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**DrukGreen**

(a dhi company)

## SECTION - I

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### INSTRUCTIONS TO BIDDERS (ITB)



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## INSTRUCTIONS TO BIDDERS (ITB)

### A GENERAL

- 1 **Scope of Supply**
- 1.1 The Purchaser, as indicated in the Bid Data Sheet (BDS), issues these Bidding Documents for the supply of Goods and Related Services incidental thereto as specified in Section VII, Schedule of Supply. The name, identification number, and number of lots within this procurement are provided in the BDS.
- 1.2 Throughout this Bidding Document:
- a) the term “in writing” means communicated in written form (e.g. by mail/electronic mail) with proof of receipt;
  - b) if the context so requires, “singular” means plural” and vice versa; and
  - c) “day” means calendar day.
- 2 **Fraud and Corruption**
- 2.1 As per the RGoB policy, Purchasers requires that the Bidders and Suppliers observe the highest standards of ethics during the procurement and execution of contracts. The terms “Corrupt Practice”, “Fraudulent practice”: “Collusive practice”, “Coercive practice” "Obstructive practice" shall be as per the definition in GCC 1.4.2. In pursuance of this policy, the Purchaser:
- a) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
  - b) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing for the contract;
  - c) will have the right to require that a provision be included in Bidding Documents and in contracts, requiring Bidders, Suppliers and their Subcontractors to permit the Purchaser, any organization or person appointed by the Purchaser to inspect their accounts and records and other documents relating to their Bid submission and contract performance and to have them audited by auditors appointed by the Purchaser;



- d) requires that Bidders, as a condition of admission to eligibility, execute and attach to their bids an Integrity Pact Statement in the form provided in Section III, Bidding Forms. Failure to provide a duly executed Integrity Pact Statement may result in disqualification of the Bid; and
- e) will report any case of corrupt, fraudulent, collusive, coercive or obstructive practice to the relevant RGoB agencies, including but not limited to the Anti- corruption Commission (ACC) of Bhutan, for necessary action in accordance with the statutes and provisions of the relevant agency.

2.2 Furthermore, Bidders shall be aware of the provision stated in GCC 10.1.1.a) iii).

### 3 Eligible Bidders

3.1 A Bidder, and all parties constituting the Bidder, may have the nationality of any country, subject to the restrictions specified in ITB. 4.1 a & b. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including Related Services.

- a) A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in this bidding process if they:
  - b) are associated, or have been associated in the past, with a firm or any of its affiliates which has been engaged by the Purchaser to provide consulting services for the preparation of the design, specifications and/or other documents to be used for the procurement of the Goods and related Service to be purchased pursuant to these Bidding Documents, or
  - c) submit more than one Bid in this bidding process, except for alternative offers permitted under ITB Clause 19. However, this does not limit the participation of subcontractors in more than one Bid.

3.2 employ or otherwise engage, either directly or through any of their affiliates, dependent or close relative of the Purchaser employee or has an authority over it. For the purposes of this Sub-Clause, a close relative is defined as immediate family which includes father, mother, brother, sister, spouse and own children.

3.3 Government-owned enterprises in Bhutan shall be eligible only if they can establish that they:

- a) are legally and financially autonomous;
- b) operate under commercial law; and



c) are not a dependent agency (directly or indirectly) of the Purchaser.

3.4 A Bidder that is under a declaration of ineligibility pursuant to ITB Sub-Clause 2.1.c) shall not be eligible to participate in this bidding process in any capacity.

3.5 Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser as the Purchaser shall reasonably request.

#### 4 Exclusions of Bidders

4.1 A Bidder shall be excluded from participating in this bidding process under the following circumstances:

- a) as a matter of law or official regulation, RGoB prohibits commercial relations with the country in which the Bidder is constituted, incorporated or registered; or
- b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. RGoB prohibits any import of Goods or contracting of Services from the Country in which the Bidder is constituted, incorporated or registered or any payments to persons or entities in that country; or
- c) Bidder is insolvent or is in receivership or is a bankrupt or is in the process of being wound up; or has entered into an arrangement with creditors; or
- d) Bidder's affairs are being administered by a court, judicial officer or appointed liquidator; or
- e) Bidder has suspended business or is in any analogous situation arising from similar procedures under the laws and regulations of his country of establishment; or
- f) Bidder has been found guilty of professional misconduct by a recognized tribunal or professional body; or
- g) Bidder has not fulfilled his obligations with regard to the payment of taxes, or other payments due in accordance with the laws of the country in which he is established or of the Kingdom of Bhutan; or
- h) Bidder is guilty of serious misrepresentation in supplying information in this tender; or
- i) Bidder has been convicted for fraud and/or corruption by a competent authority; or
- j) Bidder has not fulfilled any of his contractual obligations with the Purchaser in the past based on the Vendor Performance Management System (VPMS).
- k) Bidder has been debarred from participation in public procurement by any competent authority as per law.



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- 5 Eligible Goods and Related Services**
- 5.1 All the Goods and Related Services to be supplied under the Contract may have their origin in any country, in accordance to ITB. 3.
- 5.2 For the purposes of this Clause, the term “Goods” includes commodities, raw material, machinery, equipment and industrial plants; and “Related Services” includes services such as insurance, supervision, installation, training, and initial maintenance.
- 5.3 The term “origin” means the country where the Goods have been mined, grown, 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 components.

**B BIDDING DOCUMENTS**

- 6 Contents of Bidding Documents**
- 6.1 The Bidding Document consists of Bidding Procedure and Contracts which include all the Sections indicated below, and should be read in conjunction with any Addenda issued accordance with ITB Clause 9.

Section I	Instructions to Bidders (ITB)
Section II	Bid Data Sheet (BDS)
Section III	Bidding Forms
Section IV	General Conditions of Contract (GCC)
Section V	Special Conditions of Contract (SCC)
Section VI	Contract Forms

- 7 General Information**
- 7.1 The Invitation for Bids issued by the Purchaser is not part of the Bidding Document.
- 7.2 The Purchaser is not responsible for the completeness of the Bidding Document and their addenda, if any, if these were not obtained directly from the Purchaser.
- 7.3 The Bidder is expected to examine all instructions, forms, terms and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the Bid.
- 8 Clarifications on Bidding Documents**
- 8.1 Bidders shall not be allowed to seek any clarification of the Bidding Documents in person or by telephone or other verbal means.
- 8.2 A prospective Bidder requiring any clarification of the Bidding Documents shall notify the same to the Purchaser in writing at the Purchaser’s address specified in the BDS.



