

Standard Terms and Conditions for Participation in the Tender

1. Introduction

- 1.1. The Standard Terms and Conditions for Participation in this Tender (hereinafter - **Standard Terms and Conditions**) are determined by the terms of participation in the tender announced by “SellBuy Limited” LLC through www.tenders.ge and are mandatory for all **bidders** participating in the tender.
- 1.2. The **bidder** confirms by participating in the tender that he/she has read and agrees to the **Standard Terms and Conditions**.

2. Definitions

Unless otherwise specified in the **Standard Terms and Conditions**, or otherwise derived from its context, the following definitions used in the **Standard Terms and Conditions** have the following meanings:

- 2.1. **Company** – “SellBuy Limited” LLC (I/C: 405464965).
- 2.2. **Company Representative** - The **Company’s** authorized person indicated by the **company** in the **bid**.
- 2.3. **Tender** - Procurement announced by the **company** through the electronic procurement system of www.tenders.ge.
- 2.4. **Bidder** - any legal entity participating in a **tender** by submitting a **bid**.
- 2.5. **Successful bidder** - the **bidder** who wins the **tender** by submitting the best **bid**.
- 2.6. **Tender terms and conditions** - information about the procurement provided by the bidding documents, as well as the combination of conditions / requirements set by the company for the object of procurement and the bidder.
- 2.7. **Bid** - a tender application submitted by the company through the e-procurement system of www.tenders.ge which includes the information specified in the **Standard Terms and Conditions**, constitutes a part of the tender conditions and includes an invitation to bidders.
- 2.8. **Bidding documentation** - any type of documentation attached to the **bid**, which is part of the tender conditions.
- 2.9. **Information** - information provided and/or available to the bidder by the company related to the bidding documents, tender conditions or any other information submitted in written, oral, electronic or any other form.
- 2.10. **Bid** - In order to participate in the tender in compliance with the requirements of the **Standard Terms and Conditions**, an application submitted by the bidder in response to the bid, which includes the bidding documents.
- 2.11. **Bid Deadline** - The date specified in the tender terms and conditions and determines the deadline for submission of the Bid.
- 2.12. **Object of procurement** - goods and/or services indicated in the tender terms and conditions.
- 2.13. **Contract** - an agreement between the company and the successful bidder and/or after the completion of the tender procedures.
- 2.14. **Person** - natural person (s), legal entity (s) and / or other organizational entity (s) provided by the legislation of Georgia or another country, who/which does not/do not represent a legal entity (ies).
- 2.15. **Legislation** - current legislative and sub-legislative normative acts of Georgia and international treaties and agreements included in the system of normative acts of Georgia.

3. Bid Submission

- 3.1. The bidder shall submit a tender proposal on the website: www.tenders.ge in accordance with the tender terms and conditions, the bid and the rules defined by the **Standard Terms and Conditions**.
- 3.2. The **bidder** shall:
 - 3.2.1. prepare and submit a bid in strict compliance with the requirements of the tender application and **bidding documents**.
 - 3.2.2. attach to the bid and fill in all the schedules, attachments and/or any other information or documentation required by the **bidding documents**.

