

CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In this Contract, the following terms shall be interpreted as indicated:

a) "The Contract" means the agreement entered into between the

Procuring Entity and the Supplier, as signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

b) "The Contract Price" means the price payable to the Suppliers under the Contract for the full and proper performance of its contractual obligations.

c) "The Goods" means all of the materials which the Supplier is required to supply to the Procuring Entity under the Contract.

d) "The Services" Means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.

e) "The Procuring Entity" means Fincorp

f) "The Supplier" means the individual or firm supplying the Goods under this Contract.

2. APPLICATION

2.2 These Contract Terms and Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.

3. STANDARDS

1.1 The Goods supplied under this Contract shall be new, unused and of the latest design and must conform to the highest standards and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the concerned institution.

4. USE OF CONTRACT DOCUMENTS AND INFORMATION

- 4.1 The Supplier shall not, without the Procuring Entity's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so as may be necessary for purposes of such performance.
- 4.2 The Supplier shall not, without the Procuring Entity's prior written consent, make use of any document or information enumerated in Clause 4.1 except for purposes of performing the Contract.
- 4.3 Any document, other than the Contract itself, enumerated in Clause 4.1 shall remain the property of the Procuring Entity and shall be returned (in all copies) to the Procuring Entity on completion of the Supplier's performance under the Contract if so required by the Procuring Entity.

5. PATENT RIGHTS

- 5.1 The Supplier shall indemnify and hold harmless the Procuring Entity against all third-party claims of infringement of patent, trademark, industrial design, or intellectual property rights arising from use of the Goods or any part thereof.

6. PACKING

- 6.1 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. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- 6.2 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 any subsequent instructions given by the Procuring Entity.

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7. DELIVERY AND DOCUMENTS

7.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier shall be specified in the Contract.

8. INSURANCE

8.1 The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Contract.

9. TRANSPORTATION

9.1 Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named 16 by the Procuring Entity or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

9.2 Where the Supplier is required under the Contract to deliver the Goods CIP, transport of the Goods to the port of destination or such other named place of destination in Swaziland, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

9.3 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within Swaziland, defined as the Project Site, transport to such place of destination in Swaziland, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and the related costs shall be included in the Contract Price.

10. WARRANTY

10.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models and that incorporate all recent improvements in design materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Procuring Entity's specifications) or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in Swaziland.

10.2 This warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, or for eighteen

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(18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in the Special Conditions of Contract.

10.3 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.

10.4 Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Procuring Entity.

10.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in the Special Conditions of Contract, the Procuring Entity may proceed to take such remedial action as may be necessary at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under Contract.

11. PAYMENT

11.1 The method and conditions of payment to be made to the Supplier under this Contract shall be specified in the Contract document.

11.2 The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and upon fulfilment of other obligations stipulated in the Contract.

11.3 Payment shall be made promptly by the Procuring Entity, but in no case later than thirty (30) days after submission of an invoice or claim by the Supplier unless otherwise stated in the Contract.

12. PRICES

12.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its tender.

12.2 All such prices shall be valid and fixed for a period of one (1) year.

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13. CHANGE ORDERS

13.1 The Procuring Entity may at any time, by a written order given to the Supplier, 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 are to be specifically manufactured for the Procuring Entity.
- b) the method of shipment or packing;
- c) the place of delivery; and/or
- d) the Services to be provided by the Supplier.

13.2 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 delivery 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 Procuring Entity's change order.

14. CONTRACT AMENDMENTS

14.1 Subject to Clause 13, no variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties.

15. ASSIGNMENT

15.1 The Supplier may not assign, in whole or in part, its obligation to perform under this Contract except with the Procuring Entity's prior written consent.

16. SUBCONTRACTS

16.1 The supplier may not enter into any subcontract for performance hereunder unless the Procuring Entity shall have previously consented in writing to such consent or in the Contract, relieve the Supplier from any liability or obligation under the Contract.

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17. DELAYS IN THE SUPPLIER'S PERFORMANCE

17.1 Delivery of the goods and performance of services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity.

17.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and Performance of Services, the supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of Suppliers' notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time of performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the contract.

17.3 Except as provided under Clause 24, a delay by the Supplier in the Performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to Clause 18, unless an extension of time is agreed upon pursuant to Clause 17.2 without the application of liquidated damages.

18. LIQUIDATED DAMAGES

18.1 Subject to Clause 17, if the Supplier fails to deliver any or all of the Goods or perform the services within the period(s) specified in the contract, the Procuring Entity shall, without prejudice to its other remedies under the Contract, deduct from the contract price, as liquidated damages, a sum equivalent to the 20% (percent) of the delivery price of the delayed goods or unperformed services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of 60% (percent). Once the maximum is reached, the Procuring Entity may consider termination of Contract.

19. TERMINATION FOR DEFAULT

19.1 The Procuring entity without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this contract in whole or in part:

- a) 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 procuring entity pursuant to Clause 17; or
- b) If the supplier fails to perform any other obligation(s) under the contract.

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19.2 In the event the Procuring entity terminates the contract in whole or in part, pursuant to clause 18.1, the Procuring Entity may procure, upon such terms and in manner as it deems appropriate, goods or services similar to those undelivered, and the supplier shall be liable to the procuring Entity for any excess cost for such similar goods or services. However, the supplier shall continue performance of the contract to the extent not terminated.

20. FORCE MAJEURE

20.1 Notwithstanding the provision of Clause 17, 18 and 19, the supplier shall not be liable for liquidated damages or termination for default if and to the extent that it's delay in performance or other failure to perform its obligation under the contract is the result of Force Majeure.