- 8.3 The Purchaser shall respond in writing to any such request for clarification, provided that it is received no later than the date and time specified in the BDS.
- 8.4 Copies of the Purchaser's response shall be uploaded in the Purchaser's or relevant website including a description of the enquiry without disclosing the name of the Bidder(s) seeking clarification. Should the Purchaser deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause 9 and ITB Sub-Clause 25.2.
- 8.5 A pre-bid meeting shall be conducted only, if necessary, to clarify doubts and concerns of the Bidders prior to submission of Bids. The Bidders shall be invited to attend pre-bid meeting to be held on the date, time and location specified in BDS.
- 8.6 Non-attendance at the pre-bid meeting will not be a cause for disqualification of Bidders but at the same time shall not entitle them to raise any query at a later date.
- 8.7 The Bidders are requested to submit their questions and queries in writing not later than one week before the meeting. Clarifications to the queries raised in the pre-bid meeting, including the text of the questions raised without identifying the source, and the responses given together with any responses prepared after the meeting, shall be circulated to all Bidders and also uploaded on the Purchaser's website.
- 8.8 Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Purchaser through the issue of an addendum and not through the clarifications to the queries of pre-bid meeting.

**9 Amendment of Bidding Documents**

- 9.1 At any time prior to the deadline for submission of Bids, the Purchaser may amend the Bidding Documents by issuing an addendum. This may be done either on the Purchaser's own initiative or in response to a clarification request from a prospective Bidder.
- 9.2 Any addendum thus issued shall be part of the Bidding Documents and shall be uploaded in the Purchaser's website and or relevant website such addendum shall be binding on the prospective Bidders.
- 9.3 The Purchaser may, at its discretion, extend the deadline for submission of Bids pursuant to ITB Sub-Clause 25.2 to allow prospective Bidders reasonable time in which to take the addendum into account in preparation of their Bids.
- 9.4 It will be the responsibility of such Bidders to regularly visit the website for any addendum to the Bidding Documents until the last date of bid submission. The Purchaser shall in no way be responsible for any ignorance of the Bidder about the addendum to the Bidding Documents.





## C PREPARATION OF BIDS

- 10 Language of Bid** 10.1 The Bid, as well as all correspondence and documents related to the Bid exchanged by the Bidder and the Purchaser, shall be in English. Supporting documents and printed literature that are part of the Bid shall be in English and if in any other language, should be translated to English. The English translation shall prevail on the interpretation.
- 11 Cost of Bidding** 11.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 12 Documents Comprising the Bid** 12.1 The Bid shall comprise the following:
- a) Bid Submission Forms and Price Schedules in accordance with ITB Clauses 25 & 13;
  - b) Bid Security, in accordance with ITB Clause 18;
  - c) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Clause 22;
  - d) Documentary evidence in accordance with ITB Clauses 20 that the Goods and Related Services conform to the Bidding Documents;
  - e) Documentary evidence in accordance with ITB Clause 21 establishing the qualification of the Bidders;
  - f) Alternative Bids, if permissible, in accordance with ITB Clause 19;
  - g) Integrity Pact Statement, in accordance with ITB Sub-Clause 2.1.d);
  - h) Deviation sheet in accordance with the Bidding Form: VI of Section III; and
  - i) Relevant Bidding forms
  - j) Any other documents required in the BDS.
- 13 Price Schedule** 13.1 The Bidder shall submit the Price Schedules for Goods and Related Services according to their origin as appropriate, using the forms furnished in Section III, Bidding Forms.
- 14 Bid Prices and Discounts** 14.1 The prices and discounts quoted by the Bidder in the Bid Submission Form and in the Price Schedules shall conform to the requirements specified below:
- a) all lots and items must be listed and priced separately in the Price Schedules;
  - b) the price to be quoted in the Bid Submission Form shall be the total price of the Bid excluding any discounts offered; and



- c) the Bidder shall quote any unconditional discounts and the methodology for their application in the Bid Submission Form.
- 14.2 The terms EXW, CIF, CIP, DAP, DDP and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce pursuant to GCC sub-clause 1.3.5.
- 14.3 Unless otherwise stated in the BDS, Prices shall be quoted as specified in the Price Schedule forms for Goods and Related Services included in Section III, Bidding Forms as follows:
- a) For Goods manufactured and supplied by the Suppliers from the Kingdom of Bhutan, the price shall be inclusive of all applicable taxes, duties, licence fees and other similar levies incurred until delivery of the contracted Goods to the Place of Delivery.
- b) For Goods manufactured outside Bhutan
- i) the Supplier shall quote inclusive of all applicable taxes, stamp duties, license fees and other similar levies imposed outside Bhutan as applicable in line with the Incoterms. Any domestic taxes, duties and any other levies imposed on import of goods in Bhutan, except TDS shall be borne and paid by Purchaser.
- ii) Bidders participating from India and supplying materials and services from within India for bonafide use in the Kingdom of Bhutan shall quote exclusive of any effect of Indian Goods and Service Tax (IGST). The IGST on the export of goods and services or both are covered under Zero Rated Supply as per Chapter VII, 16(1) of the INTEGRATED GOODS AND SERVICES TAX ACT, 2017 of India.
- 14.4 Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB Sub-Clause 14.1, provided the Bids for all lots are submitted and opened at the same time.



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14.5 If so, indicated in ITB Sub-Clause 14.1, Bids are being invited for individual items, lots or packages as indicated in the BDS, unless otherwise indicated in the BDS, prices quoted shall correspond to one hundred percent (100%) of the items specified for each lot and to one hundred percent (100%) of the quantities for each item of a lot. Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB Sub- Clause 14.1, provided the Bids for all lots are submitted and opened at the same time.

**15 Price Variation**

15.1 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the BDS. A Bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected pursuant to ITB Clause 33. If, in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a Bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

**16 Currencies of Bid**

16.1 The unit rates and prices required to be quoted by the Bidder shall be as per the currencies specified in the BDS.

16.2 The reference exchange rate (selling rate) prevailing on the day of Bid opening or the immediate preceding date as posted by the Royal Monetary Authority of the Kingdom of Bhutan shall be used for conversion of prices.

16.3 Bid prices shall be evaluated in accordance to ITB 38. The payments shall be made in the currency of the bid and any banking charges related to payment shall be borne by the Purchaser.

**17 Bid Validity**

17.1 Bids shall remain valid for the period specified in the BDS from the Bid submission deadline prescribed by the Purchaser. A Bid valid for a shorter period shall be rejected by the Purchaser as non-responsive.

17.2 In exceptional circumstances, prior to expiry of the Bid validity period, the Purchaser may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. The Bid Security shall also be extended for a corresponding period. A Bidder may refuse the request to extend the validity of its Bid without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB Sub-Clause 17.3.



17.3 The provisions of the ITB 17 regarding the forfeiture and discharge of Bid Security shall continue to apply during the extended period of Bid Validity.

## 18 Bid Security

18.1 The Bidder shall furnish, as part of its Bid, a Bid Security in original form, denominated in currency and in the amount specified in the BDS.

