

# **ELECTRICITY SUPPLY CORPORATION OF MALAWI (ESCOM) LIMITED**



**NAME OF CONTRACT:** Supply and Delivery of Mechanical Pullers

**PROJECT NAME:** Malawi Emergency Power Restoration Project

**PROJECT ID:** P178914

**CONTRACT NO:** MW-ESCOM-31911-GO-RFQ

**between**

**ELECTRICITY SUPPLY CORPORATION OF MALAWI (ESCOM) LIMITED**

**and**

**TROPICAL PRODUCTS LIMITED IN JOINT VENTURE WITH NINGBO MARSHINE POWER  
TECHNOLOGY COMPANY LIMITED**

**FEBRUARY, 2023**

## Contract Agreement

THIS AGREEMENT made the ..... day of February, 2023.

BETWEEN

- (1) ***Electricity Supply Corporation of Malawi (ESCOM) Limited*** a corporation incorporated under the laws of Malawi and having its principal place of business at ESCOM House, Annexe Building, 9 Haile Selassie Street, P.O. Box 2047, Blantyre, Malawi (hereinafter called "the Purchaser"), of the one part, and
- (2) ***Tropical Products Limited in Joint Venture with Ningbo Marshine Power Technology Co Limited***, a corporation incorporated under the laws of Malawi and China and having its principal place of business at Private Bag 59, Lilongwe, Malawi (hereinafter called "the Supplier"), of the other part:

WHEREAS the Purchaser invited quotations for certain Goods and ancillary services, vis; Supply and Delivery of Two (2No) Mechanical Puller and has accepted a quotation by the Supplier for the supply of those Goods and Services

The Purchaser and the Supplier agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (a) the Letter of Acceptance
  - (b) the Supplier's offer including specifications and prices
  - (c) Conditions of Contract
  - (d) the Purchaser's Requirements (including Schedule of Requirements and Technical Specifications)
  - (e) the completed Schedules (including Price Schedules)
  - (f) any other document listed as forming part of the Contract
3. In consideration of the payments to be made by the Purchaser to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Related Services if applicable and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Related Services if applicable and the remedying of defects therein, the Contract



IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Malawi on the day, month and year indicated above.

**For and on behalf of the Purchaser:**



Signed.....

**KAMKWAMBA KUMWENDA**

in the capacity of *Chief Executive Officer*

in the presence of: .....



YAMIBANI DAVID KAMBAUJA

**For and on behalf of the Supplier:**

Signed: 

**MATHEWS MAUWA**

in the capacity of *Sales Director*

in the presence of: .....

Coispa Kogwa  
Cokayner



## Conditions of Contract

<b>Definitions</b>	<p>The following words and expressions shall have the meanings hereby assigned to them:</p> <ul style="list-style-type: none"><li>(a) "Bank" means the World Bank and refers to the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA).</li><li>(b) "CC" means the Conditions of Contract.</li><li>(c) "Contract" means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.</li><li>(d) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.</li><li>(e) "Contract Price" means the price payable to the Supplier as specified in CC 8.1, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.</li><li>(f) "Day" means calendar day.</li><li>(g) "Completion" means the fulfillment of the Related Services, as applicable, by the Supplier in accordance with the terms and conditions set forth in the Contract.</li><li>(h) "Goods" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.</li><li>(i) "Party" means the Purchaser or the Contractor, as the context requires, and "Parties" means both of them.</li><li>(j) "Purchaser" means the entity purchasing the Goods and Related Services as applicable, as specified in CC 2.</li><li>(k) "Purchaser's Country" is the country specified in the CC 2.</li><li>(l) "Related Services" means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract, as applicable.</li><li>(m) "Subcontractor" means any person, private or government entity, or a combination of the above, to whom any part of</li></ul>
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	<p>the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.</p> <p>(n) "Supplier" means the person, private or government entity, or a combination of the above, whose Quotation to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.</p> <p>(o) "The Project Site," where applicable, means the place named CC 2.</p>
<b>Purchaser, Purchaser's Country, Project Site/Final Destination</b>	<p>The Purchaser is: <i>Electricity Supply Corporation of Malawi Limited</i></p> <p>The Purchaser's Country is: <i>Malawi</i></p> <p>The Project Site(s)/Final Destination(s) is: <i>Chichiri Power Station</i></p>
<b>Incoterms</b>	The edition of Incoterms that shall apply is: <i>2020</i>
<b>Notices and Addresses for notices</b>	<p>Any notice given by one Party to the other pursuant to the Contract shall be in writing to the address hereafter using the quickest available method such as electronic mail with proof of receipt.</p> <p><b><u>Address for notices to the Purchaser:</u></b></p> <p><i>Mr. Jack Thabwa</i>  <i>Project Procurement Specialist</i>  <i>Electricity Supply Corporation of Malawi Limited</i>  <i>Umoyo House, 3<sup>rd</sup> Floor,</i>  <i>Blantyre Malawi</i>  <a href="mailto:jthabwa@escom.mw">jthabwa@escom.mw</a></p> <p><b><u>Address for notices to the Supplier:</u></b></p> <p><i>Mathews Mauwa</i>  <i>Sales Director</i>  <i>Tropical Products Limited</i>  <i>P/Bag 59</i>  <i>Lilongwe, Malawi.</i>  <a href="mailto:Tropicalproductmw@outlook.com">Tropicalproductmw@outlook.com</a></p>
<b>Governing Law</b>	The Contract shall be governed by and interpreted in accordance with the laws of <b><i>Malawi</i></b>



