

SUPPLIER'S CONTRACT

For the "PROCUREMENT OF TWO (2) UNITS SEMI-AUTOMATIC BOTTLE FILLING MACHINE"

KNOW ALL MEN BY THESE PRESENTS:

This SUPPLIER'S CONTRACT made and executed by and between:

METALS INDUSTRY RESEARCH AND DEVELOPMENT CENTER, an attached agency under the DEPARTMENT OF SCIENCE AND TECHNOLOGY, with office address at Gen. Santos Avenue, Bicutan, Taguig, represented herein by its Executive Director, **Engr. ROBERT O. DIZON**, hereinafter referred to as "**MIRDC**";

— and —

KITCHEN MALL (KMC) CORPORATION, a corporation duly existing and organized under and by virtue of the Republic of the Philippines, with office address at 2870 Pertierra Street, Poblacion, Makati City, represented herein by its General Manager, **Mr. PAUL C. KIM**, hereinafter referred to as **KITCHEN MALL (KMC) CORPORATION**;

WITNESSETH:

WHEREAS, **MIRDC** is undertaking the procurement for the "**TWO (2) UNITS SEMI-AUTOMATIC BOTTLE FILLING MACHINE**", hereinafter referred to as the **PROJECT**;

WHEREAS, **MIRDC** conducted a negotiated bidding on April 11, 2016 in accordance with the Government Procurement Reform Act (R.A. 9184) and, after evaluating all the Bid proposals submitted, determined that herein **KITCHEN MALL (KMC) CORPORATION** was the **Single Calculated & Responsive Bidder**;

WHEREAS, a Notice of Award was issued to the who has accepted to supply the labor and materials for the **PROJECT** under set terms and conditions and warrants itself to be competent and fully equipped with the necessary materials, manpower and equipment necessary for undertaking the **PROJECT**;

NOW, THEREFORE, for and in consideration of the foregoing premises the PARTIES have agreed as follows:

ARTICLE I

SCOPE OF CONTRACT

1.1 The Goods and Related Services to be provided shall be as specified in the Schedule of Requirements/Terms of Reference.

1.2 This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein.

ARTICLE II

CONTRACT DOCUMENTS

2.1 The following documents are incorporated hereto and made an integral part of this Agreement, to wit:

- (a) Bid Documents, including the General and Special Conditions of Contract, if any;
- (b) Specifications/Terms of Reference;
- (c) Invitation to Apply for Eligibility and to Bid;
- (d) Instructions to Bidders;
- (e) Bid Data Sheet;
- (f) Addenda and/or Supplemental/Bid Bulletins, if any;
- (g) Bid form, including all the documents/statements contained in the Bidder's bidding envelopes, as annexes;
- (h) Eligibility requirements, documents and/or statements;
- (i) Performance Security;
- (j) Credit line issued by a licensed bank, if any;
- (k) Notice of Award of Contract and the Bidder's *conforme* thereto;
- (l) Other contract documents that may be required by existing laws and/or by MIRDC.

2.2 In case of doubt or conflict between and among any items or provisions of the Contract Documents, and/or between and among any of the Contract Documents and this Agreement, **KITCHEN MALL (KMC) CORPORATION** shall refer the same in writing to **MIRDC** for clarification and guidance. The clarification or determination made by **MIRDC** in writing shall be binding and conclusive upon the Parties.

2.3 **KITCHEN MALL (KMC) CORPORATION** shall not make any changes or alteration in the drawings, designs, or specifications in the **PROJECT** without prior written approval by **MIRDC**.

2.4 The parties may, in writing, agree to any revision, alteration, or addition to the terms and conditions of this Agreement or the Contract Documents.

ARTICLE III

CONTRACT PRICE

3.1 For and in consideration of the performance and accomplishment of the **PROJECT**, **MIRDC** shall pay **KITCHEN MALL (KMC) CORPORATION** the total amount of **ONE MILLION EIGHTY SIX THOUSAND FOUR HUNDRED Pesos and 00/100 (PhP1,086,400.00)** only subject to pertinent laws on government contracts and auditing procedures.

3.2 The Contract Price is inclusive of all taxes, stamp duties, license fees, and other such levies imposed for the completion of this Contract.

3.3 The Contract Price shall be fixed and not subject to variation or price escalation on any account except under conditions specified by law. Any adjustments in Contract Price shall be done in accordance with the guidelines provided by law.