18.2 The Bid Security shall at the Bidder's option, be in any of the following forms:

- a) an Unconditional Bank Guarantee (in accordance with the form included in Section III, Bidding Forms); or
- b) a Banker's Certified Cheque/Cash Warrant or
- c) a Demand Draft;
- d) Cash deposit through Bank Transfer, in case of exceptional circumstance where the submission of bid security by the above form are not possible.

18.3 The Bid security shall be issued by a reputable financial institution enforceable in any Banks in Bhutan.

18.4 Bid Security shall be submitted in original and copies shall not be accepted.

18.5 Bid Security shall remain valid for a period of thirty (30) days beyond the end of the validity period of the Bid, as extended, if applicable. Accordingly, the Bid Security shall remain valid till the date specified in the BDS. A Bid security with shorter period and inadequate value shall be rejected by the Purchaser as non-responsive.

18.6 The Bid Securities of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder furnishing the Performance Security pursuant to ITB Clause 43. In case of single stage-two envelope and two stage mode of tendering, Bid Security of non-responsive Bidders shall be returned immediately after technical evaluation.

18.7 The Bid Security shall be forfeited:

- a) if a Bidder withdraws its Bid during the period of Bid validity except as provided in ITB Sub-Clause 17.2; or
- b) if the successful Bidder fails to:
  - i) sign the Contract in accordance with ITB Clause 44;
  - ii) furnish a Performance Security in accordance with ITB Clause 43; or
  - iii) accept the correction of its Bid Price pursuant to ITB Sub-Clause 34.4.

18.8 The Bid Security of a JV/C must be in the name of the JV/C that submits the Bid.



- 19 **Alternative Bids** 19.1 Unless otherwise indicated in the BDS, alternative Bids shall not be considered.
- 20 **Documents Establishing the Conformity of the Goods and Related Services**
- 20.1 To establish the conformity of the Goods and Related Services to the Bidding Document, the Bidder shall furnish as part of its Bid documentary evidence that the Goods conform to the technical specifications and standards.
- 20.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specifications and, if applicable, a statement of deviations and exceptions to the provisions of the Schedule of Supply must be clearly indicated in the deviation schedule under Section III, Bidding Form.
- 20.3 The Bidder shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period specified in the BDS following commencement of the use of the Goods by the Purchaser.
- 20.4 Standards for workmanship, process, material and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Supply, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names and/or catalogue numbers, provided that it demonstrates to the Purchaser's satisfaction that the substitutions ensure equivalence or are superior to those specified in the Schedule of Supply with exception in certain Bulk items, Strategic Critical and Strategic Security items category.
- 20.5 In order to prove that the Goods offered are of acceptable quality and standard, the Bidders shall furnish the documentary evidence that the Goods offered have been in production and all relevant catalogues, test certificates, ISO certificates, list of previous clients, list of past performance certificate from the user and Purchaser or manufacturer profile for all new brands are submitted.
- 21 **Document Establishing the Qualification of Bidders**
- 21.1 The Bidder shall have the minimum level of financial capacity if so, specified in the BDS to qualify for supply of Goods and Related Services under the Contract.
- 21.2 The Bidder shall have following technical capacity and minimum level of experience to qualify for supply of Goods and Related Services under the Contract:
- a) the minimum number of years of experience in the supply of Goods and Related Services if so, specified in the BDS;



- b) specific experience in the Supply of similar Goods and related service if so, specified in the BDS; and
  - c) minimum production capacity or availability of equipment if so, specified in the BDS.
- 21.3 The documentary evidence of the Bidder's qualifications to perform the contract if its Bid is accepted shall establish to the Purchaser's satisfaction:
- a) that, if required by the BDS, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section III, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in Bhutan;
  - b) that, if required in the BDS, in the case of a Bidder not doing business within Bhutan, the Bidder is or will be (if awarded the Contract) represented by an agent/dealer in Bhutan equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications;
    - i) that, if permitted in the BDS, Bids submitted by a Joint Venture/Consortium (JV/C) of two or more firms as partners comply with the following requirements:
    - ii) the Bid is signed so as to be legally binding on all partners;
    - iii) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
    - iv) one of the partners is nominated as the lead partner of the JV/C, authorized to incur liabilities, and to receive instructions for and on behalf of any and all partners of the JV/C;
    - v) the execution of the entire Contract, including payment, shall be done exclusively with the lead partner; and
  - c) a copy of the JV/C Agreement entered into by the partners is submitted with the Bid; or a Letter of Intent to execute a JV/C Agreement in the event of a successful Bid is signed by all partners and submitted with the Bid, together with a copy of the proposed Agreement.

**22 Format and Signing of Bids**

22.1 The Bidder shall prepare ONE Original document comprising the Bid as described in ITB Clause 12 and clearly mark it "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number specified in the BDS and clearly mark them "COPY". In the event of any discrepancy between the Original and the Copies, the Original shall prevail.



- 22.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder.
- 22.3 Any interlineations, erasures or overwriting shall be valid only if they are signed or initialed by the authorized person signing the Bid.

#### D SUBMISSION OF BIDS

- 23 Submission of Bid** 23.1 The Bidder shall submit the Bid Submission Form using the form furnished in Section III. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 23.2 A bid in which the Bid Submission Form is not duly filled, signed and sealed by the Bidder shall be rejected.
- 24 Submission, Sealing and Marking of Bids** 24.1 Bids shall be delivered by hand, courier, registered post or electronic means. The Bidder shall seal the original of the Bid and the number of copies stipulated in the BDS, in separate inner envelopes contained within one outer envelope. All envelopes shall be sealed with adhesive or other sealant to prevent reopening.
- 24.2 The outer Envelope shall:
- a) be marked "CONFIDENTIAL";
  - b) be addressed to the Purchaser provided in the BDS;
  - c) bear the Tender name and number; and
  - d) provide a warning not to open before the time and date for Bid Opening.
- 24.3 Single-Stage Two Envelope Process:
- a) The inner Envelope - I shall contain:
    - (i) technical bids and be signed across their seals by the person authorized to sign the Bid on behalf of the Bidder;
    - (ii) Bid Security; and
    - (iii) be marked "ORIGINAL", "ALTERNATIVE" (if permitted) and "COPY".
  - b) The inner envelope - II shall contain:
    - (i) financial bids and be signed across their seals by the person authorized to sign Bid on behalf of the Bidder; and
    - (ii) be marked "ORIGINAL", "ALTERNATIVE" (if permitted) and "COPY".