	<p>Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in the Purchaser's Country when:</p> <ul style="list-style-type: none"> <li>(a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country; or</li> <li>(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, the Borrower's Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.</li> </ul>
<b>Settlement of Disputes</b>	<p>(a) Contracts with Supplier national of the Purchaser's Country:</p> <p>In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser's Country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of Malawi</p>
<b>Shipping and other documents to be provided</b>	<p>The Delivery of the Goods and Completion of the Related Services as applicable shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements.</p> <p>Details of Shipping and other Documents to be furnished by the Supplier are:</p> <ul style="list-style-type: none"> <li>i. <i>a negotiable bill of lading,</i></li> <li>ii. <i>a non-negotiable sea way bill,</i></li> <li>iii. <i>insurance certificate,</i></li> <li>iv. <i>Manufacturer's Authorization</i></li> <li>v. <i>Supplier's warranty certificate,</i></li> <li>vi. <i>Supplier's factory shipping details</i></li> <li>vii.</li> </ul> <p>The above documents shall be received by the Purchaser:</p> <ul style="list-style-type: none"> <li>(i) before arrival of the Goods, if the mode of payment is through letter of credit if so specified in CC 9. If the documents are not received before arrival of the Goods, the Supplier will be responsible for any consequent expenses; or otherwise;</li> </ul>
<b>Contract Price</b>	<p>The Contract Price is specified in Price Schedule 4.</p> <p>Subject to CC 31 and 32, the 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 and accepted by the Purchaser.</p>





<b>Terms of payment</b>	<p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p><b>30% Advance Payment Direct Payment after provision of Advance Payment Guarantee and an invoice</b></p> <p><b>70% Final Direct Payment disbursement upon delivery and acceptance of the Mechanical Puller and invoice.</b></p>
<b>Taxes and Duties</b>	<p>For Goods manufactured outside the Purchaser's Country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's Country.</p> <p>For Goods Manufactured within the Purchaser's Country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.</p> <p>If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.</p>
<b>Performance Security</b>	<b>Performance Security:</b> Not Required
<b>Subcontractors</b>	The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Quotation. Such notification, in the original Quotation or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
<b>Specifications and Standards</b>	The Goods and Related Services if applicable supplied under this Contract shall conform to the technical specifications and standards mentioned in the Technical Specifications 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>Packing, marking and documentation</b>	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 size and weights shall take into consideration, where appropriate, the remoteness of

