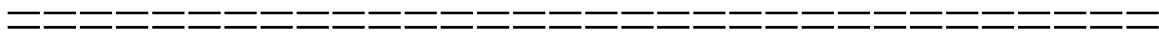


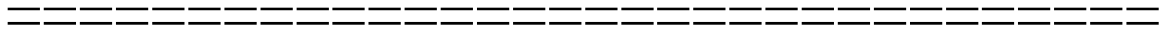


CHEMELIL SUGAR COMPANY LIMITED

TENDER FOR



**SUPPLY OF LAMINATED SUGAR
PACKAGING WRAPPERS &
BALERS**



YEAR: 2018/2019

TENDER NO: CSCL/T/2018-2019/14

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Section A. Invitation for Tenders

Date: 5th November, 2018

To:

.....

.....

Dear Sir/Madam,

TENDER REF NO: CSCL/T/2018-2019/14

**TENDER NAME: TENDER FOR SUPPLY OF LAMINATED SUGAR
PACKAGING WRAPPERS & BALERS**

- 1.1 The Chemelil Sugar Company Limited invites sealed tenders from eligible candidates for **the Supply of Laminated Sugar Packaging Wrappers & Balers**
- 1.2 Interested eligible candidates may obtain further information from and inspect the tender documents at Chemelil Sugar Company Limited during normal working hours. It may also be downloaded from our website www.chemsugar.co.ke/corporate documents or the National Treasury IFMIS website: www.supplier.treasury.go.ke free of charge or obtain a set of each hard copy upon payment of a non-refundable fee of Kshs. 1,000.00 payable to Chemelil Sugar Company Ltd either in cash or bankers cheque.
- 1.3 Prices quoted should be net inclusive of all taxes, must be in Kenya Shillings and shall remain valid for (90) days from the closing date of the tender.
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at the **Company's Reception** or be addressed to **The Managing Director, Chemelil Sugar Company Limited** so as to be received on or before, **10.00 a.m. on Monday 19th November, 2018.**
- 1.5 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at the **Company's Boardroom.**

Yours faithfully,

For: **CHEMELIL SUGAR COMPANY LIMITED**

SHIRLEY SAKWA
SUPPLY CHAIN MANAGER(Ag)

Section B. General Information

Introduction

1.0 Eligible Tenderers

- 1.1 This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall complete the supply of goods by the intended completion date specified in the tender documents.
- 1.2 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Company to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 1.3 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2.0 Eligible Goods

- 2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2 For purposes of this clause, “**origin**” means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 2.3 The origin of goods is distinct from the nationality of the tenderer.

3.0 Cost of Tendering

- 3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the Company, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

The Tender Document

4.0 Contents

4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders.

- (i) Invitation for Tenders
- (ii) General information
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of Requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form

4.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

5.0 Clarification of Documents

5.1. A prospective tenderer requiring any clarification of the tender document may notify the Company in writing or by cable (hereinafter, the term *cable* is deemed to include telex and facsimile) at the Company's address indicated in the Invitation for tenders. The Company will respond in writing to any request for clarification of the tender documents, which it receives no later than thirty (30) days prior to the deadline for the submission of tenders, prescribed by the Company. Written copies of the Company response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderer that have received the tender document.

6.0 Amendment of Documents

6.1 At any time prior to the deadline for submission of tenders, the Company, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.

6.2 All prospective tenderers that have received the tender documents will be notified of the amendment in writing or by cable, and will be binding on them.

6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Company, at its discretion, may extend the deadline for the submission of tenders.

Preparation of Tenders

7.0 Language of Tender

7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Company, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

8.0 Documents Comprising the Tender

8.1 The tender prepared by the tenderer shall comprise the following components:

- (a) a Tender Form, and a Price Schedule completed in accordance with paragraph 9,10 and 11 below.
- (b) documentary evidence established in accordance with paragraph 12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) documentary evidence established in accordance with paragraph 13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) tender security furnished in accordance with paragraph 14.

9.0 Tender Form

9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

10.0 Tender Prices

10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract.