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- 24.4 Where Bids are invited under the single stage single envelope, Technical Bid, Financial Bid and Bid Security shall be in one envelope.
- 24.5 In addition to the identification required in ITB Sub-Clause 24.2, the inner envelopes shall indicate the name and address of the Bidder, to enable the Bid to be returned unopened in case it is declared late pursuant to ITB Clause 26.
- 24.6 If the outer envelope is not sealed and marked as above, the Purchaser shall assume no responsibility for the misplacement or premature opening of the Bid.
- 24.7 In the Two-Stage Process, Bidders shall be advised to submit only the technical bids in the first stage. In the second stage, Bidders shall be requested to submit both their technical bids as modified and agreed with the Purchaser and the financial bids based on the modified technical bids simultaneously in two separate sealed envelopes.
- 24.8 When so specified in the BDS Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the procedures specified in the BDS.

**25 Deadline for Submission of Bids**

- 25.1 Bids shall be delivered by hand, courier, registered post or electronic means to the Purchaser at the address and no later than the date and time indicated in the BDS.
- 25.2 The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Documents in accordance with ITB Clause 9, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 25.3 In the event of the specified date for submission of Bids being declared a holiday for the Purchaser, the bids will be received up to the specified time on the next working day. Such postponement of the date will not have any impact on the other dates specified bidding document (Bid Validity and validity of Bid Security).

**26 Late Bids**

- 26.1 The Purchaser shall not consider any Bid that arrives after the deadline for submission of Bids. Any Bid received by the Purchaser after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

**27 Withdrawal, Substitution or Modification of Bids**

- 27.1 A Bidder may withdraw, substitute or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney). The corresponding substitution or modification of the Bid must accompany the respective written notice and must be:



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- a) submitted in accordance with ITB Clauses 23 and 25 in addition, the respective envelopes shall be clearly marked “WITHDRAWAL”, “SUBSTITUTION” or “MODIFICATION;” and
  - b) received by the Purchaser prior to the deadline prescribed for submission of Bids, in accordance with ITB Clause 25.
- 27.2 Bids requested to be withdrawn shall be returned unopened to the Bidders.
- 27.3 No Bid may be withdrawn, substituted or modified in the interval between the deadline for submission of Bids and the expiry of the period of Bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.
- 27.4 Withdrawal of a bid between the deadline for submission of bids and expiration of the period of bid validity specified as extended pursuant to Clause 17.1, may result in the forfeiture of the Bid Security pursuant to Clause 18. If the lowest or the lowest evaluated Bidder withdraws his bid between the periods specified in this clause, the bid security of the Bidder shall be forfeited.

## E BID OPENING AND EVALUATION

### 28 Bid Opening

- 28.1 The Purchaser shall conduct the Bid Opening in public, in the presence of Bidders designated representatives who choose to attend (not more than two representatives), and at the address, date and time specified in the BDS.
- a) Bidders, their representatives and other attendees at the Bid Opening shall not be permitted to approach any members of the Bid Opening Committee or any of the Purchaser employees.
  - b) First, envelopes marked “WITHDRAWAL” shall be read out and the envelope with the corresponding Bid shall not be opened, but shall be returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid Opening.
  - c) Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Bid being substituted which shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid Opening.
  - d) Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding



modification notice contains a valid authorization to request the modification and is read out at Bid Opening.

- e) All other envelopes shall be opened one at a time. The Bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, bid withdrawals, substitutions or modifications, the presence or absence of Bid Security, responses to any Bidding Documents addenda, and such other details as the Purchaser may consider appropriate shall be announced by the Purchaser at the Bid Opening.
  - f) No Bid shall be rejected at Bid Opening except for late Bids pursuant to ITB Clause 26, and Bid Security not in accordance with ITB 18.
  - g) Substitution Bids and modifications submitted pursuant to ITB Clause 27 that are not opened at Bid Opening shall not be considered for further evaluation.
  - h) The Bidders' representatives and attendees who are present shall be requested to sign the Record of Bid Opening. The omission of a Bidder's or other attendee's signature on the record shall not invalidate the contents and effect of the record.
- 28.2 In case of Single Stage Two Envelope Bid, Technical Bid shall only be opened on the bid opening date. The date for opening the Financial Bid shall be intimated to the Bidders whose Bid is found responsive in the techno-commercial evaluation.

## 29 Confidentiality

- 29.1 Information relating to the examination, evaluation, comparison of Bids, and recommendation of Contract Award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until publication of the Contract Award.
- 29.2 Any effort by a Bidder to influence the Purchaser in the examination, evaluation, comparison and post qualification of the Bids or Contract Award decisions may result in the rejection of its Bid.
- 29.3 Notwithstanding ITB Sub-Clause 29.2, from the time of Bid Opening to the time of Contract Award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.



- 30 Clarification of Bids**
- 30.1 To assist in the examination, evaluation, comparison of the Bids, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid such as discrepancies between the offered Guaranteed Technical Particulars and test value/drawings/relevant documents, any documentary evidences including type test report, past performance certificates, ISO certificates etc.
- 30.2 Any clarification submitted by a Bidder that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Bids, in accordance with ITB Clause 34. If a Bidder does not provide clarifications of its Bid by the date and time set by the Purchaser, the bid may be rejected.
- 31 Preliminary Examinations of Bids**
- 31.1 The Purchaser shall examine the Bids to confirm that all documents and information requested in ITB Clause 12 have been provided, and to determine the completeness of each document submitted.
- 31.2 The Purchaser shall confirm that the following documents and information have been provided in the Bid. If any of these documents or information is missing, the offer shall be rejected.
- a) Bid Submission Form, in accordance with ITB Sub-Clause 12.1(a);
  - b) Price Schedules, in accordance with ITB Sub-Clause 12.1 (a);
  - c) Bid Security, in accordance with ITB Clause 18.
- 31.3 No conditional offer(s) shall be allowed. A bid with conditional offers shall be rejected.
- 32 Examination of Techno-Commercial Bids**
- 32.1 The Purchaser shall examine the Bid to confirm that all terms and conditions specified in the BDS and the SCC have been accepted by the Bidder without any material deviation or reservation.
- 32.2 During the evaluation of bids, the following definitions shall apply:
- a) "Deviation" is a departure from the requirements specified in the Bidding Document. Any comments, remarks, observations and feedbacks will constitute as deviation and shall be indicated in the deviation sheet;
  - b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and



- c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 32.3 The Purchaser shall evaluate the technical aspects of the Bid submitted in accordance with ITB Clause 20, to confirm that all requirements specified in Schedule of Supplies, have been met without any material deviation or reservation.
- 32.4 If, after the examination of the terms and conditions and the technical evaluation, the Purchaser determines that the Bid is not substantially responsive in accordance with ITB Clause 34, the bid shall be rejected.
- 33 Responsiveness of Bids**
- 33.1 The Purchaser's determination of a Bid's responsiveness shall be based on the contents of the Bid itself, and is to determine which of the Bids received are responsive and thereafter to compare the responsive Bids against each other to select the lowest evaluated Bid.
- 33.2 A substantially responsive Bid is one that conforms to all the terms, conditions and technical specifications of the Bidding Documents without material deviation, reservation or omission. A material deviation, reservation or omission is one that:
- a) affects in any substantial way the scope, quality or performance of the Goods or Related Services required; or
  - b) limits in any substantial way inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the Contract; or
  - c) if rectified would affect unfairly the competitive position of other Bidders presenting responsive Bids.
- 33.3 If a Bid is not substantially responsive to the Bidding Documents, it shall be rejected by the Purchaser and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation or omission.
- 34 Nonconformities, Errors and Omissions**
- 34.1 Provided that a Bid is substantially responsive, the Purchaser may waive any non-conformities or omissions in the Bid that do not constitute a material deviation.
- 34.2 Provided that a Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.



