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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 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' 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.

## 7. SPARE PARTS

7.1 As specified in the Special Conditions of Contract, the Supplier may be required to provide any or all of the following materials, notifications, and information pertaining to the spare parts manufactured or distributed by the Supplier:

- (a) such spare parts, as the Procuring Entity, may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
- (b) in the event of termination of the production of the spare parts:

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- (i) advance notification to the Procuring Entity of the pending termination is done in sufficient time to permit the Procuring Entity to produce needed requirements; and
- (ii) following such termination, furnishing at no cost to the Procuring Entity, the blueprints, drawings, and specifications of the spare parts, if requested.

8. DELIVERY AND DOCUMENTS

- 8.1 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.
- 8.2 For purposes of the Contract, the trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of Incoterms published by the International Chamber of Commerce, Paris.

9. INSURANCE

- 9.1 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.

10. TRANSPORTATION

- 10.1 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 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.
- 10.2 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 Eswatini, 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.
- 10.3 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within Eswatini, defined as the Project Site, transport to such place of destination in Eswatini, 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.

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## 11. WARRANTY

- 11.1 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 and 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 Eswatini.
- 11.2 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 (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.
- 11.3 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 11.4 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.
- 11.5 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 the Contract.

## 12. PAYMENT

- 12.1 The method and conditions of payment to be made to the Supplier under this Contract shall be specified in the Contract document.
- 12.2 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.
- 12.3 Payments shall be made promptly by the Procuring Entity, but in no case later than thirty (30) days after submission

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of an invoice or claim by the Supplier unless otherwise stated in the Contract.

### 13. PRICES

13.1 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.

13.2 All such prices shall be valid and fixed for a period of one (01) year

### 14. DELAYS IN THE SUPPLIER'S PERFORMANCE

14.1 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.

14.2 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 the Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.

14.3 Except as provided under Clause 17, 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 19, unless an extension of time is agreed upon pursuant to Clause 14.2 without the application of liquidated damages.

### 15. TERMINATION FOR DEFAULT

15.1 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 the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to Clause 14.1; or

b) if the Supplier fails to perform any other obligation(s) under the Contract.

15.2 In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to Clause 15.1, the Procuring Entity may procure, upon such terms and in such manner

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as it deems appropriate, Goods or Services like those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

## 16. LIQUIDATED DAMAGES

- 16.1 Subject to GCC Clause 15, if the Supplier fails to deliver any or all of the Goods or fails to 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 percentage specified in the Special Conditions of Contract of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of the delay until the actual delivery or performance, up to a maximum deduction of the percentage specified in the Special Conditions of Contract. Once the maximum is reached, the Procuring Entity may consider termination of the Contract pursuant to GCC Clause 14.

## 17. FORCE MAJEURE

- 17.1 Notwithstanding the provisions of Clauses 14, 15 and 16, the Supplier shall not be liable for liquidated damages or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 17.2 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 the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 17.3 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 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.

## 18. APPLICABLE LAW

- 18.1 The Contract shall be interpreted in accordance with the laws and regulations in effect in The Kingdom of Eswatini.

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termination or validity thereof, either party may require that the dispute be referred for resolution by final and binding arbitration in accordance with UNCITRAL Arbitration Rules presently in force.

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

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

### 23. GOVERNING LANGUAGE

23.1 The Contract shall be written in English and this Tender Invitation has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in the same language.

### 24. PERFORMANCE SECURITY

24.1 Within fourteen (14) days of receipt of the notification of the Contract Award and before the contract signing, the successful Tenderer, otherwise referred herein as Supplier, shall furnish to the Procuring Entity the Performance Security in the amount and in the format specified in the Special Conditions of Contract.

24.2 The proceeds of the Performance Security shall be used as a recompense for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

24.3 The Performance Security shall be denominated in the currency of the Contract and shall be in one of the following forms:

(a) a bank guarantee issued by a reputable bank located in the Tenderer's country or abroad, acceptable to the Procuring Entity; or

(b) an insurance company bond from a reputable Insurance Company acceptable to the Procuring Entity

24.4 Once delivery of the requirements has been completed, the Supplier may apply to have the Performance Security reduced to 1% (one percent) to cover the period of the warranty obligations.

24.5 The Performance Security will be discharged by the Procuring Entity and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract,

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including any warranty obligations, unless specified otherwise in the Special Conditions of Contract.