10.2 Prices indicated on the Price Schedule shall be entered separately in the following manner:

- (i) the price of the goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable:
- (ii) charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination; and

10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 22.

11.0 Tender Currencies

11.1 Prices shall be quoted in Kenya Shillings:

12.0 Tenderers Eligibility and Qualifications.

12.1 Pursuant to paragraph 1 of section III, the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Company's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph I of section III.

12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Company's satisfaction:

- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods;
- (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

13.0 Goods' Eligibility and Conformity to Tender Document.

13.1 Pursuant paragraph 2 of this section, the tenderer shall furnish, as part of its tender, documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract.

13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristics of the goods;

- (b) 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 for a period of two (2) years, following commencement of the use of the goods by the Company; and
- (c) a clause-by-clause commentary on the Company's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

13.4 For purposes of the commentary to be furnished pursuant to paragraph 13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Company in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Company satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

14.0 Tender Security

14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to instructions to tenderers.

14.2 The tender security shall be in the amount not exceeding(**2%**) two **percent** of the total tender price.

14.3 The tender security is required to protect the Company against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 14.7.

14.4 The tender security shall be denominated in Kenya Shillings and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya, in the form provided in the tender documents or another form acceptable to the Company and valid for thirty (30) days beyond the validity of the tender.

14.5 Any tender not secured in accordance with paragraph 14.1 and 14.3 will be rejected by the Company as non-responsive, pursuant to paragraph 22.

14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Company.

14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 30, and furnishing the performance security, pursuant to paragraph 31.

14.8 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity specified by the

Company on the Tender Form; or

- (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 30
or
 - (ii) to furnish performance security in accordance with paragraph 31.

15.0 Validity of Tenders

- 15.1 Tenders shall remain valid for 90 days or as specified in the tender documents after date of tender opening prescribed by the Company, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected by the Company as non-responsive.
- 15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

16.0 Format and Signing of Tender

- 16.1 The Company shall prepare two copies of the tender, clearly marking each "**ORIGINAL TENDER**" and "**COPY OF TENDER**," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
- 16.3 The tender shall have no interlineation, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

Submission of Tenders

17.0 Sealing and Marking of Tenders

17.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.

17.2 The inner and outer envelopes shall :

(a) be addressed to the Company at the following address:

Managing Director,
Chemelil Sugar Company Limited,
P.O Box 1649

KISUMU

1.6 bearing Tender for supply of Laminated Sugar Packaging Wrappers and Balers, and the words: “DO NOT OPEN BEFORE,” **10.00 a.m. on Monday 19th November, 2018.**

17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

17.4 If the outer envelope is not sealed and marked as required by paragraph 17.2, the Company will assume no responsibility for the tender’s misplacement or premature opening.

18.0 Deadline for Submission of Tenders

1.7 Tenders must be received by the Company at the address specified under paragraph 17.2 no later than **10.00 a.m. on Monday 19th November, 2018.**

18.2 The Company may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the Company and tenderers previously subject to the deadline will thereafter be subject to the deadline as extended.

19.0 Modification and Withdrawal of Tenders

19.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Company prior to the deadline prescribed for submission of tenders.

19.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 17. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

19.3 No tender may be modified after the deadline for submission of tenders.

19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 14.7.

Opening and Evaluation of Tenders

20.0 Opening of Tenders

20.1 The Company will open all tenders in the presence of tenderers' representatives who choose to attend, at **10.00 a.m. on Monday 19th November, 2018** in the **Company's Board Room**.

The tenderers' representatives who are present shall sign a register evidencing their attendance.

20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Company, at its discretion, may consider appropriate, will be announced at the opening.