- 3.2.3. submit a bid on the date and time specified in the tender terms and conditions. In case of submission of a bid by the bidder in violation of the tender proposal term, the company is not obliged to consider the bid or sign a contract.
- 3.2.4. submit a list of subcontractors to the company for approval (if any). The Company shall reserve the right to reject at its own discretion the approval of subcontractors proposed by the Bidder.
- 3.3. The bidder shall be entitled to request an extension of the bid period specified in the tender terms and conditions by submitting a written request to the company representative at least 2 (two) working days prior to the expiration of such deadline, stating the reasons for the extension. The company shall be entitled to agree or refuse to extend the term requested by the bidder at its own discretion.
- 3.4. In case of discrepancy, error and/or defect in the bid by the bidder, the bidder shall be entitled to notify the company representative in writing about the discrepancy, error and/or defect.
- 3.5. The bidder shall be entitled to submit its bid before the expiration of the bid period.
- 3.6. By submitting a bid, the bidder shall agree to the tender terms and **Standard Terms and Conditions**.
- 4. Submission of a bid by a Joint Venture (JV)**
 - 4.1. **Bids** may be submitted by several **bidders** on the basis of a joint venture agreement (hereinafter referred to as the **Joint Venture**).
 - 4.2. The **bid** submitted by the **Joint Venture** shall provide detailed information on the structure of the **Joint Venture** and/or consortium.
 - 4.3. The company shall be entitled to request the relevant contract, agreement or other document of the **Joint Venture**, which confirms the will of the participants of the **Joint Venture** (hereinafter - the **Joint Venture Agreement**).
 - 4.4. The term of the **Joint Venture Agreement** may not be less than the term of the agreement to be concluded with the Company.
 - 4.5. Termination of the **Joint Venture Agreement** shall provoke termination of the contract with the company.
 - 4.6. The participants of the **Joint Venture** shall bear several and joint liability against the company to the full extent.
- 5. Correction of Bidding Documentation and Request for Additional Information**
 - 5.1. The **bidder** shall be entitled to correct the bidding documentation and/or any of its attachments at any time before the expiration of the bid, based on a written notice to the company representative. The written notice shall clearly indicate that the corrected documentation is an integral part of the bidding documentation.
 - 5.2. The **bidder** shall be entitled to request additional information on the tender, the bid, the object of the procurement, at least 2 (two) calendar days before the expiration of the bid, based on a written request to the company representative.
 - 5.3. After submitting the bid, the **company** shall be entitled to request additional information from the bidder and/or to specify the information specified in the bid, which must be done immediately by the **bidder**.
- 6. Alternative Object of Procurement**
 - 6.1. If the bid submitted by the bidder is in compliance with the tender conditions and the requirements of the **bidding documentation**, the **bidder** shall be entitled to alternately submit a second bid (hereinafter - the alternative bid), which:
 - 6.1.1. does not meet the requirements of the bidding documentation and/or tender conditions.
 - 6.1.2. clearly describes the issues that do not comply with the requirements of the bidding documentation and / or tender conditions.
 - 6.1.3. each page clearly has the entry "**Alternative Bid**"
 - 6.2. The company shall be entitled to consider or not to accept an **alternative bid** at its discretion.

6.3. If the **bidder** is aware that any of the materials provided in the **bidding documentation** are not available, the bidder shall indicate this fact in the bid, with detailed justification and submit alternative material, indicating the appropriate price/quality.

7. Bid Acceptance

7.1. The bidder shall submit a bid that will be valid for at least 30 (thirty) calendar days after the expiration of the bid.

7.2. By submitting a bid, the bidder shall agree not to change or request the tender proposal before the expiration of the period provided for in Paragraph 7.1 of this Article, except in the case provided for in Paragraph 3.5 of the **Standard Terms and Conditions** or with the Company's prior written consent.

7.3. The **company** shall be entitled to prioritize the bidding and select a successful bidder at its own discretion, by assessing the compliance of the bid with the bidding documents in its entirety, which does not mean that the lowest bidder will automatically become a successful bidder.

7.4. The **bid** shall be considered final only in case of concluding a contract between the company and the successful **bidder**.

7.5. The successful **bidder** shall acknowledge and agree to the Company's authority to include in the contract the **bid** either in whole or in part..

7.6. Upon completion of the bidding process, bidders who are not successful bidders shall be notified by written email in the bidding documents that their bid has been unsuccessful. The company is not obliged to disclose the reasons for the rejection of the bid and to provide additional communication with the **bidder** regarding the **bidding documentation**.

8. Privacy

8.1. The **bidder** shall protect the confidentiality of any information received from the company during the bid period, as well as after the tender, including but not limited only to information about the object of procurement, information specified in the bidding documents, drawings, specifications, technical and other information that is shared in any form (oral, written and/or electronic) with the **bidder** (hereinafter - **Confidential Information**).

