PRICE FOR FULL DELIVERY</b>					

Signature of bidder \_\_\_\_\_

*Note: In the case of discrepancy between the unit price and the total, unit price takes precedence*

## Section IV: Conditions of Contract

### 1. Definitions

- a) "Contract" means the agreement between the purchaser and the supplier, as described in the purchase order and other documents referred to in the purchase order.
- b) "Contract price" means the price, inclusive of all amounts for taxes and contributions (as the term is defined in the financing agreement) payable to the supplier under the contract.



- c) "Goods" means the goods which the supplier is required to supply to the purchaser under the contract.
- d) "Incidental services" means any service ancillary to the supply of the goods, such as installation, commissioning, provision of technical assistance, and training.
- e) "The purchaser" means the procuring entity that issues this purchase order.
- f) "Supplier" means the natural person or legal person who will supply the goods.
- g) "Bidding documents" means the documents issued by the purchaser for the procurement of the goods.

## 2. Use of contract documents and information

2.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for the purposes of such performance.

2.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information specified in CC clause 2.1, except for purposes of performing the contract.

2.3. All documents enumerated in CC clause 2.1, other than the contract itself, shall remain the property of the purchaser and shall be returned (all copies) to the purchaser upon completion of the supplier's performance of its obligations under the contract, if so, required by the purchaser.

## 3. Patent rights

3.1. The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, copyright, industrial design rights or other intellectual property rights arising from use of the goods or any part thereof in the purchaser's country and from the sale of products produced by the goods in any country.

3.2. 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

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association or combination with any other equipment, plant, or materials not supplied by the supplier, pursuant to the contract.

3.3. Any studies, reports or other material, graphics, software or otherwise, prepared by the supplier for the purchaser under the contract shall belong to and remain the property of the purchaser. The supplier may retain a copy of such documents and software. Restrictions about the future use of these documents and software, if any, shall be specified in the purchase order.

3.4. The supplier shall hold the purchaser harmless from and against all suits, proceedings, claims, demands, losses and liabilities of any kind or nature brought by any party against the purchaser in connection with, based on, arising from, or relating to the contract. This shall include, but not be limited to litigation costs and expenses, attorney's fees, settlement payments and damages.

#### **4. Inspections and tests**

4.1. The purchaser or its representative shall have the right to inspect and to test the goods to confirm their conformity to the contract at no extra cost to the purchaser. The purchaser shall notify the supplier about any inspections and tests the purchaser requires and where they are to be conducted. Further, the purchaser shall notify the supplier in writing of the identity of any representatives retained for these purposes.

4.2. At the option of the purchaser, inspections and tests may be conducted on the premises of the supplier or its subcontractor(s), at the point of delivery, or at the project site. If conducted on the premises of the supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the purchaser.

4.3. Should any inspected or tested goods fail to conform to the specifications, the purchaser may reject the goods and the supplier shall either replace or make alterations necessary to meet specification requirements free of cost to the purchaser.

4.4. The purchaser's right to inspect, test and, where necessary, reject the goods shall in no way be limited or waived by reason of having previously been inspected, tested, and passed by the purchaser or its representative prior to shipment, installation or other performance in the purchaser's country.

4.5. Nothing in Clause 4 shall in any way release the supplier from any warranty or other obligations under this contract.

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## 5. Packing

5.1. The supplier shall provide such packing of goods as is required to prevent damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination and the absence of heavy handling facilities at all points in transit.

5.2. 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 specified in the contract documents and through any subsequent instructions issued by the purchaser.

## 6. Incidental services

6.1. A supplier shall provide the incidental services indicated in the contract.

## 7. Spare parts

7.1. Unless not required under the contract, the supplier shall provide materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier including such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract.

7.2. In the event of termination of production of the spare parts:

- a) the supplier shall give advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
- b) following such termination, furnishing at no cost to the purchaser, blueprints, drawings, and specifications of the spare parts, if requested.

## 8. Warranty

8.1. The supplier warrants that the goods are new, unused, of the most recent or current models, and incorporates all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that the goods have no defect arising from design, materials, or workmanship or from any act or omission of the supplier, which may develop under normal use of the goods in the conditions prevailing in the purchaser's country.