20.2 The Company will prepare minutes of the tender opening.

21.0 Clarification of Tenders

- 21.1 To assist in the examination, evaluation and comparison of tenders the Company may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.
- 21.2 Any effort by the tenderer to influence the Company in the Company's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

22.0 Preliminary Examination

- 22.1 The company will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.
- 22.3 The Company may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 22.4 Prior to the detailed evaluation, pursuant to paragraph 23, the Company will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Company's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 22.5 If a tender is not substantially responsive, it will be rejected by the Company and may not subsequently be made responsive by the tenderer by correction of the non-conformity

Mandatory Requirements (Preliminary Evaluation)

Failure to meet any one of the mandatory requirements shall be a basis for automatic disqualification. It is therefore imperative that the bids submitted meet all the mandatory requirements which are listed thereafter:-

1. Company Profile
2. Certificate of Incorporation or Registration
3. PIN Certificate

4. Valid Kenya Revenue Authority Tax Compliance Certificate
5. Manufacturers authorization form
6. Provide Sample rolls for testing strength, seal quality and compatibility with machines

23.0 Evaluation and Comparison of Tenders

23.1 The Company will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 22.

23.2 The Company's evaluation of a tender will exclude and not take into account:

- (a) in the case of goods manufactured in Kenya or goods of foreign origin already located in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the tenderer; and
- (d) any allowance for price adjustment during the period of execution of the contract, if provided in the tender.

23.3 The comparison shall be of the ex-factory/ex-warehouse/off-the-shelf price of the goods offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods.

23.4 The Company's evaluation of a tender will take into account, in addition to the tender price and the price of incidental services, the following factors, in the manner and to the extent indicated in paragraph 23.5 and in the technical specifications:

- (a) delivery schedule offered in the tender;
- (b) deviations in payment schedule from that specified in the Special Conditions of Contract;
- (c) the cost of components, mandatory spare parts, and service;
- (e) the availability in Kenya of spare parts and after-sales services for the equipment offered in the tender;

23.5 Pursuant to paragraph 23.4 the following evaluation methods will be applied:

- (a) **Delivery schedule.**

The Company requires that the goods under the Invitation for Tenders shall be delivered at the time specified in the Schedule of Requirements. Tenders offering deliveries longer than the Company's required delivery time will be treated as non-responsive and rejected.

- (b) **Deviation in payment schedule.**

Tenderers shall state their tender price for the payment of schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Company may consider the alternative payment schedule offered by the selected tenderer

(c) Spare parts and after sales service facilities.

Tenderers must offer items with service and spares parts back-up. Documentary evidence and locations of such back-up must be given. Where a tenderer offers items without such back-up in the country, he must give documentary evidence and assurance that he will establish adequate back-up for items supplied.

24.0 Contacting the Company

24.1 Subject to paragraph 21, no tenderer shall contact the company on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

24.2 Any effort by a tenderer to influence the Company in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

Award of Contract

25.0 Post-qualification

25.1 In the absence of pre-qualification, the Company will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

25.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 12.3, as well as such other information as the Company deems necessary and appropriate.

25.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Company will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

26.0 Award Criteria

26.1.1 The Company will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

26.1.2 Technical Evaluation

Technical evaluation shall constitute 70% of total evaluation score.

Only candidates who score **50/70** shall proceed to Financial Evaluation

No.	Description	Marks Awarded
1.	State whether manufacturer or non-manufacturer. <ul style="list-style-type: none">• Manufacturer (20 Marks)• Non-manufacturer (10 Marks)	20
2.	Payment terms supplier requires:- <ul style="list-style-type: none">• Payment before supply (0 Marks)• 50% payment with order (2 marks)• Payment within 30 days after delivery (5 marks)	5
3.	Evidence of having supplied similar goods to at least two (2) firms in similar industry within the last two years <ul style="list-style-type: none">• Two (2) firms (10 marks)• One (1) firms (5 marks)	10
4.	Provide reference letter from Bank on financial strength.	5
5.	Provide Certified Audited Books of Accounts for the last 2 years	5
6.	Provide reference letters from at least 2 of your major clients <ul style="list-style-type: none">• 2 clients = 5 marks• Less than = 0 marks	5
7.	Provide at least 2 of your current clients, names of contact persons, their telephone, email or address <ul style="list-style-type: none">• Client, name of contact person and contact address (2 marks for each complete entry)	10
8.	Response time from receipt of order to supply of goods to Chemelil Sugar Company <ul style="list-style-type: none">• Within 4 days (10 marks)• Within 5-15 days (5 Marks)• More than 15 days (1 marks)	10
Total		70