3.4 Any amount payable to **KITCHEN MALL (KMC) CORPORATION** may be compensated against liquidated damages payable to **MIRDC** under this Agreement.

ARTICLE IV

PAYMENTS and WARRANTY

4.1 **MIRDC** shall, upon a written request of **KITCHEN MALL (KMC) CORPORATION** which shall be submitted as a contract document, make an advance payment to **KITCHEN MALL (KMC) CORPORATION** in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most, two installments according to a schedule specified in the Instruction to Bidders and other relevant Tender Documents.

4.2 The advance payment shall be made only upon the submission to and acceptance by **MIRDC** of an irrevocable letter of credit or from a bank guarantee issued by a universal or commercial Bank. The irrevocable letter of credit or bank guarantee shall remain valid until the goods are delivered.

4.3 The advance payment shall be repaid by **KITCHEN MALL (KMC) CORPORATION** by deducting fifteen percent (15%) from his periodic progress payments or in an amount equal to the percentage of the total contract price used for the advance payment until the amount of advance payment is fully liquidated.

4.4 **MIRDC** shall pay **KITCHEN MALL (KMC) CORPORATION** progress payments based on billings or invoice describing, as appropriate, the actual works accomplished as verified and certified by the Executive Director of **MIRDC** or his representative.

4.5 All progress payments shall be subject to a retention fee of ten percent (10%). Such retention shall be based on the total amount due to **KITCHEN MALL (KMC)**

CORPORATION prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of work, as determined by MIRDC, are completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall again be imposed using the rate specified therefore.

4.6 The total "retention money" shall be due for release after the lapse of the warranty period (minimum of 3 months for expendable goods or until consumption; minimum of 1 year for non-expendable goods); provided, however, that the Goods delivered are free from patent and latent defects and all the conditions imposed under this Contract have been fully met.

4.7 KITCHEN MALL (KMC) CORPORATION warrants that the materials used for the PROJECT are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials, except when the technical specifications required by MIRDC provides otherwise.

4.8 KITCHEN MALL (KMC) CORPORATION further warrants that the Goods shall have no defect, arising from materials or workmanship or from any act or omission of that may develop under normal use of the supplied Goods in the conditions currently prevailing.

ARTICLE V

TIME OF COMPLETION AND LIQUIDATED DAMAGES FOR DELAY

5.1 KITCHEN MALL (KMC) CORPORATION shall perform and complete the PROJECT to the satisfaction of MIRDC within SEVEN (7) CALENDAR DAYS reckoned from the date of receipt of the Notice to Proceed.

5.2 Time being of the essence of the PROJECT, delay in the completion of the PROJECT may be excusable only if the same is due to *force majeure*, additional work approved by MIRDC, or for any other special circumstances as may be determined by MIRDC.

5.3 *Force majeure* shall be interpreted to mean an event that the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions except for typhoons; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by KITCHEN MALL (KMC) CORPORATION.

5.4 If a *force majeure* situation arises, KITCHEN MALL (KMC) CORPORATION shall promptly notify MIRDC in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of KITCHEN MALL (KMC) CORPORATION's notice, MIRDC shall evaluate the situation and may extend KITCHEN MALL (KMC) CORPORATION's time for performance, in which case the extension shall be ratified by the Parties by amending this Contract.

5.5 If **KITCHEN MALL (KMC) CORPORATION** fails to satisfactorily deliver any or all of the Goods and/or to perform the Services within the period(s) specified under Section 5.1 of this Contract inclusive of duly granted time extensions, if any, **MIRDC** shall, without prejudice to its other remedies under this Contract and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of **one tenth (1/10) of one (1) percent** of the cost of the delayed goods scheduled for delivery for every day of delay until such goods are finally delivered and accepted by **MIRDC**.

5.6 This Contract is automatically rescinded once the total sum of liquidated damages exceed ten percent (10%) of the total contract price, without prejudice to imposition of appropriate sanctions over and above the liquidated damages.

ARTICLE VI

PERFORMANCE SECURITY

6.1 The Performance Security shall be posted in favor of **MIRDC** in the form and amount prescribed under the Contract Documents or applicable laws, rules and regulations. It shall remain valid until the issuance of the Certificate of Final Acceptance and may be released after the issuance of the Certificate of Final Acceptance subject to conditions mandated by law.

6.2 The Performance Security shall be forfeited in the event it is established that **KITCHEN MALL (KMC) CORPORATION** is in default in any of its obligations under this Agreement.