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8.2. The warranties under this clause shall remain valid for twelve (12) months after final acceptance of the goods by the purchaser, unless a longer (but not a shorter) period is specified in the contract.

8.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

8.4. Upon receipt of such notice, the supplier shall, with all reasonable speed, and in any case within 72 hours, repair or replace the defective goods or parts thereof, without costs to the purchaser unless otherwise agreed in writing by the contracting parties.

8.5. If the supplier, having been notified, fails to remedy any defect within the period specified in the contract documents, the purchaser may proceed to take 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.

## 9. Payment

9.1. The supplier's requests for payment shall be in writing and accompanied by an invoice and the required documents.

9.2. Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice by the supplier and certification from the purchaser, whichever is later.

9.3. Payments shall be made in the currency of the purchaser order, unless otherwise stated.

## 10. Prices

10.1. The contract price shall not vary from the prices quoted by the supplier in its bid except for any price adjustments authorized in the contract.

## 11. Change orders

11.1. The purchaser may, at any time, issue a written order to the supplier regarding changes in any, some or all of the following:

- a) drawings, designs or specifications for the goods;
- b) methods of shipment and packing of the goods;

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c) the place of performance or delivery of the goods; and

d) the incidental services.

11.2. If a change order will cause an increase or decrease in the cost of, or the time required for the supplier's supply of the goods, the parties shall exert their best effort to agree on an equitable adjustment in the contract price, the delivery schedule, or both. Any claims by the supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the supplier's receipt of the change order.

## 12. Contract amendments

12.1. No variation or modification of the terms of the contract shall be made except by either (a) a written amendment signed by the parties, or (b) a change order.

## 13. Assignment

13.1. The Supplier shall not assign, in whole or in part, its obligations to perform under this contract, except with the prior written consent of the purchaser.

## 14. Sub-contracts

14.1. The supplier shall notify the purchaser in writing about all subcontracts for the supply of the goods. Such notification shall not relieve the supplier of any liability or obligation under the contract.

## 15. Delays in the supplier's performance

15.1. If the supplier foresees or encounters conditions impeding timely delivery of the goods, the supplier shall promptly notify the purchaser in writing of the fact of the actual or foreseen delay, its likely duration and its causes.

15.2. No extension of the supplier's time for performance shall be effective unless the parties amend the contract.

## 16. Liquidated damages

16.1. Subject to CC clause 18, if the supplier fails to deliver all goods within the period specified in the contract, the purchaser may, without prejudice to other remedies under the contract (including termination of the contract), deduct, as liquidated damages, 0.5% from the contract price for each week of delay or fraction thereof, until delivery of all goods, up to 10% of the contract price.

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## 17. Termination

17.1. Without prejudice to any other remedy for breach of contract, the purchaser may terminate this contract in whole or in part by written notice to the supplier:

- a) if the supplier fails to deliver all the goods within the period specified in the contract;
- b) if the supplier fails to perform any other obligation(s) under the contract;
- c) if the supplier becomes bankrupt or otherwise insolvent;
- d) if at any time the purchaser decides to terminate the contract for its own convenience; or
- e) if the supplier fails to provide performance security within fifteen (15) days if performance security is part of this contract.

17.2. For the purpose of this clause: "corrupt practice" and "fraudulent practice" carries meaning defined in the Public Procurement Act, 2011.

17.3. In the event that the purchaser terminates the contract in whole or in part under clause 17.1(a), (b), (c) or (d), the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods similar to those that the supplier failed to deliver, provide or perform, and the supplier shall be liable to the purchaser for any excess costs for such similar goods. However, the supplier shall continue its performance of its obligations under the contract to the extent that the contract was not terminated.

17.4. If the contract is for goods, in the event that the purchaser terminates the contract in whole or in part under clause 17.1 (e), the goods that are complete and ready for shipment within thirty (30) 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:

- a) to have any portion completed and delivered at the contract terms and prices; and/or
- b) to cancel the remainder and pay the supplier an agreed amount for partially completed goods and for materials and parts previously procured by the supplier.

## 18. Force majeure

18.1. The purchaser may not deduct the liquidated damages from the contract price or terminate the contract under clause 17.1(a) or (b) if the supplier's delay in the performance of its obligations under the contract is the result of an event of force majeure.