26.1.3 Financial Evaluation

Financial evaluation = 30 points

Formula;-

FS – Financial Scores

FM - Lowest priced Financial proposal

F – Financial proposal of the bidder being evaluated

SF – $30 \times \frac{FM}{F}$

Total Score = Financial Score + Technical Score

To be awarded to the lowest evaluated bidder

The tender may be awarded to more than one bidder as per CSCL requirement

26.2 Subject to paragraph 10,23 and 28 the Company will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

27.0 Company's Right to Vary Quantities

27.1 The Company reserves the right at the time of contract award and during the contract performance and execution to increase or decrease the quantity of goods originally specified in the Schedule of requirements and tendered for without any change in unit price or other terms and conditions.

28.0 Company's Right to Accept or Reject Any or All Tenders

28.1 The Company reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Company's action.

29.0 Notification of Award

29.1 Prior to the expiration of the period of tender validity, the company will notify the successful tenderer in writing that its tender has been accepted.

29.2 The notification of award will constitute the formation of the Contract.

29.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, the Company will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 14.

30.0 Signing of Contract

- 30.1 At the same time as the Company notifies the successful tenderer that its tender has been accepted, the company will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.
- 30.2 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Company.

31.0 Performance Security

- 31.1 Within thirty (30) days of the receipt of notification of award from the Company, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Company.
- 31.2 Failure of the successful tenderer to comply with the requirement of paragraph 30 or paragraph 31 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Company may make the award to the next lowest evaluated tenderer or call for new tenders.

32.0 Corrupt Fraudulent Practices

- 32.1 The Company requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, the Company:-
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “**corrupt practice**” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) “**fraudulent practice**” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Company, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Company of the benefits of free and open competition;
 - (b) will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
 - (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.
- 32.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

Section C-General Conditions of Contract

1.0 Definitions

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

- (a) **“The Contract”** means the agreement entered into between the company and the tenderer, as recorded in the Contract Form 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 tenderer under the Contract for the full and proper performance of its contractual obligations.
- (c) **“The Good”** means the Laminated Sugar packaging wrappers and balers which the tenderer is required to supply to the company under the Contract.
- (d) **“The Company”** means Chemelil Sugar Company Limited purchasing the item under this Contract.
- (e) **“The tenderer”** means the individual or firm supplying the Goods under this Contract.

2.0 Application

2.1 These General Conditions shall apply in all Contracts made by the Company for the procurement of goods.

3.0 Country of Origin

3.1 For purposes of this Clause, **“origin”** means the place where the Goods were mined, grown, or produced.

3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

4.0 Standards

4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

5.0 Use of Contract Documents and Information

5.1 The tenderer shall not, without the Company’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 Company in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

- 5.2 The tenderer shall not, without the Company's prior written consent, make use of any document or information enumerated in paragraph 5.1 above.
- 5.3 Any document, other than the Contract itself, enumerated in paragraph 5.1 shall remain the property of the Company and shall be returned (all copies) to the Company on completion of the Tenderer's performance under the Contract if so required by the Company.

6.0 Patent Rights

- 6.1 The tenderer shall indemnify the Company against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Company's country.

7.0 Performance Security

- 7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Company the performance security in the amount specified in Special Conditions of Contract.
- 7.2 The proceeds of the performance security shall be payable to the Company as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Company and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya, acceptable to the Company, in the form provided in the tender documents.
- 7.4 The performance security will be discharged by the Company and returned to the tenderer not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract.

8.0 Inspection and Tests

- 8.1 The Company or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications. The Company shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 8.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer 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 Company.

- 8.3 Should any inspected or tested Goods fail to conform to the Specifications, the Company may reject the Goods, and the tenderer shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Company
- 8.4 The Company's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by the Company or its representative prior to the Goods' delivery.
- 8.5 Nothing in Paragraph 8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

9.0 Packing

- 9.1 The tenderer 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.
- 9.2 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.