8.2. The **bidder** shall not disclose and/or transmit confidential information to third parties without the prior written consent of the company, including not disclosing, issuing, publishing information, document, article (including photo or film), media release or other advertisements, do not allow third parties to use, disseminate such information for purposes other than the preparation of a bid..

8.3. In case the **bidder** receives any question from the media about the tender, the bidder shall forthwith inform the representative of the company, and the bidder shall not be entitled to communicate with the media about the tender issues without notifying the company.

8.4. The above privacy policy shall not apply to information or disclosure of information:

8.4.1. which was known to the information claimant without violation of the law prior to the disclosure of the relevant information by the disclosing company

8.4.2. which will be disclosed in compliance with the requirements of the law (including by a party (including the arbitral tribunal) in the exercise of its rights);

8.4.3. which can be obtained from other publicly available sources;

8.4.4. if the information is disclosed to a third party by written agreement between the bidder and the company, in which case the bidder is fully responsible for protecting the confidentiality of the information provided to it by the third party.

8.5. The company shall be entitled to request additional information from the **bidder** during the tender to conclude a non-disclosure agreement. In the event that a bidder refuses to sign such an agreement, the Company shall be entitled not to consider the bid submitted by such bidder.

8.6. The **bidder** shall ensure that all its employees, agents, subcontractors or any other person to whom the bidder shares confidential information comply with the provisions of this Article.

8.7. By submitting a bid, the **bidder** shall agree to use the information or documentation submitted by the bidder in written, oral and / or electronic form to evaluate, publicize, and transfer to a third party in order to evaluate the bid.

9. Intellectual Property

- 9.1. All intellectual property rights provided by law for documents, drawings, data, technical and other images provided in writing on behalf of the company and/or by the company representative to the bidder, including copyright and related rights shall belong to the company.
- 9.2. During or after the tender, the company shall be entitled to request the immediate return and/or destruction of the written documentation, copies and/or other written information provided to the **bidder** to the company.
- 9.3. The copyright and related rights to the bid shall belong to the company in accordance with the terms provided by law.

10. Personal Data

- 10.1. The **bidder** shall comply with the requirements of the Law of Georgia on Personal Data Protection when processing information / documentation containing personal data.

11. Conflict of Interest

- 11.1. The **bidder** shall promptly disclose to the Company any circumstance, transaction or relationship that constitutes or reasonably casts doubt on the existence of actual or potential conflicts of interest with the **bidder's** obligations under the Bidding Document or Contract.

12. Bidder's Representations and Warranties

- 12.1. The bidder hereby represents and warrants that:
 - 12.1.1. has no information about the bidding price, bidding documents or other conditions of any other bidder.
 - 12.1.2. has not entered into a contract, or into a transaction and / or agreed with another bidder on the identity of the successful bidder and / or the prices / terms specified in the tender terms and conditions.
 - 12.1.3. has not been involved in meetings or exchanged information with other bidders on bidding processes or direct bids.
 - 12.1.4. no artificial increase of the tender price was carried out in order to avoid winning the tender.
 - 12.1.5. fully acquainted with the scope of the tender, the tender terms and conditions and there are no circumstances that might affect its bid and performance of the contract by it.
 - 12.1.6. The bid was prepared on a voluntary basis, based on its own judgment, its own research and its own interpretation, and there was no coercion by the company to submit a bid, sign a contract or take any other tender action.
 - 12.1.7. Based on the requirements of the law and reasonable consideration, including and not only on the material provided in the bidding documents and technical information provided by the company, check for information on risks, unforeseen circumstances or other circumstances that may affect the **bid**.
 - 12.1.8. independently verifies/checks the accuracy, adequacy and correctness of the information provided on behalf of the company in addition to the information provided in the **bidding documents**.
 - 12.1.9. the price of the bid was set taking into account all the taxes, fees and charges provided by the legislation.
 - 12.1.10. If necessary, inspect the supplier's enterprise / territory (if any) and take into account the existing conditions, circumstances and other characteristics in the **bid**.
 - 12.1.11. Assessed all the requirements under the law in relation to the contractual obligations and that he can fully assume the fulfillment of the obligations under the contract.
 - 12.1.12. The Company has provided the information contained in the **Bidding Documents** or any other information for convenience only and shall not have a claim against the Company or a Company representative for such information within the limits provided by law. Thus the company shall not be responsible for the accuracy and precision of such information.
 - 12.1.13. Attended/attends the inspection of the supplier's enterprise / territory in order to study the supplier's enterprise / territory, the scope of the contractual obligations and the obligations contained in the **bidding documents**. Absence from the said inspection shall not release the **bidder** from fulfilling its obligations under the contract.