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18.2. For purposes of this clause, "event of force majeure" means an exceptional event or circumstance which satisfies all of the following conditions: (a) such event or circumstance is beyond the control of the supplier, (b) the supplier could not reasonably have provided against such event or circumstance before entering into the contract, (c) such event or circumstance having arisen, the supplier could not reasonably have avoided or overcome such event or circumstance, and (d) the such event or circumstance is not in any way attributable to the supplier. Such events may include, but are not restricted to, acts of the purchaser's country in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

18.3. If an event of force majeure occurs, 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 event of force majeure.

## 19. Settlement of disputes

19.1. If any dispute or difference of any kind whatsoever shall arise between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

## 20. Limitation of liability

20.1. Except in cases of criminal negligence or willful misconduct, and in the case of infringement as described in CC clause 3,

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 contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

## 21. Language

21.1. Unless the purchaser agrees otherwise, all documents referred to in the contract and all communications from supplier to the purchaser shall be in the English language.

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## 22. Applicable law

22.1. The contract shall be interpreted in accordance with the laws of the purchaser's country.

## 23. Notices

23.1. Any notice given by one party to the other pursuant to the contract shall be in writing and delivered to the other party in person or by courier, electronic mail or facsimile, to the other party's address specified in the contract.

23.2. A notice shall be effective when delivered or on the notice's effective date, whichever is later.

## 24. Taxes and duties

24.1. The supplier should carefully read the provisions and revenue regulations of the applicable law.

24.2. The supplier shall be entirely responsible for all taxes, customs duties, license fees, and other such levies imposed both inside and outside of the purchaser's country by reason of or in relation to the contract.

24.3. Unless exempt under applicable laws and regulations, the supplier is subject to taxes and contributions for payments under this contract, as may be required under applicable laws and regulations. In no event shall the purchaser be responsible for the payment or reimbursement of any taxes and contributions. In the event that any taxes and contributions are imposed on the supplier, the contract price shall not be adjusted to account for such taxes and contributions.

## 25. Performance security

25.1. The supplier shall, within fifteen (15) days of the notification of contract award, provide performance security for the due performance of this contract in the amount or percentage specified in the purchase order.

25.2. 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 in accordance with the terms of this contract.

25.3. The performance security shall be denominated in the currency of this contract and shall be in the form of either a bank guarantee, bond or an irrevocable standby letter of credit issued by a

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reputable bank or surety located in purchaser's country and in form and substance satisfactory to the purchaser, substantially in the appropriate form included as an annex to this purchase order.

25.4. 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 this contract, including any warranty obligations.

## **26. Prohibition of Fraud and Corruption**

26.1. The Supplier shall abide by and perform the contract in compliance with the Public Procurement Act, 2011 and the Fund's Policies 1. Failure to comply with this policy may lead to termination of contract as set out above at para. 17.1(c).

26.2. In accordance with Eswatini's Anticorruption Act, the Fund has the right to sanction firms and individuals, including by declaring them ineligible, permanently or for a stated period of time, to participate in any PSPF-funded or Public Procurement activity or operation subject to debarment by ESPPRA. The Fund also has the right to recognize debarments by other International Financial Institutions in accordance with its Anticorruption Policy.

26.3. The supplier will take appropriate measures to inform potential sub-contractors, sub-consultants, suppliers, agents and any of its agents or personnel of their obligations under the country's Anticorruption laws and require their compliance with this policy in connection with their involvement in competing for, or executing, this contract.

26.4. The supplier is required to complete and sign the attached statutory forms. In particular, the supplier is obliged to disclose relevant prior sanctions and criminal convictions and any commissions or fees paid or are to be paid to any agents or other party in connection with this procurement process or the execution of the contract.

26.5. The supplier is required to fully cooperate with any investigation conducted by the Fund, ESPPRA, and the Anti-Corruption Commission or any law enforcing agency of Eswatini including by making personnel available for interviews and by providing full access to any and all accounts, premises, documents and records (including electronic records) relating to this contract or the relevant procurement process and to have such accounts, premises, records and documents audited and/or inspected by auditors or investigators appointed by the Fund.

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# INVITATION TO TENDER: SUPPLY AND DELIVERY OF GYM EQUIPMENT (PSPF/ITT/13/2024)

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