	<p>the goods' final destination and the absence of heavy handling facilities at all points in transit.</p> <p>The packing, marking and documentation within and outside the packages shall be: <b><i>Refer to the Technical Specifications</i></b></p>
<b>Insurance cover</b>	<p>The insurance coverage shall be as specified in the Incoterms.</p>
<b>Transportation</b>	<p>Responsibility for transportations shall be as follows: The Supplier is required under the Contract to transport the Goods to a specified place of final destination within the Purchaser's Country, defined as the Project Site. Transport to such place of destination in the Purchaser's Country, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price"</p>
<b>Inspections and Tests</b>	<p>The Supplier shall at its own expense and at no cost to the Purchaser carry out the tests and/or inspections of the Goods and Related Services <b>as are specified in the Technical Specifications.</b></p> <p>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 any other location, <b>as specified in the Related Services Schedule.</b> Subject to CC 17.3, 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.</p> <p>The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in CC 17.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.</p> <p>Whenever the Supplier is ready to carry out any such test and inspection, it shall give a 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.</p> <p>In accordance with CC 31, 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</p>



	<p>performance of the Goods comply with the technical specifications codes and standards under the Contract.</p> <p>The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.</p> <p>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 CC 17.5.</p> <p>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 CC 17.7, shall release the Supplier from any warranties or other obligations under the Contract</p>
<b>Delivery Date and Completion Date</b>	The Delivery Date of the Goods shall be: .... April, 2023
<b>Liquidated damages and bonuses</b>	<p>The liquidated damage shall be 1 % of the price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance.</p> <p>The maximum amount of liquidated damages shall be 5% of the Contract Price. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to CC 26.</p>
<b>Warranty</b>	<p>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.</p> <p>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 the country of final destination.</p> <p>The warranty shall remain valid for 24 months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination.</p> <p>The period for repair or replacement after being notified of the defect by the Purchaser shall be 14 days.</p>

	<p>If having been notified, the Supplier fails to remedy the defect within the period specified in CC 20.4, 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.</p> <p>For purposes of the warranty, the place(s) of final destination(s) shall be: <i>Chichiri Power Station, End of Johnston Road, Off Queen Elizabeth Central Hospital Round About, Blantyre, Malawi</i></p>
<b>Copyright</b>	<p>The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein 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.</p>
<b>Fraud and Corruption</b>	<p>The Bank requires compliance with the Bank's Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the WBG's Sanctions Framework, as set forth in Attachment A to the Conditions of Contract.</p> <p>The Purchaser requires the Supplier to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the request for quotations or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.</p>
<b>Inspections and Audit by the Bank</b>	<p>Pursuant to paragraph 2.2 e. of the attachment to the Conditions of Contract, the Supplier shall permit and shall cause its agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and personnel, to permit, the Bank and/or persons appointed by the Bank to inspect the site and/or the accounts, records and other documents relating to the request for quotations process and/or execution of Contract. The Supplier's and its subcontractors attention is drawn to CC 22.1 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).</p>
<b>Limitation of Liability</b>	<p>Except in cases of criminal negligence or willful misconduct,</p> <p>(a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or</p>



	<p>consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and</p> <p>(b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the Purchaser with respect to patent infringement.</p>
<b>Force Majeure</b>	<p>The Supplier shall not be liable for forfeiture of its Performance Security (if required), 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.</p> <p>For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, and freight embargoes.</p> <p>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.</p> <p>If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other Party.</p>
<b>Termination</b>	<p><b>Termination for Default</b></p> <p>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:</p>

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	<ul style="list-style-type: none"> <li>(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;</li> <li>(ii) if the Supplier fails to perform any other obligation under the Contract; or</li> <li>(iii) if the Supplier, in the judgment of the Purchaser has engaged in Fraud and Corruption, in competing for or in executing the Contract.</li> </ul> <p>In the event the Purchaser terminates the Contract in whole or in part, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services if applicable 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 if applicable. However, the Supplier shall continue performance of the Contract to the extent not terminated.</p> <p>Termination for Convenience</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect: <ul style="list-style-type: none"> <li>(i) to have any portion completed and delivered at the Contract terms and prices; and/or</li> <li>(ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services if applicable and for materials and parts previously procured by the Supplier.</li> </ul> </li> </ul>
<b>Forced Labor</b>	<p>The Supplier, including its Subcontractors, shall not employ or engage forced labor or persons subject to trafficking, as described in CC 27.2 and CC 27.3.</p> <p>Forced labor consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labor, such as</p>