- 12.1.14. Has not had or will have any kind of communication (oral and / or written) with any employee, consultant or supplier of the Company without the prior written consent of the Company Representative, unless such consent is issued directly by the Company Representative. In this case, the bidder shall be entitled to conduct only oral communication. The bidder shall be obliged to send a written communication (letter, e-mail or other) to the company for confirmation and then to the addressee.
- 12.2. The **bidder** shall immediately notify the Company in writing of any circumstances (s) that may conflict with its representations and warranties and/or cause their breach.
- 12.3. The present representations and warranties of the **bidder** shall be valid until the successful bidder is identified or in case of concluding a contract with the bidder, until the full and proper fulfillment of the obligations under the contract, regardless of full or partial termination of the contract.
- 12.4. The **bidder** acknowledges that the company relies on the representations and warranties given in this article when reviewing the bid and concluding the contract, in case of violation of which the company is entitled to a) refuse to consider the bid; b) use other mechanisms provided by **law**.

13. **Limitation of Liability**

- 13.1. The Company's obligations to the **bidder** shall be limited to the bidding only and shall not be construed in such a way that the Company is liable to accept the **Bid** by posting the tender application.
- 13.2. The **bidder** shall participate in the tender at its own liability, risk and expense. The bidder shall not be entitled to claim compensation or reimbursement to the company for the costs or losses incurred during the preparation or submission of the **bidding documents**, or otherwise in connection with the bidding documents.
- 13.2.1. The Company shall not be liable to the **bidder** for such actions when:
- 13.2.2. at its own discretion, it decides not to purchase in whole or in part the goods and/or services presented in the **Bidding Documents**.
- 13.2.3. negotiates with any third party in parallel with the negotiations with the **bidder**.
- 13.2.4. it terminates the bidding procedures and negotiations with the **bidder**.
- 13.2.5. the Bidder is not selected as the Supplier of the Procurement Object that is the subject of the tender terms and conditions..
- 13.2.6. An alternative bid is selected as a successful bidder.
- 13.2.7. it exercises the discretionary powers provided for in Article 14 within or in connection with the **Bidding Documents**.

14. **Discretionary Power of the Company**

- 14.1. The Company shall be entitled, in its sole discretion:
- 14.1.1. cancel the tender in whole or in part at any time before or after the expiration of the **bid period**.
- 14.1.2. provide similar information/documentation to all other bidders in case of providing additional information/documentation to a specific bidder.
- 14.1.3. change the **bid period**.
- 14.1.4. refuse to consider the bid which: a) is submitted in a method different from the **bidding documentation**; b) submitted after the expiration of the tender proposal; and/or c) is submitted by a **bidder** who does not meet the tender conditions.
- 14.1.5. use your own criteria when evaluating a **bid**.
- 14.1.6. in case of considering the tender proposal incomplete / inconsistent, refuse to consider the relevant bidder, request the bidder to submit additional information or request the bidder to amend the tender proposal.
- 14.1.7. negotiate with one or more bidders regarding their bids.
- 14.1.8. re-place the tender in relation to the already procured object, or invite any other person to submit a **bid**.
- 14.1.9. carry out pre-qualification, shortlist or direct negotiations with one or more persons at any time (regardless of whether such person has submitted a **bid**).
- 14.1.10. divide the object of procurement into several lots and sign contracts with different **bidders** for each lot.