6.3 In case of a reduction of the contract value, **MIRDC** shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

ARTICLE VII

INSPECTION AND TESTS

7.1 **MIRDC** or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to **MIRDC**.

7.2 **MIRDC** may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. **KITCHEN MALL (KMC) CORPORATION** shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to **MIRDC**, and shall repeat the test and/or inspection, at no cost to **MIRDC**.

7.3 **KITCHEN MALL (KMC) CORPORATION** agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by **MIRDC** or its representative, shall release **KITCHEN MALL (KMC) CORPORATION** from any warranties or other obligations under this Contract.

ARTICLE VIII

ASSIGNMENTS AND SUB-CONTRACTING

8.1 **KITCHEN MALL (KMC) CORPORATION** cannot assign, transfer, pledge, sub-contract, or otherwise dispose of this Agreement or any part or interest herein without the prior written approval of **MIRDC**. Any such approval shall not relieve **KITCHEN MALL (KMC) CORPORATION** from any liability or obligation under the law or this Agreement, nor shall it create any contractual relation between the sub-contractor, pledgee, transferee, or assignee, and **MIRDC**.

8.2 **KITCHEN MALL (KMC) CORPORATION** will be responsible for the acts, defaults, and negligence of any sub-contractor, its agents, servants or workmen as fully as if these were **KITCHEN MALL (KMC) CORPORATION's** own acts, defaults, or negligence, or those of its agents, servants or workmen.

8.3 In case of sub-contracting, **KITCHEN MALL (KMC) CORPORATION** shall submit, before Final Acceptance, a sworn statement executed by the sub-contractor attesting to the fact that the latter has been fully paid by **KITCHEN MALL (KMC) CORPORATION** for the materials furnished and the labor performed under the sub-contract.

ARTICLE IX

OBLIGATIONS/RESPONSIBILITIES OF KITCHEN MALL (KMC) CORPORATION

9.1 **KITCHEN MALL (KMC) CORPORATION** shall comply with all laws, rules and regulations promulgated by the government of the Republic of the Philippines, including those on labor, environment, safety and sanitation and other pertinent laws. **KITCHEN MALL (KMC) CORPORATION** shall be solely liable for any violation of the same.

9.2 **KITCHEN MALL (KMC) CORPORATION** shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without cost to **MIRDC**. If **KITCHEN MALL (KMC) CORPORATION**, having been notified, fails to remedy the defect(s) within a reasonable period, **MIRDC** may proceed to take such remedial action as may be necessary, at **KITCHEN MALL (KMC) CORPORATION's** risk and expense and without prejudice to any other rights which **MIRDC** may have against **KITCHEN MALL (KMC) CORPORATION** under this Contract and applicable law.

ARTICLE X

SETTLEMENT OF DISPUTES

10.1. Any dispute or difference arising between the Parties hereto in connection with or arising out of this Contract shall be resolved amicably through mutual consultation. Unresolved issues remaining after thirty (30) days shall be settled in accordance with Republic Act 9285 ("R.A. 9285"), otherwise known as the "Alternative Dispute Resolution Act of 2004."

10.2 Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and **MIRDC** shall pay **KITCHEN MALL (KMC) CORPORATION** any monies due them.


ARTICLE XI

LIABILITY OF KITCHEN MALL (KMC) CORPORATION

11.1 Subject to additional provisions, if any, set forth in the Contract Documents, **KITCHEN MALL (KMC) CORPORATION's** liability under this Agreement shall be provided by the laws of the Republic of the Philippines.

ARTICLE XII

CONFIDENTIAL INFORMATION



12.1 **KITCHEN MALL (KMC) CORPORATION** shall not, except for purposes of performing the obligations in this Contract, without **MIRDC's** prior written consent, disclose this Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of **MIRDC**. Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

ARTICLE XIII

CONTRACT EFFECTIVITY

13.1 Contract effectivity date shall be provided in the Notice to Proceed.

ARTICLE XV

TERMINATION OF CONTRACT

14.1 MIRDC shall terminate this Contract on grounds stated under Republic Act No. 9184, otherwise known as the General Procurement Law, and its implementing rules and regulations:

IN WITNESS whereof the parties thereto have caused this Agreement to be executed this _____ at Bicutan, Taguig City.