	<p>indentured labor, bonded labor or similar labor-contracting arrangements.</p> <p>Trafficking in persons is defined as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.</p>
<b>Child Labor</b>	<p>The Supplier, including its Subcontractors, shall not employ or engage a child under the age of 14 unless the national law specifies a higher age (the minimum age).</p> <p>The Supplier, including its Subcontractors, shall not employ or engage a child between the minimum age and the age of 18 in a manner that is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.</p> <p>Work considered hazardous for children is work that, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children. Such work activities prohibited for children include work:</p> <ul style="list-style-type: none"> <li>(a) with exposure to physical, psychological or sexual abuse;</li> <li>(b) underground, underwater, working at heights or in confined spaces;</li> <li>(c) with dangerous machinery, equipment or tools, or involving handling or transport of heavy loads;</li> <li>(d) in unhealthy environments exposing children to hazardous substances, agents, or processes, or to temperatures, noise or vibration damaging to health; or</li> <li>(e) under difficult conditions such as work for long hours, during the night or in confinement on the premises of the employer.</li> </ul>
<b>Health and safety obligations</b>	<p>The Supplier shall comply, and shall require its Subcontractors if any to comply, with all applicable health and safety regulations, laws, guidelines, and any other requirement stated in the Technical Specifications.</p>
<b>Patent Indemnity</b>	<p>The Supplier shall, subject to the Purchaser's compliance with CC 30.2, 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,</p>



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 the country where the Site is located; and
- b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in CC 30.1, the Purchaser shall promptly give the Supplier a 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 claim.

If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.

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

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.





<b>Change Orders and Contract Amendments</b>	<p>The Purchaser may at any time order the Supplier through notice in accordance CC 4.1, to make changes within the general scope of the Contract in any one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;</li> <li>(b) the method of shipment or packing;</li> <li>(c) changes in quantities of Goods to be supplied within the range specified herewith. <ul style="list-style-type: none"> <li>(i) <i>The maximum percentage by which:</i>  <i>quantities may be increased is: 25%</i>  <i>percentage by which quantities may be decreased is: 0%</i></li> </ul> </li> <li>(d) the place of delivery;</li> <li>(e) any test and/or inspection not required by the Contract but deemed necessary, pursuant to CC 17.5; and</li> <li>(f) the Related Services to be provided by the Supplier.</li> </ul> <p>If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.</p> <p>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.</p> <p>Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.</p>
<b>Change in Laws and Regulations</b>	<p>Unless otherwise specified in the Contract, if after the date of submission of Quotation, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's Country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be</p>

	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.
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# **ATTACHMENT A TO THE CONDITIONS OF CONTRACT**

## **FRAUD AND CORRUPTION**

*(Text in this Appendix shall not be modified)*

### **1. Purpose**

1.1 The Bank's Anti-Corruption Guidelines and this annex apply with respect to procurement under Bank Investment Project Financing operations.

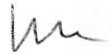
### **2. Requirements**

2.1 The Bank requires that Borrowers (including beneficiaries of Bank financing); bidders (applicants/proposers), consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process, selection and contract execution of Bank-financed contracts, and refrain from Fraud and Corruption.

2.2 To this end, the Bank:

a. Defines, for the purposes of this provision, the terms set forth below as follows:

- i. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii. "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;
- iv. "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;
- v. "obstructive practice" is:
  - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank 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
  - (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 2.2 e. below.





- b. Rejects a proposal for award if the Bank determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- c. In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection and/or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- d. Pursuant to the Bank's Anti- Corruption Guidelines and in accordance with the Bank's prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for a stated period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>1</sup> (ii) to be a nominated<sup>2</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-financed project;
- e. Requires that a clause be included in bidding/request for proposals documents and in contracts financed by a Bank loan, requiring (i) bidders (applicants/proposers), consultants, contractors, and suppliers, and their sub-contractors, sub-consultants, service providers, suppliers, agents personnel, permit the Bank to inspect<sup>3</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.