34.3 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:

- a) If there is a discrepancy between the unit price and the line-item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line-item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line-item total as quoted shall govern and the unit price shall be corrected;
- b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to ITB Sub-Clauses 34.3 (a) and (b) above.

34.4 If the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be disqualified and its Bid Security shall be forfeited.

**35 Conversion to Single Currency**

35.1 For evaluation and comparison purposes, the Purchaser shall convert all Bid prices expressed in amounts in various currencies into a single currency based on the Telegraphic Transfer (TT) selling rate published by the Royal Monetary Authority of Bhutan on the day of bid opening.

**36 Detail Evaluation and Comparison of Bids**

36.1 The Purchaser shall evaluate each Bid that has been determined, up to this stage of the evaluation, to be substantially responsive.

36.2 To evaluate a Bid, the Purchaser shall only use the factors, methodologies and criteria defined in this ITB Clause 36. No other criteria or methodology shall be permitted.

36.3 To evaluate a Bid, the Purchaser shall consider the following:

- a) evaluation shall be done for Items wise or in Lots, as specified in the BDS;
- b) the Bid Price, as quoted in accordance with ITB Clause 14;
- c) price adjustment for correction of arithmetic errors in accordance with ITB Clause 34.3;
- d) price adjustment due to discounts offered in accordance with ITB Clause 14.4;
- e) adjustments due to the application of the evaluation criteria specified in the BDS; and
- f) adjustments due to the application of a margin of preference, in accordance with ITB Clause 38, if applicable.



- g) If required, the Purchaser may carry out the inspections of the Bidder's factories to assess the production and technical capacity of the Bidder to perform the Contract. The Purchaser shall notify in advance of the date in writing on which the inspection will be made.
- 36.4 The Purchaser's evaluation of a Bid shall exclude and not consider:
- a) in the case of Goods manufactured in Bhutan, sales and other similar taxes which will be payable on the Goods if the Contract is awarded to the Bidder;
  - b) in the case of Goods manufactured outside Bhutan, or to be imported, Customs duties and other import taxes levied on the imported Goods, sales and other similar taxes which will be payable on the Goods during the evaluation shall be considered. however, the same shall be borne by the purchaser subject to the Incoterms specified, if the Contract is awarded to the Bidder; and
  - c) any allowance for price adjustment during the period of execution of the Contract, if provided in the Bid.
- 36.5 The Purchaser's evaluation of a Bid may require the consideration of other factors in addition to the Bid Price quoted in accordance with ITB Clause 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Bids, the factors, criteria and the methodology of application shall be as specified in ITB Sub-Clause 36.3 (e).
- 36.6 If so, specified in the BDS, these Bidding Documents shall allow Bidders to quote separate prices for one or more lots, and shall allow the Purchaser to award one or multiple lots to more than one Bidder. The methodology of evaluation to determine the lowest evaluated lot combinations is specified BDS.
- 36.7 The Purchaser shall compare all substantially responsive Bids to determine the lowest evaluated Bid, in accordance with ITB Sub-Clause 33.

**37 Abnormally High/Low Bids**

- 37.1 An abnormally low bid is one where the bid price, in combination with other elements of the bid appears to be so low that it raises concerns as to the capability of the Bidders to perform the contract for the offered bid price.



- 37.2 When the prices in a particular bid appear abnormally low or seriously unbalanced, the Purchaser shall revisit/ review its own estimated value. Based on the revised value, decision shall be taken to reject/ accept the abnormally low or high bids. The Procuring Agency /TEC shall seek written clarifications from the Bidder including detailed price analysis of its bid price in relation to the subject matter of the contract and any other requirements of the request for Bidding Documents.
- 37.3 If the Purchaser decides to accept the abnormally low bid after considering the above, the Bidder shall be required to provide additional differential security equivalent to the difference between the estimated amount and the quoted price in addition to the performance security, to a maximum of 10% of the quoted amount in the form of BG/DD enforceable in any Bank of Bhutan. The Differential security shall be retained till the completion of the supplies.
- 37.4 If the prices of all the received bids are abnormally high then the Purchaser may negotiate with the lowest evaluated Bidder after approval of the Competent Authority. In case the negotiation fails, all bids may be rejected.

**38 Margin of Preference**

- 38.1 A margin of preference may apply to domestic Goods manufactured in Bhutan as provided for in the BDS. To avail a margin of preference, the Bidder shall provide a value addition certificate from the Ministry of Economic Affairs.

**39 Purchaser's Right to vary Quantities**

- 39.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified Schedule of Supply, provided this does not exceed 25% of the total quantity of the item without any change in the unit prices or other terms and conditions of the Bid and the Bidding Documents.

**F AWARD OF CONTRACT**

**40 Award Criteria**

- 40.1 The Purchaser shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

**41 Purchaser's Right to Accept or Reject Bids**

- 41.1 The Purchaser reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to Bidders.



**42 Notification of Award**

- 42.1 Prior to expiry of the period of Bid validity, the Purchaser shall notify the successful Bidder, in writing, that its Bid has been accepted and may publish a Notification of Award on the Purchaser's website or relevant website.
- 42.2 Until a formal Contract is prepared and executed, the Notification of Award shall constitute a binding Contract.
- 42.3 Upon the successful Bidder furnishing the signed Contract Form and the Performance Security pursuant to ITB Clause 43. The Purchaser shall promptly notify each unsuccessful Bidder and discharge its Bid Security, pursuant to ITB Sub-Clause 18.
- 42.4 After the issuance of Notification of Award, unsuccessful Bidders within three (3) days may request in writing to the Purchaser for a debriefing seeking explanations of the grounds on which their Bids were not selected. Where a request for debriefing has been received within the deadline, the Purchaser shall provide debriefing within five (5) days in writing to any unsuccessful Bidder.

**43 Performance Security**

- 43.1 Within the time period specified in the BDS, on receipt of Notification of Award from the Purchaser, the Bidder shall submit the Performance Security in accordance with the GCC 3.3.2, using any of the following forms:
- 43.2 Unconditional bank guarantee in the form provided for in Section VI, Contract Forms, or another form acceptable to the Purchaser, or
- a) Banker's certified cheque/cash warrant, or
  - b) Demand draft, or
  - c) Cash deposit through Bank transfer only in case of exceptional circumstances in the Purchaser's bank account.
  - d) If the Performance Security is provided by the successful Bidder in the form of a bank guarantee issued by any Financial Institution enforceable in any Banks in Bhutan.
- 43.3 Failure by the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily. Such a failure shall be considered as "withdrawal" and all relevant clauses shall apply.