10.0 Delivery and Documents

- 10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Company in its Schedule of Requirements and the Special Conditions of Contract

11.0 Insurance

- 11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract

12.0 Payment

- 12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract.
- 12.2 Payments shall be made promptly by the Company as specified in the contract.

13.0 Prices

- 13.1 Prices charged by the tenderer for Goods delivered and Services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

14.0 Assignment

14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Company's prior written consent.

15.0 Subcontracts

15.1 The tenderer shall notify the Company in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract.

16.0 Termination for Default

16.1 The Company may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part:

- (a) if the tenderer fails to deliver any or all of the Goods within the period(s) specified in the Contract and/or in the Local Purchase Order, or within any extension thereof granted by the Company.
- (b) if the tenderer fails to perform any other obligation(s) under the Contract.
- (c) if the tenderer, in the judgment of the Company has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

16.2 In the event the Company terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, Goods similar to those undelivered, and the tenderer shall be liable to the Company for any excess costs for such similar Goods.

17.0 Liquidated Damages

17.1 If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract and/or in the Local Purchase Order, the Company shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed goods up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

18.0 Resolution of Disputes

18.1 The Company and the tenderer 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.

18.1 If, after thirty (30) days from the commencement of such informal negotiations both parties

have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

19.0 Language and Law

19.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

20.0 Force Majeure

20.1 The tenderer shall not be liable for forfeiture of its performance security, 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.

Section D: Special Conditions of Contract

1.0. Performance Security:

There shall be a tender security and/or performance security under this contract for 2.0%.

2.0. Delivery and Documents

- (i) Delivery of the goods shall be made by the tenderer to the Company's stores and in accordance with the time schedule prescribed by the Company in the Local Purchase Orders.
- (ii) If at any time during the performance of the Contract, the tenderer should encounter conditions impeding timely delivery of the Goods, the tenderer shall promptly notify the Company in writing of the fact of the delay, its likely duration and its causes. On receipt of the tenderer notice, the Company shall evaluate the situation and may at its discretion extend the tenderer's time for delivery with or without liquidated damages, in which case the extension shall be ratified by the Company by amendment of the Local Purchase Order.
- (iii) Except as provided under the General Conditions of contract paragraph 20, a delay by the tenderer in the performance of its delivery obligations shall render the tenderer liable to the imposition of liquidated damages pursuant to paragraph 17 unless an extension of time is agreed upon pursuant to paragraph 2 (ii) above without application of liquidated damages.
- (iv) Upon delivery of the Goods, the tenderer shall notify the Company and forward the following documents to the company:
 - (a) Copies of the tenderer's invoice showing Goods description, quantity, unit price, total amount and Local Purchase Order number (LPO).
 - (b) Delivery notice giving details as (a) above.

The Company with the arrival of the Goods shall receive the above documents, and if not received, the Goods will be rejected and the tenderer will be responsible for any consequent expenses.

3.0. Payment:

The method and conditions of payment to the tenderer under this contract shall be as follows:

- (i) payment for the Goods shall be made in local currency
- (ii) payment for the Goods shall be made by the Company's cheque
- (iii) there shall be no advance payment under this contract
- (iv) payments shall be made promptly by the Company, but in no case later than ninety (90) days after submission of an invoice and a statement or claim by the tenderer.

4.0. Prices

Prices quoted by the tenderer shall be fixed during the tenderer performance of the Contract and not subject to variation on any account for a period of 6 months except due to statutory or legislative requirements. Unit price quoted shall be inclusive of all other charges incidental to the delivery of the goods to our stores..

5.0. Availability

The tenderer shall ensure that the good is supplied as promptly as possible and within the period specified on the Local Purchase Orders.