<sup>1</sup> For the avoidance of doubt, a sanctioned party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

<sup>3</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Bank or persons appointed by the Bank to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

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## **Advance Payment Security Demand Guarantee**

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[Insert name and Address of Purchaser]*

**Date:** *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.


At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (\_\_\_\_\_) *[insert amount in words]*<sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant has used the advance payment for purposes other than toward delivery of Goods.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced in proportion to the value of the Goods shipped (for Goods supplied from abroad) and/or the value of the Goods delivered

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<sup>1</sup> The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Purchaser.





at the named place of destination (for Goods supplied from within the Purchaser's country), as evidenced by copy(ies) of [ ].<sup>4</sup>

This Guarantee shall expire upon our receipt of copy(ies) of the above referenced documents, evidencing that at least ninety (90) percent of the Contract Price of the Goods has been delivered or on the [insert day] day of [insert month], [insert year]<sup>5</sup>, whichever is earlier.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No.758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_  
[signature(s)]

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

<sup>4</sup> Insert shipping/other applicable documents establishing "delivery" of the Goods in accordance with the applicable Incoterm to the Contract.

<sup>5</sup> Insert the Delivery date specified in the Contract Delivery Schedule. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Purchaser might consider adding the following text to the form, at the end of the penultimate paragraph: "We agree to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the guarantee."





# ELECTRICITY SUPPLY CORPORATION OF MALAWI LTD

All Correspondence must be  
Addressed to the Chief Executive Officer

Your Ref:

Our Ref: EMEPRP/06/3

Date: 7<sup>th</sup> February, 2023



HEAD OFFICE: ESCOM HOUSE,  
9 HAILE SELASSIE ROAD,  
P.O. BOX 2047,  
BLANTYRE  
Telephone: + (265) 01822 000

E-mail: [ceo@escom.mw](mailto:ceo@escom.mw)  
Website: [www.escom.mw](http://www.escom.mw)

## LETTER OF ACCEPTANCE

Tropical Products Limited in Joint Venture with  
Ningbo Marshine Power Technology Limited  
P/Bag 59,  
Lilongwe,  
Malawi

Dear Sir

### **MALAWI EMERGENCY POWER RESTORATION PROJECT (MEPRP) SUPPLY AND DELIVERY OF MECHANICAL PULLERS CONTRACT No.: MW-ESCOM-31911-GO-RFQ**

This is to notify you that your Quotation dated 31 October, 2022 for supply and delivery of Distribution Transformers for the Contract Price in the aggregate of **Malawi Kwacha Four Hundred Forty-Eight Million Two Hundred Thousand Only (MWK448,200,000.00)** excluding Taxes as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by Electricity Supply Corporation of Malawi Limited.

You are requested to sign the attached contract and return to ESCOM within Seven (7) Days of this letter.

Yours faithfully,

**ELECTRICITY SUPPLY CORPORATION OF MALAWI LIMITED**

**KAMKWAMBA KUMWENDA  
CHIEF EXECUTIVE OFFICER**

On behalf of, **Tropical Products Limited in Joint Venture with Ningbo Marshine Power Technology Limited**, I confirm acceptance of the terms of the above contract award.

**Tropical Products Ltd**  
Private Bag 59, Lilongwe  
Call: 0882 910 461  
Email: [tropicalproductsmw@outlook.com](mailto:tropicalproductsmw@outlook.com)  
**Authorised Signatory**

# **Sample Letter of Award of Contract**

*[use letterhead paper of the Purchaser]*

To: *Tropical Products Limited in Joint Venture with Ningbo Marshine Power Technology Limited*  
P/Bag 59, Lilongwe, Malawi

Subject: ***Notification of Award of Contract No. MW-ESCOM-003-GO-RFQ***

In reference to the RFQ No. MW-ESCOM-003-GO-RFQ dated 21<sup>st</sup> October, 2022, your Quotation dated 31<sup>st</sup> October, 2022 has been accepted.

Please find inclosed herewith the Contract. You are requested to sign the contract within four (4) business days.