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**44 Signing of Contract**

- 44.1 At the same time as notifying the successful Bidder in writing through NoA that its Bid has been accepted, the Purchaser shall invite the successful Bidder for signing of Contract Agreement.
- 44.2 Within the time period specified in the BDS, on issuance of the NoA the successful Bidder are required to submit performance security and sign the Contract Agreement.
- 44.3 Where the Contract is not signed by both parties in person:
- a) The Purchaser shall send to the successful Bidder a duly signed copy comprising of complete Contract documents and the NoA. These documents shall be signed by the successful Bidder or its duly authorized representative, together with the date of signature, in order for the Contract to be effective;
  - b) The NoA shall indicate the deadline within which the successful Bidder shall sign these documents with the date of signature and return a copy to the Purchaser, in accordance with the mode of delivery including electronic mode (e.g., scanned copy with electronic signature, etc.) as may be specified by the Purchaser in the NoA;
  - c) The Contract shall become effective from the date of signing these documents;
  - d) Failure of the successful Bidder to accept the award/sign the contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.
- 44.4 Notwithstanding ITB Sub-Clause 43 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Purchaser, to Bhutan, or to the use of the products/Goods, systems or services to be supplied, where such export restrictions arise from trade regulations from a country supplying those Goods, systems or services, the Bidder shall not be bound by its Bid, always provided, however, that the Bidder can demonstrate to the satisfaction of the Purchaser that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and/or licenses necessary for the export of the Goods, systems or services under the terms of the Contract.

**45 Vendor Performance Management System**

- 45.1 The performance of the vendor shall be assessed as per the Vendor Performance Management System (VPMS) available in the Purchaser's website and relevant website for the purpose of assessing the performance of the supplier.







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**DrukGreen**

(a dhi company)

SECTION IV

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GENERAL CONDITIONS OF CONTRACT (GCC)



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## GENERAL CONDITIONS OF CONTRACT (GCC)

### 1 GENERAL PROVISIONS

#### 1.1 Definitions

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

- 1.1.1 **Affiliate** means business concerns, organizations, or individuals that control each other or that are controlled by a common third party. Control may include shared management or ownership; common use of facilities, equipment and resources; or family interests.
- 1.1.2 **Award of Contract** means the decision of the Purchaser to enter into a contract with a supplier for delivery of specified goods which has been conveyed to the contractor through a purchase order and/or signing of a contract.
- 1.1.3 **Bid** an offer to execute works in accordance with the terms and conditions set out in the bid documents inviting such offers. The term “tender” is synonymous with the term “bid”;
- 1.1.4 **BDS** means Bid Data Sheet
- 1.1.5 **Bidder** means an eligible individual or legal entity that participates in a competitive procurement process defined by this Manual.
- 1.1.6 **Bidding Documents** means the set of documents issued by the Purchaser to potential Bidders in which the specifications, terms and conditions of the proposed procurement are prescribed. The terms “bidding documents”, “tender documents” and “bid documents” are synonymous.
- 1.1.7 **Contract Documents** means the documents listed in the Contract Agreement, including any amendments thereto.
- 1.1.8 **Contract Price** means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions there from as may be made pursuant to the Contract till the completion of the Contract, the price so adjusted shall be termed as Executed Price.
- 1.1.9 **Purchaser** means the purchaser including its successors and permitted assigns. The term “Purchaser” and “Purchaser” are synonymous.
- 1.1.10 **Day** means calendar day.
- 1.1.11 **Delivery** means the transfer of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract Documents.
- 1.1.12 **GCC** means the General Conditions of Contract.



- 1.1.13 **Goods** means any object in solid, liquid or gaseous form, tangible and intangible that has an economic utility or value, which can be exchanged or traded along with related service.
- 1.1.14 **ITB** means Instructions to Bidders
- 1.1.15 **Notification of Award** means the letter issued by The Purchaser conveying the acceptance of the Bid of the successful Bidder subject to such terms and conditions as may have been stated therein.
- 1.1.16 **Party** means the Purchaser or the Supplier, as the context requires, and “parties” means both of them.
- 1.1.17 **Price schedule:** summary of the quantities, measurement unit and unit prices of the items to be procured under the contract. The term “Bill of Quantities” is synonymous.
- 1.1.18 **Final Destination** means the place named in the SCC.
- 1.1.19 **Purchaser** means The Purchaser (specified in SCC.)
- 1.1.20 **Related Services** means Includes services such as installations, supervision, training, initial maintenance, insurance, testing and commissioning related to the Goods.
- 1.1.21 **SCC** means the Special Conditions of Contract.
- 1.1.22 **Subcontractor** means any natural person, private or government entity, or a combination thereof, including its legal successors and 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.
- 1.1.23 **Supplier** a legal entity entering into a contract with the Purchaser for the supply of Goods.
- 1.1.24 **Technical Specifications** means specifications of the Goods incorporated in the bidding documents and forming part of the contract and includes any modification or amendment thereto or any addition thereto or any deduction there from, as may be made with the mutual agreement of the Purchaser and Supplier.

**1.2 Contract Documents**

- 1.2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract Agreement shall be read as a whole.

**1.3 Interpretation**

- 1.3.1 If the context so requires it, singular means plural and vice versa.
- 1.3.2 A “law” shall be construed as a reference to such law including its amendments or re-enactments from time to time.
- 1.3.3 A “person” shall be construed as a reference to any person, firm, Purchaser, corporation, society, trust, government, or agency of a government or any association or partnership



(whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests.

1.3.4 The words “hereof” or “herein” if and when used in the Contract Documents shall mean a reference to the Contract Documents of this Contract.

1.3.5 Incoterms:

- a) Unless inconsistent with any provision of the Contract or otherwise specified in the SCC, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by Incoterms.
- b) The terms EXW, CIF, CIP, DAP, DDP and other similar terms as specified in SCC, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the SCC and published by the International Chamber of Commerce in Paris, France.

1.3.6 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.

1.3.7 Non-waiver:

- a) Subject to GCC 1.3.7.b) below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the 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.
- b) 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.

1.3.8 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.

1.3.9 Entire Agreement: The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements of the parties with respect thereto made prior to the date of Contract.





## 1.4 Fraud and Corruption

1.4.1 If the Purchaser determines that the Supplier has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing the Contract then the Purchaser may, after giving fourteen (14) days' notice to the Supplier, terminate the Supplier's employment under the Contract and cancel the Contract, and the provisions of GCC 10.1 shall apply as if such termination has been made under GCC 10.1.1.