20.2 For purposes of this Clause, "Force Majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include but are not restricted to, acts of Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

20.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligation 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.

21. TERMINATION FOR INSOLVENCY

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

22. RESOLUTION OF DISPUTES

22.1 The Procuring entity and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement, disputes, or claim arising out of or in connection with the contract or the breach, termination, or validity thereof.

22.2 If, after thirty (30) days from the commencement of such informal negotiations, the Procuring Entity and the Supplier have failed to negotiate such an amicable settlement, any dispute,

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controversy, or claim arising out of or in connection with this contract, or the breach, termination, or validity thereof, either party may require that the dispute be referred for resolution by final and binding arbitration.

22.3 The arbitrator shall determine the matters in dispute in accordance with the laws in effect in Eswatini.

22.4 All notices to be given in connection with the arbitration shall be in writing and shall be effective upon receipt.

23. APPLICABLE LAW

23.1 The contract shall be interpreted in accordance with the laws and regulations in effect in the Kingdom of Eswatini.

24. NOTICES

24.1 Any notice given by one party to the other pursuant to this contract shall be sent to the other party in writing by personal delivery, mail, or e-mail or facsimile and, if by e-mail or facsimile, confirmed in writing to the other party's address specified in the special conditions of contract. Each party may change such address by notice to the other party.

25. TAXES AND DUTIES

25.1 The Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies incurred or imposed until delivery of the contracted Goods to the Procuring Entity.

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ANNEXURE 1: BID SUBMISSION FORM

[Note to Tenderers: This Bid Submission Form should be on the letterhead of the Company and should be signed by a person with the proper authority to sign documents that are binding on the entity.

It should be included by the tenderer with the submitted tender.]

[>>>Date>>>]

Procurement Reference No: [>>>insert Tender number>>>]

To: **The Chairperson
FINCORP Tender Committee
P.O. Box 6099
Mbabane**

Dear Sirs:

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tendering Document;
- (b) We offer to supply in conformity with the Tendering Document and in accordance with the response times specified in the Tender Document;
- (c) We understand that any resulting contract will be a framework contract, with estimated quantities, and that you will not be bound to purchase any Supplies, with exception of any guaranteed minimum value;
- (d) Our tender shall be valid for a period of **ninety (90)** calendar days from the date fixed for the tender submission deadline in accordance with the Tendering Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (e) We do not have any conflict of interest and have not participated in the preparation of the procurement requirements and specifications for the Client;
- (f) We, our affiliates or subsidiaries, including any subcontractors or Suppliers for any part of the contract, have not been suspended from participating in public procurement in accordance with the Public Procurement Act, 2011;
- (g) We understand that this tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (h) We understand that you are not bound to accept the lowest tender or any other tender that you may receive.

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Signed: [signature of person whose name and capacity are shown below]

Name: [insert complete name of person signing the tender]

In the capacity of [insert legal capacity of person signing the tender]

Duly authorised to sign the tender for and on behalf of: [insert complete name of Tenderer]

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

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ANNEXURE 2: DECLARATION OF ELIGIBILITY FORM

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

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

**To: The Chairperson
FINCORP Tender Committee
P.O. Box 6099
Mbabane**

Dear Sirs,

RE: Tender Reference: Tender for Supply of Calendars, desk calendars, diaries and notebooks

We hereby declare that:-

- 1. We, including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract;
- 2. We are not insolvent, in receivership, bankrupt or being would up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended, and we are not the subject of legal proceedings for any of the foregoing;
- 3. We have fulfilled our obligations to pay taxes and social security contributions;
- 4. We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings and
- 5. We do not have a conflict of interest in relation to the procurement requirement.

Signed

Authorised Representative

Date

PRICE SCHEDULE

ITEM#	DESCRIPTION	UNIT OF MEASURE	QUANTITY	UNIT PRICE	TOTAL AMOUNT
LOT1					
LOT2					
LOT3					

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CONDITIONS OF FRAMEWORK AGREEMENT
[to be completed after contract award decision]

SCC Clause Number	Clauses
Definitions	
1.	The Procuring Entity is: Eswatini Development Finance Corporation (FINCORP), P.O. Box 6099, Mbabane, Eswatini, H100
2.	The Supplier is:
Nature of Contract and Governing Language	
3.	Expiration of Contract: Upon delivery of all required quantities in good condition.
4.	The Governing Language shall be: English
Applicable Law	
5.	The Applicable Law shall be: Laws of the Kingdom of Eswatini
Modifications and Variation	
6.	FINCORP may vary the quantities of the required Items.
Warranty	
7.	The Supplier shall comply with the performance and/or consumption guarantees specified under the Contract.
Payment	
8.	Payment for Goods and Services shall be made in Emalangeni.
9.	The Supplier shall be paid within thirty (30) calendar days after the date of the acceptance of delivery of Goods and Services.

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Prices	
10.	Prices shall be fixed for a period of 12 months and can be adjusted by approval of FINCORP, in writing, in response to a written request submitted by the Supplier.
Procedures for Disputes	
11.	The Adjudicator shall be [<i>insert: name of the Adjudicator</i>]
12.	Rate of the Adjudicator fees shall be [<i>insert: rate</i>]
13.	Arbitration institution shall be [<i>insert: institution</i>] Place for carrying out Arbitration [<i>insert: full address of the place/location</i>]
14.	Appointing Authority for the Adjudicator [<i>insert: Authority</i>]
Notices	
15.	<p>FINCORP's address for notice purposes: The Group Managing Director Eswatini Development Finance Corporation P.O. Box 6099 2nd Floor, Intfutuko Building Corner of Gwamile and Dabede Street Mbabane</p> <p>Supplier's address for notice purposes:</p>

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