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: Kamkwamba Kumwenda – Chief Executive Officer

Name of Agency: Electricity Supply Corporation of Malawi (ESCOM) Limited

**Attachment: Contract**





## PRICE SCHEDULES

## Quotation for Goods: Price Schedule 1

**For Goods to be supplied from outside the Purchaser's country**

1	2	3	4	5	6	7	8	9
Line Item N°	Description of Goods	Country of Origin	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price CIP [insert place of destination] / [ as applicable, FCA (named place)]	CIP (or FCA as applicable) Price per line item (Col. 5x6)	[FOR CIP, IF REQUIRED] Price per line item for inland transportation and other services required in the Purchaser's Country to convey the Goods to their final destination specified in RFQ	Total Price per Line item (Col. 7+8)
1	Mechanical Puller	China	January, 2023	2	MK190,600,000.00	MK381,200,000.00	MK12,000,000.00	MK393,200,000.00
							Quotation Price	MK393,200,000.00

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### Quotation for Related Services: Price Schedule 3

1	2	3	4	5	6	7	
Item No.	Item description	Description of Services (excludes inland transportation and other services required in the Purchaser's Country to convey the goods to their final destination)	Country of Origin	Completion Period at place of Final destination	Quantity and physical unit	Unit price	Total Price per Service (Col. 5*6 or estimate)
1	Other Related Services	Factory Acceptance Testing and training	China	8 Weeks	1	MK55,000,000.00	MK55,000,000.00
Quotation Price							MK55,000,000.00

### Total Quotation: Price Schedule 4

The total price for the supply and delivery of the Goods, and related Services is as follows:

Price Schedule	Amount
Goods: Price Schedule 1	MK393,200,000.00
Related Services: Price Schedule 3	MK55,000,000.00
<b>Total Quotation</b>	<b>MK448,200,000.00</b>

*me*



## LIST OF GOODS AND DELIVERY PERIOD

Line Item N°	Description of Goods	Quantity required	Physical unit	Named Place of Destination (CIP)	Place of Final Destination (Project Site)	Applicable Incoterms (e.g. CIP, EXW, FCA etc.)
1	Mechanical Puller	2	Each	Chichiri Power Station, Blantyre, Malawi	N/A	CIP



## 1.3 Technical Specifications

### 1.3.2 Detailed Technical Specifications and Standards

Item No.	Feature	Technical specifications of items required		Mandatory (M)	Bidder offered specifications
		A		B	C
	Reference specifications			M	
	Equipment Name	Hydraulic Tensioner and Puller		M	
Item No.	Equipment Description	The hydraulic puller is used to pull steel wire rope for conductors stringing. It is fully hydraulic controlled, easily used and maintained		M	
		Model		SA-YQ180	M
		Max. Pulling Force (KN)	180	M	
		Continuous Pulling Force (KN)	160	M	
		Max. Pulling Speed (K/hr)	5km/hr	M	
		Pulling force at max. speed (kN)	80	M	
		Root Diameter of Bull wheel (mm)	Φ630	M	
		Number of grooves	9	M	
		Max. Steel rope Diameter (mm)	Φ24	M	
		Model of Diesel Engine	Water cooled diesel engine	M	
	Features  Main components	Power of Diesel Engine	209 KW	M	
		Rotate Speed of Engine (rpm)	2100	M	
		Electrical System	DC24V	M	
		Weight (kg)	7500	M	



Feature	Dimension (m)	5.50 x 2.20 x 2.57	M		
	Closed hydraulic circuit,infinately variable speed control in both rotating directions.	M			
	Preset function for maximum pulling force for stringing operation	M			
	Provision of pulling force gauge / Indicator	M			
	Provision of pulling speed gauge / Indicator	M			
	Automatic over pulling protection system	M			
	Automatic spring applied brakes- for hydraulic failure safety	M			
	Hydraulic cooling system	M			
	Heat treated wear-proof bull wheels	M			
	Hydraulic clamp for handling steel wire rope when changing on reel winder.	M			
	Integral self-loading reel winder with automatic level wind.	M			
	Hydraulic front jack	M			
	Mounted on trailer with rigid axle for towing at high speed	M			
	Engine Main variable displacement hydraulic pump and main motor Reducer	Cummins water-cooled diesel engine. (USA)	M	M	
		Rexroth (German)	M		
		Rexroth (German)	M		
	Reel winder motor				
	Main hydraulic valves	Rexroth (German)	M		

	Hydraulic instruments Radiator	WIKA (German)	M	M	
		AKG (German)	M		
				M	
	Technical specifications of items required				
Reference specifications Equipment Name   					





<b>Other Requirements</b>	M	Training of at least three Engineers both theoretical (manufacturers premises or in Malawi) and practical in Malawi.