## 25. INSPECTION AND TESTS

- 25.1 The Procuring Entity's representative shall have the right to inspect and/or test the Goods for conformity with Contract Specifications at no extra cost to the Procuring Entity. The Special Conditions of Contract and the Technical Specifications shall specify the nature of inspection and tests the Procuring Entity requires to and where they are to be conducted. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the authorized representative for these purposes.
- 25.2 The inspections and tests may be conducted on the premises of the Supplier or Subcontractor's, at point of delivery, and/or at the Goods destination. If conducted on the premises of Supplier or its Subcontractor's, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.
- 25.3 Should any inspected or tested Goods fail to conform to the Specifications, the Procuring Entity may reject the Goods, and the Supplier shall either replace the rejected goods or make the necessary alterations to meet specification requirements at no cost to the Procuring Entity.
- 25.4 The Procuring Entity's right to inspect, test and, where necessary, reject the Goods after the Goods arrival in the Kingdom of Eswatini shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by the Procuring Entity or its representative prior to the Goods' shipment from the country of origin. No provision under Clause 7 of the GCC shall in any way release the Supplier from any warranty or other obligations under this Contract.
- 25.5 Where a sample is furnished by the Supplier, the Goods shall be equivalent thereto in every respect.

## 26. NOTICES

- 25.1 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.

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

## SECTION NINE – SPECIAL CONDITIONS OF CONTRACT

GCC Clause No	GCC Subject	Special Conditions
1.1 (e)	Name and Address of the Procuring Entity	<p><b><u>Procuring Entity:</u></b></p> <p>Client Name: National Disaster Management Agency (NDMA)</p> <p>Address : P. O. Box 8909, Mbabane, Eswatini</p> <p>Phone No. : +268 2409 5500</p> <p>Contact Person: Mduduzi Ngcamphalala</p>
8.	<b>Delivery and Documents</b>	
8.1	Delivery of Goods	Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements
8.2	Documentation to be delivered by the Supplier	Delivery documents are normally: Delivery Notes and Certificate of Acceptance by the end-user, depending on the nature of the supply. Often, the invoice is also part of the delivery documents
9.	Insurance	
9.1	Insurance	Goods must be fully insured. The Insurance shall be in an amount equal to 110% of the CIP value of the goods from “warehouse” to “warehouse” on All risk's basis, including War Risks and Strikes.
12	Payment	
12.1	The Method and conditions of payment	Payments shall be made promptly by the Procuring Entity, but in no case later than 30 days after submission of an invoice or claim by the Supplier accompanied by a letter of satisfactory inspection from the Official at the Delivery Point
16	Liquidated Damages	

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16.1	Liquidated Damages	Liquidated damages will apply to any delayed portion of the contract and will be a deduction of payment equivalent to half of one percent (0.5%) of the delayed portion per week of delay up to a maximum of 10% (Ten Percent)
24	Performance Security	Performance Security is required
24.1	The Amount of the Performance Security	The Performance Security shall be 5% (five percent) of the contract value depending on the risk involved. The Performance Security shall be provided in the form stated in the General Conditions of Contract and shall be valid for the period of the Contract including warranty obligations.  Once delivery has been completed the Supplier may apply to have the Performance Security reduced to 1% to cover the period of warranty obligations.
24.3	The Format of the Performance Security	The Performance Security shall be provided in the form: <ul style="list-style-type: none"> <li>➤ A bank guarantee issued by a reputable bank located in the Tenderer's country or abroad, acceptable to the Procuring Entity, in the form provided in the Invitation to Tender documents or another form acceptable to the Procuring Entity; or</li> <li>➤ An insurance Company Bond from a reputable Insurance Company acceptable to the Procuring Entity</li> </ul>
25	Inspection and Tests	Will be carried out at Supplier's Premises
25.1	Site Inspection	Site Inspection shall be as follows: <ul style="list-style-type: none"> <li>➤ Site inspection will be conducted by Project Manager and Procurement Officers before delivery.</li> <li>➤ On completion on confirmation of availability of building material.</li> </ul>
25.2	Place of Final Inspection	NDMA Warehouse Matsapha
26	<b>Notices:</b>	
26.1	Procuring Entity's address for notice purposes:	<i>Will be completed when contract is awarded</i>

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	Supplier's address for notice purposes:	<i>Will be completed when contract is awarded</i>
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