1.4.2 For the purposes of this Sub-Clause:

- a) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value" to influence improperly the actions of another party;
- b) "fraudulent practice" is any intentional act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- c) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- d) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a Party;
- e) "obstructive practice" is
  - i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order materially to impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - ii) acts intended materially to impede the exercise of the inspection and audit rights of the Purchaser and/or any other relevant RGoB agency provided for under GCC 5.1.

1.4.3 Should any employee of the Supplier be determined to have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice during the purchase of the Goods, then that employee shall be removed.



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

**1.5 Language**

1.5.1 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, the translation shall govern.

1.5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

**1.6 Joint Venture/  
Consortium**

1.6.1 If the Supplier is a Joint Venture/Consortium (JV/C), all of the parties shall be jointly and severally liable to the Purchaser for the fulfilment of the provisions of the Contract and shall designate one party to act as a lead with authority to bind the (JV/C). The composition or the constitution of the joint venture, consortium shall not be altered without the prior consent of the Purchaser.

**1.7 Notices**

1.7.1 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, including electronic communication.

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

**1.8 Governing Law**

1.8.1 The Contract shall be governed by and interpreted in accordance with the laws of Bhutan.

**1.9 Assignment**

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

**1.10 Eligibility**

1.10.1 The Supplier and its sub-contractors shall have the nationality of an eligible country. A Supplier and its sub-contractors 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.

1.10.2 All Goods and Related Services to be supplied under the Contract 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 components.



**1.11 Export  
Restriction**

1.11.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to Bhutan, or to the use of the products/Goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/Goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/Goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to GCC 10.1.3.

**2 THE PURCHASER**

**2.1 Purchaser's  
Responsibilities**

2.1.1 Whenever, the supply of Goods and Related Services requires that the Supplier obtain permits, approvals and/or import and other licenses or similar permissions from Bhutanese public authorities, the Purchaser shall, if so, required by the Supplier, use its best efforts to assist the Supplier in complying with such requirements in a timely and expeditious manner, but without incurring any costs.

**3 THE SUPPLIER**

**3.1 Supplier's  
Responsibilities**

3.1.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supplies in accordance with GCC 4.1, and the delivery and completion requirements as per GCC 6.1.

**3.2 Performance  
Security**

3.2.1 The Supplier shall, provide a Performance Security for the due performance of the Contract in the amount and currency specified in the SCC.

3.2.2 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.

3.2.3 The Performance Security shall be denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to the Purchaser, shall be valid until the successful completion of the Supplier's performance obligations under the Contract, including any warranty obligations, and shall be in one of the forms stipulated by the Purchaser in the SCC.

3.2.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier on completion of the



Supplier's performance obligations under the Contract, including any warranty obligations.

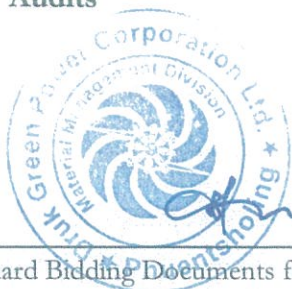
- 3.3 Subcontracting** 3.3.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Such notification, in the original Bid or later, shall not relieve the Supplier of any of its obligations, duties, responsibilities or liabilities under the Contract. Subcontracts shall comply with the provisions of GCC 1.4 and GCC 1.10.

#### **4 SCOPE OF SUPPLIES**

- 4.1 Scope of Supplies** of 4.1.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Supply.
- 4.1.2 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 of the Goods and completion of the Related Services as if such items were expressly mentioned in the Contract.
- 4.2 Specification and Standards** 4.2.1 Technical Specifications and Drawings:
- a) the Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards stipulated in Schedule of Supply 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.
- b) 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.
- 4.2.2 Wherever, references are made in the Contract to codes and standards in accordance with which it shall be executed, the editions or the revised versions of such codes and standards shall be those specified in the Schedule of Supply. 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 8.1.

#### **5 TESTS AND INSPECTIONS**

- 5.1 Inspection and Audits** 5.1.1 The Supplier shall permit the Purchaser and/or persons appointed by the Purchaser to inspect the Supplier's offices and/or the accounts and records of the Supplier and its Subcontractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Purchaser if so, required by the Purchaser.



The Supplier's attention is drawn to GCC 1.4, which provides, inter alia, that acts intended materially to impede the exercise of the inspection and audit rights provided for under this GCC 5.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under ITB Sub-Clause 2.1.c) of the Instructions to Bidders that preceded the placement of the Contract of which these GCCs form a part).

## 5.2 Tests and Inspections

- 5.2.1 At its own expense and at no cost to the Purchaser, the Supplier shall carry out all such tests and/or inspections of the Goods and Related Services as are specified in the SCC. The purchaser or its representative shall have the right to inspect and / or to test the Goods to confirm their conformity to the specifications.
- 5.2.2 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 Bhutan as specified in the SCC. Subject to GCC 5.2.3, 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.
- 5.2.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC 5.2.2, provided that the Purchaser bears all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.
- 5.2.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give 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.
- 5.2.5 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. 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.
- 5.2.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.



- 5.2.7 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 5.2.4.
- 5.2.8 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 5.2.6 shall release the Supplier from any warranties or other obligations under the Contract.

## 6 COMMENCEMENT, DELAYS AND SUSPENSIONS

- 6.1 Delivery and Documents**
- 6.1.1 Subject to GCC 8.1, the delivery of the Goods and completion of the Related Services shall be in accordance with the delivery and completion requirements specified in the Schedule of Supply. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.
- 6.2 Extension of Time**
- 6.2.1 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 6.1, the Supplier shall promptly notify the Purchaser in writing of the delay, the likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may 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.
- 6.2.2 Except in case of Force Majeure, as provided under GCC 12, 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 6.3, unless an extension of time is agreed upon, pursuant to GCC 6.2.
- 6.3 Liquidated Damage**
- 6.3.1 Except as provided for under GCC 12, if the Supplier fails to deliver any or all of the Goods by the date(s) of delivery or fails to 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 delivered price of the delayed Goods or unperformed Services for each day or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is



reached, the Purchaser may terminate the Contract pursuant to GCC 10.

## 7 WARRANTY

### 7.1 Warranty

- 7.1.1 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.
- 7.1.2 Subject to GCC 4.2.1.b), 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 Bhutan.
- 7.1.3 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months or 18 months from the day of supply or from the date of putting the item into use as the case may be.
- 7.1.4 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.
- 7.1.5 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.

## 8 VARIATION AND ADJUSTMENTS

### 8.1 Change Orders and Contract Amendments

- 8.1.1 The Purchaser may at any time order the Supplier through notice in accordance with GCC 1.7 to make changes within the general scope of the Contract in any one or more of the following:
- a) drawings, designs or specifications, where Goods to be furnished under the Contract is to be specifically manufactured for the Purchaser;
  - b) the method of shipment or packing; the place of delivery; and the Related Services to be provided by the Supplier.
- 8.1.2 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 thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.