**METALS INDUSTRY RESEARCH
AND DEVELOPMENT CENTER**

**KITCHEN MALL (KMC)
CORPORATION**


By:

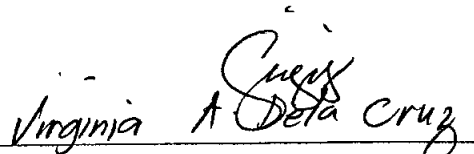
By:


Engr. ROBERT O. DIZON
Executive Director



Mr. PAUL C. KIM
President

SIGNED IN THE PRESENCE OF:


Engr. BRIAN U. RASCO
Project Leader


Virginia A. Dela Cruz

CERTIFIED FUNDS AVAILABLE:


JOHNNY G. QUINGCO
Accountant IV

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF MAKATI CITY) S.S.

Before me, a Notary Public for and in the MAKATI CITY this
MAY 19 2016 2016, personally appeared:

NAME	I.D. NO.	DATE/PLACE ISSUED
Engr. ROBERT O. DIZON	2016002	DOST, Bicutan, Taguig City January 08, 2016
Mr. PAUL C. KIM	N04-90-157543	MAKATI CITY MAY 07, 2014

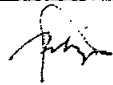
all known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their free act and deed as well as of the principal they represent.

This instrument refers to **SUPPLIER's** contract consisting of nine (9) pages, including this page in which the Acknowledgment is written, signed by the parties and their witnesses on each and every page and sealed with my notarial seal.


WITNESS MY HAND AND SEAL on the date and place above written.

Doc No. 903;
Page No. 45;
Page No. 389;
Series of 2016.

RUBEN T.M. RAMIREZ
NOTARY PUBLIC
UNTIL DEC. 31, 2017
2734 MA. AURORA ST. MAKATI CITY
IBP NO. 1009030-00-24-2016 CY-2016
ROLL NO. 28047/MCLE 4 NO. 0003324/G-0-12
PTR NO. 12329573/0 NO. 10 MAKATI CITY
757 CINTMENT NO. M.L.



WIRE ID No. 2005002



CIVIL DRIVER

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION & COMMUNICATIONS
LAND TRANSPORTATION OFFICE
SANTO SPIRIT QUEZON CITY

NON-PROFESSIONAL

LAST NAME FIRST NAME MIDDLE NAME
KIM TAE HYUN CHOI


ADDRESS NO. STREET CITY MUN. PROVINCE
UNION LEBONANE COND TORDERLAS ST. BAL. BAY CITY

BIRTH DATE SEX HT (cm) WT (kg) NATIONALITY
1972-05-03 M 163 55 FILIPINO

RESTRICTIONS CONDITIONS AGY EXPIRATION DATE
N/A N/A 2017-05-03

LICENCE NO.
N01-90-15-443

ASST. SECRETARY



NOTICE OF AWARD

May 02, 2016

Mr. PAUL C. KIM

President

Kitchen Mall Corporation (KMC)

2870 Pertierra Street, J.P. Rizal Ave.,

Poblacion, Makati City

Dear Mr. Kim:

You are advised that the Purchase Order for the procurement for the **"Two (2) Units Semi-Automatic Bottle Filling Machine"** of the Metals Industry Research and Development Center has been awarded to your firm in the amount of **One Million Eighty Six Thousand Four Hundred Pesos and 00/100 (Php1,086,400.00)** only, subject to the approval of the concerned authorities.

You are therefore requested to accept the award in writing within ten (10) calendar days from receipt hereof and post a performance security according to the following schedule:

- a. Cash, Manager's check or Cashier's check – 5% of the total contract price;
- b. Bank Guarantee/ Draft/ Irrevocable Letter of Credit – 5% of the total contract price;
- c. Surety Bond, callable on demand, valid for one year, issued by the Office of the Insurance Commissioner, or any combination thereof – 30% of the total contract price.

Thank you.

Very truly yours,


ROBERT O. DIZON
Executive Director

NOTICE TO PROCEED

May 13, 2016

Mr. PAUL C. KIM
President
Kitchen Mall Corporation (KMC)
2870 Pertierra Street, J.P. Rizal Ave.,
Poblacion, Makati City

Dear Mr. Kim:

The attached Contract Agreement having been approved, notice is hereby given to **KITCHEN MALL (KMC) CORPORATION**, that work may proceed on the project for the "**Procurement of Two (2) Units Semi-Automatic Bottle Filling Machine**", effective after Three (3) calendar days from receipt of this Notice to Proceed. Upon receipt of this notice, you are responsible for performing the services under the terms and conditions of the Agreement and in accordance with the Implementation Schedule.