6.0. Warranty

- (i) The tenderer warrants that the Goods supplied under the contract are new, unused and conform to the specifications indicated in the Contract and/or Local Purchase Orders. The tenderer further warrants that all Goods supplied under this contract shall have no defects, arising from design, materials or workmanship (except when the design and/or material is required by the Company's specification) or from any act or omission of the tenderer that may develop under normal use of the supplied Goods in the Conditions prevailing in the Company.
- (ii) The warranty period shall be six (6) months and above from the date of acceptance of the Goods at the final destination.
- (iii) If, for reasons attributed to the tenderer, these warranties are not attained in whole or in part. the tenderer shall either:
 - (a) make such changes, modifications and/or additions to the goods or any part thereof as may be necessary in order to attain the contracted warranties specified in the contract at its own cost and expense and to carry out further performance tests to the satisfaction of the Company
 - (b) Replace such Goods with the ones that conform to the specifications in the contract at his own costs.

7.0. Insurance.

The tenderer shall cover transit insurance risk for the goods up to the point of delivery in the Company's premises.

8.0. The Company's evaluation of a tender will take into account the Unit tender price in the Schedules and will award the orders as and when requires to the tenderer(s) who has been determined to be the lowest evaluated tender.

9.0. The tenderer shall obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract.

Section E. Technical Specifications

GENERAL

1. These specifications describe the basic requirements for goods. Bidders are requested to submit with their offers the detailed specifications, drawings, catalogues, etc. for the Products they intend to supply.
2. Tenderers must indicate on the specifications sheets whether the Goods offered comply with the specified requirement.
3. All the dimensions and capacities of the Goods to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any, shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. Company reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
4. The tenderers are requested to present information along with their offers as follows:
 - i) Shortest possible delivery period of each product.
 - ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

TECHNICAL SPECIFICATIONS FOR PACKAGING & BALING MATERIALS

1. Laminated Sugar Packaging Wrappers

All these wrappers should be of 12 microns PET and 60 microns PE.

Denomination (kgs)	Roll Width (cm)	Marker to Marker Distance (cm)	Weight of Rolls (kgs)	Quantity Required (Tons)
¼	25.0	17.5	20	3
½	31.4	19.5	20	10
1	40.4	25.1	20	30
2	51.0	29.1	30	20

2. Polythene Baling Materials (Clear)

Thickness 100 microns in rolls of 60 Kg.

Denomination (Kgs)	Roll Width (mm)	Weight of Roll (Kgs)	Quantity Required (Tons)
¼	845	60	2
½	980	60	10
1	1140	60	20
2	940	60	10

Note: Samples MUST be provided for approval by the evaluation committee.

Section F. Tender Form and Price Schedules

(i) Form of Tender

Date: _____
Tender N^o: _____

To: _____

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. _____ the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver _____
[description of goods]
in conformity with the said tender documents for the sum of
Kshs _____
[total tender amount in words and figures]

or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to deliver the goods in accordance with the delivery schedule specified in the Schedule of Requirements.
3. We agree to abide by this Tender for a period of **90** days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____

[signature]

[in the capacity of]

Duly authorized to sign tender for and on behalf of _____

(ii) Price Schedule

Name of tenderer _____ Tender Number _____

1. LAMINATED SUGAR PACKAGING WRAPPERS

Weight	DESCRIPTION / QUANTITY	UNIT PRICE (KSHS)	TOTAL PRICE (KSHS)	NAME OF MANUFACTURER
	Packaging Material (TONNES)			
2 Kg	20 Tonnes			
1 Kg	30 Tonnes			
½ Kg	10 Tonnes			
¼ Kg	3 Tonnes			
	To conform with KBS Marked: CHEMELIL SUGAR COMPANY LIMITED P.O. BOX 1649 KISUMU			

2. POLYTHENE BALING MATERIALS

Weight	DESCRIPTION / QUANTITY	UNIT PRICE (KSHS)	TOTAL PRICE (KSHS)	NAME OF MANUFACTURER
	Baling Material (TONS)			
2 Kg	10 tonnes			
1 Kg	20 tonnes			
½ Kg	10 tonnes			
¼ Kg	2 tonnes			

Signature of the bidder _____

Note: In case of discrepancy between unit price and total, the unit price shall prevail.

Section G. Tender Security Form

Whereas..... *[name of the tenderer]*
(hereinafter called “the tenderer”) has submitted its tender dated*[date of submission of tender]* for the supply of.....

[name and/or description of the goods]

(hereinafter called “the Tender”).....