- 8.1.3 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.
- 8.1.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment by the parties.
- 8.2 Change in Laws and Regulations**
- 8.2.1 If, after thirty (30) days prior to the date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated or changed in Bhutan (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery/Completion Schedule and/or the Contract Price, then such Delivery/Completion Schedule 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 9.1.



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## 9 CONTRACT PRICE AND PAYMENT

### 9.1 Contract Price

- 9.1.1 The Contract Price shall be the price payable to the Supplier as specified in the Contract Agreement subject to any additions and adjustments thereto or deductions there from as may be made pursuant to the Contract.
- a) Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Bid, with the exception of any price adjustments authorized in the SCC.

### 9.2 Terms of Payment

- 9.2.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.
- 9.2.2 The Supplier shall submit to the Purchaser, the invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC 6.1 and upon fulfilment of all the obligations stipulated in the Contract.
- 9.2.3 Payments shall be made promptly by the Purchaser, no later than thirty (30) days after the submission of verified invoice or request for payment by the Supplier, and the Purchaser has accepted it.
- 9.2.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Bid Price is expressed.

### 9.3 Taxes and Duties

- 9.3.1 For Goods manufactured outside Bhutan, the Supplier shall bear and pay all applicable taxes, stamp duties, license fees and other similar levies imposed outside Bhutan as applicable in line with the Incoterms. Any domestic taxes, duties and any other levies imposed on import of goods in Bhutan, except TDS shall be borne and paid by Purchaser.
- 9.3.2 For Goods manufactured or supplied by the Suppliers from the Kingdom of Bhutan, the Supplier shall bear all applicable taxes, duties, license fees and other similar levies incurred until delivery of the contracted Goods to the Place of Delivery.
- 9.3.3 Bidders participating from India and supplying materials and services from within India for bonafide use in the Kingdom of Bhutan shall quote the rates for the items in the Price Schedule exclusive of any effect of Indian Goods and Service Tax (IGST). The IGST on the export of goods and services or both are covered under Zero Rated Supply as per Chapter VII, 16(1) of the INTEGRATED GOODS AND SERVICES TAX ACT, 2017 of India.
- 9.3.4 At the time of release of payment, Tax Deducted at Source (TDS) from Bhutanese Bidders and International Bidders shall be as specified in the SCC from the gross amount of bills.



The Purchaser shall furnish necessary TDS Certificate to the Bidders, issued by the Purchaser.

- 9.3.5 If any tax exemptions, reductions, allowances or privileges are available to the Supplier in the Kingdom of Bhutan, if applicable, the Purchaser shall use its best endeavors to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

## 10 TERMINATION

### 10.1 Terminations

#### 10.1.1 Termination for Default:

- a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
- i) 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 6.2; or
  - ii) if the Supplier fails to perform any other obligation under the Contract; or
  - iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC 1.4, in competing for or in executing the Contract.
- b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC 10.1.1.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. Wherever the Contract is terminated in part, the Supplier shall continue performance of the Contract to the extent not terminated.

#### 10.1.2 Termination for Insolvency:

- a) 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 shall be without compensation to the Supplier, provided that such termination shall not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

#### 10.1.3 Termination for Convenience.

- a) 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 performance of the Supplier under the



Contract is terminated, and the date upon which such termination becomes effective.

b) 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:

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

10.1.4 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.

## 11 RISKS AND RESPONSIBILITY

### 11.1 Copyright

11.1.1 The copyright in all drawings, documents and other materials containing data and information furnished to the Purchaser by the Supplier 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.

### 11.2 Confidential Information

11.2.1 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 Sub-contractors such documents, data and other information as it receives from the Purchaser to the extent required for the Sub-contractor to perform its obligations under the Contract, in which event the Supplier shall be under obligation to have a clause in the contracts with their sub-contractors regarding confidentiality similar to that provided herein.

11.2.2 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 of plant and equipment, construction or such other work and services as are required for the performance of the Contract.

11.2.3 The obligation of a Party under GCC 11.2.1 and 11.2.2 above, however, shall not apply to information that:



- a) the Purchaser or the Supplier needs to share with the RGoB;
- b) is already in public domain now, or enters the public domain during the execution of the contract through no fault of that Party;
- c) 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
- d) otherwise lawfully becomes available to that Party from a third party that has no obligation of confidentiality.

11.2.4 The above provisions of GCC 11.2 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 performance of the Contract or any part thereof.

11.2.5 The provisions of GCC 11.2 shall survive completion or termination, for whatever reason, of the Contract.

**11.3 Patent Indemnity**

11.3.1 The Supplier shall, subject to the Purchaser's compliance with GCC 11.3.2, 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:

- a) the installation of the Goods by the Supplier or the use of the Goods in Bhutan; and
- b) the sale in any country of the products produced by the Facilities.

11.3.2 Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or reasonably to be 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.

11.3.3 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC 11.3.1, the Purchaser shall promptly give the Supplier 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 claims.

11.3.4 If the Supplier fails to notify the Purchaser within thirty (30) days after receipt of such notice that it intends to conduct any



such proceedings or claims, then the Purchaser shall be free to conduct the same on its own behalf.

- 11.3.5 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claims, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 11.3.6 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.

#### 11.4 Limitation of Liability

- 11.4.1 Except in cases of gross negligence or willful misconduct:
- a) neither party shall be liable to the other party, 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;
  - b) and 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.

## 12 FORCE MAJEURE

### 12.1 Force Majeure

12.1.1 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 delays in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

12.1.2 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 war, civil insurrection, fire, floods, epidemics, earthquakes, quarantine restrictions and freight embargoes.

12.1.3 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.

### 13 TRANSPORTATION

- 13.1 Transportation** 13.1.1 Unless otherwise specified in the SCC, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.
- 13.2 Packing and Documents** 13.2.1 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 sizes and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- 13.2.2 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.

### 14 INSURANCE

- 14.1 Insurance** 14.1.1 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.

### 15 DISPUTES AND ARBITRATION

- 15.1 Settlement of Dispute** 15.1.1 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.
- 15.1.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute. No arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of



intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the below and method of proceedings shall be as specified in SCC.

a) Contract with an International Supplier:

- i) Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force; Or
- ii) All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules; Or
- iii) Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

b) Contract with a Bhutanese Supplier:

- i) In the case of a dispute between the Purchaser and a Bhutanese Supplier, the dispute shall be referred to adjudication or arbitration in accordance with Alternative Dispute Resolution Act of Bhutan 2013.

15.1.3 Notwithstanding any reference to arbitration herein,

- a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- b) the Purchaser shall pay the Supplier any monies payable to the Supplier.



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