Please acknowledge receipt and acceptance of this notice by signing both copies in the space provided below. Keep one copy and return the other to Metals Industry Research and Development Center.

Very truly yours,



ROBERT O. DIZON
Executive Director

I acknowledge receipt of this Notice on MAY 18, 2016 (date of receipt)Name of Bidder's Representative: PAUL C. KIMAuthorized Signature: 

The Head of the Procuring Entity or his duly authorized representative shall issue the Notice to Proceed within seven (7) calendar days from the date of the approval of the contract.

**BAC RESOLUTION DECLARING NOTICE OF AWARD AND RECOMMENDING
FOR APPROVAL**

RESOLUTION NO. 2016 011-B

**Project: "Procurement of Two (2) Units Semi-Automatic Bottle Filling Machine"-
(Re-bidding**

Approved Budget for the Contract (ABC): PhP1,086,400.00

Pre-bid Conference: March 28, 2016 at 9:00 a.m.

Opening of Bids: April 11, 2016 at 9:00a.m.

Whereas, the Metals Industry Research and Development Center (MIRDC) posted the Invitation to Bid for the above project on March 19, 2016 in the Philippine Government Electronic Procurement System (PhilGEPS), Metals Industry Research and Development Center (MIRDC) websites and conspicuous places at the premises of the DOST Bicutan, Taguig City continuously for 19 days;

Whereas, in response to the said advertisement, only one prospective bidder, that is, Kitchen Mall Corporation (KMC), signified their intention to join the bidding and purchased the bidding documents;

Whereas, a pre-bid conference was conducted on March 28, 2016 and attended by the aforementioned bidder and the BAC/TWG;

Whereas, the opening of bids was held on April 11, 2016 at 9:00 a.m. at the MIRDC Conference Room, 3rd Floor, Laboratories Building, MIRDC Compound, Gen. Santos Ave., Bicutan, Taguig City, where Kitchen Mall Corporation (KMC) submitted their bid proposal as a lone bidder;

Whereas, upon careful examination, validation and verification of all the eligibility, technical and financial requirements submitted by Kitchen Mall Corporation (KMC), the TWG reports its findings to the BAC dated April 18, 2016. Based on the said findings, the BAC found the bid of Kitchen Mall Corporation (KMC) to be complying and responsive.

Whereas, the bid proposal of Kitchen Mall Corporation (KMC) was found to be complying, such that:

Approved Budget of the Contract (ABC) – One Million Eighty Six Thousand Four Hundred Pesos (PhP1,086,400.00) Only;

BID AMOUNT – One Million Eighty Six Thousand Four Hundred Pesos (PhP1,086,400.00) only;

Whereas, Kitchen Mall Corporation (KMC), offered the Single Calculated and Responsive Bid, as stated under Section 36 (a) of RA 9184:

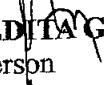
"if after advertisement, only one prospective bidder submits an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR, and it meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements."


NOW, THEREFORE, We, the Members of the Bids and Awards Committee, hereby RESOLVE as it is hereby RESOLVED:

- a.) To declare Kitchen Mall Corporation's bid proposal as the Single Calculated and Responsive Bid; and
- b.) Recommend to award the contract of the **"Procurement of Two (2) Units Semi-Automatic Bottle Filling Machine to Kitchen Mall Corporation (KMC)."**

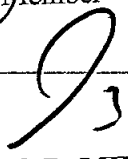
RESOLVED, at Taguig City this _____, 2016.

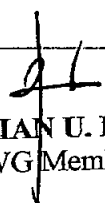

Ms. AUREA T. MOTAS
BAC Chairman/MIRDC

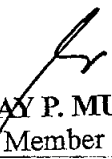

Ms. MERCEDITA G. ABUTAL
Vice Chairperson


GINA A. CATALAN
BAC Member

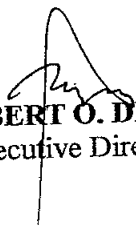

Atty. TRIXIE HAZEL C. VELUZ
BAC Member


ISIDRO D. MILLO
BAC Member


BRIAN U. RASCO
TWG Member


ELLJAY P. MUTUC
TWG Member

Approved (✓) / Disapproved ()


ROBERT O. DIZON
Executive Director

Approved on _____