KNOW ALL PEOPLE by these presents that **WE**.....

of..... having our registered office at

..... (hereinafter called “the Bank”), are bound unto

[name of Company] (hereinafter called “the Company”) in the sum of

for which payment well and truly to be made to the said Company, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of _____ 20_____.

THE CONDITIONS of this obligation are:

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Company during the period of tender validity:
 - (a) fails or refuses to execute the Contract Form, if required; or
 - (b) fails or refuses to furnish the performance security, in accordance with the Instructions to tenderers;

we undertake to pay to the Company up to the above amount upon receipt of its first written demand, without the Company having to substantiate its demand, provided that in its demand the Company will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

[signature of the bank]

Section H. STATEMENT OF VERIFICATION

I/we hereby verify and confirm that:-

- a) I/we have not committed an offence under the public Procurement and Disposal Act, 2005.
- b) I/we have not committed an offence relating to procurement under any Act.
- c) I/we have not breached a contract for procurement by a public entity.
- d) I/we have not in procurement proceedings, given false information about my/our qualifications.
- e) I/we have not refused to enter into any previous written contract as required under Section 136 of the Public Procurement and Asset Disposal Act, 2015.

I/we also hereby declare that I/we will not engage in any corrupt practice while participating in the procurement proceedings herein.

Sign:

1. Name:

Designation:

Official rubber stamp

2. Name:

Designation:

Official rubber stamp

3. Name:

Designation:

Official rubber stamp

Section I. Contract Form

THIS AGREEMENT made the..... day of 20..... between[*name of Company*] of.....[*country of Company*] (hereinafter called “**the Company**”) of the one part and..... [*name of tenderer*] of..... [*city and country of tenderer*] (hereinafter called “**the tenderer**”) of the other part:

WHEREAS the Company invited tenders for certain goods, viz.,..... [*brief description of goods*] and has accepted a tender by the tenderer for the supply of those goods in the sum of..... [*Contract price in words and figures*] (Hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
3.
 - (a) the Tender Form and the Price Schedule submitted by the tenderer;
 - (b) the Schedule of Requirements;
 - (c) the Technical Specifications;
 - (d) the General Conditions of Contract;
 - (e) the Special Conditions of Contract; and
 - (f) the Company's Notification of Award.
3. In consideration of the payments to be made by the Company to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Company to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Company hereby covenants to pay the tenderer in consideration of the provision of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by _____ the _____ (for the Company)

Signed, sealed, delivered by _____ the _____ (for the tenderer)

in the presence of _____

Section J. Performance Security Form

To:
[name of Company]

WHEREAS[name of tenderer]
(Hereinafter called "the tenderer") has undertaken, in pursuance of Contract No. _____
[reference number of the contract] dated _____ 20____ to supply
.....
[Description of goods] (Hereinafter called "the Contract").

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer's performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of.....
[Amount of the guarantee in words and figures],
and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of.....
[Amount of guarantee]
as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the ____ day of _____ 20_____.

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

Section K. Bank Guarantee for Advance Payment

To:
[Name of Company]

[Name of Tender]

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment,

.....
[name and address of tenderer] (hereinafter called "the tenderer") shall deposit with the Company a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of.....

[amount of guarantee in figures and words].

We, the.....

[bank or financial institution], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Company on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding

.....
[amount of guarantee in figures and words].

We further agree that no change or addition to or other modification of the terms of the Contract to be performed thereunder or of any of the Contract documents which may be made between the Company and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the tenderer under the Contract until[date].

Yours truly,

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

Section L. Manufacturer's Authorization Form

To: *[Name of the Company]*

WHEREAS

[Name of the Manufacturer]

who are established and reputable manufacturers of.....

[Name and/or description of the goods]

having factories at.....

[Address of factory]

do hereby authorize.....

[Name and address of Agent]

to submit a tender, and subsequently negotiate and sign the Contract with you against tender

No..... for the above goods manufactured by us.

[Reference of the Tender]

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

[Signature for and on behalf of Manufacturer]

Note: This letter of authority should be on the letter-head of the Manufacturer and should be signed by a person competent.