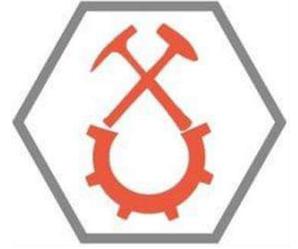




DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA  
MINISTRY OF INDUSTRIES



**KAHATAGAHA GRAPHITE LANKA  
LIMITED**

Bidding Document

**SALE OF KAHATAGAHA GRAPHITE**

BID REFERENCE NO: KGLL/MTC/01/2023

**INTERNATIONAL COMPETITIVE BIDDING**

**SALES COMMITTEE**

Chairman  
Ministry Tender Committee,  
Ministry of Industries  
P.O.BOX 570, No. 73/1, Galle Road,  
Colombo – 03, Sri Lanka.

**SELLER**

Kahatagaha Graphite Lanka Ltd,  
No.561/3, Elvitigala Mawatha,  
Narahenpita, Colombo 05  
Sri Lanka.

CONTENT		
SECTIONS	DESCRIPTIONS	PAGE NO
01	SECTION- 01: INTRODUCTION	03
02	SECTION -02: INVITATION FOR BIDS (IFB)	04-06
03	SECTION 03 – SPECIFICATIONS OF PRODUCTS	07-08
04	SECTION 04 - TERMS AND CONDITIONS OF SALE	09-23
05	PRESCRIBED BIDDING FORMS	
	a). BID SUBMISSION FORM	24-25
	b ). SPECIMEN OF BID GUARANTEE FORM	26
06	CONTRACT FORMS	
	a) SALES AGREEMENT	27-32

## SECTION- 01: INTRODUCTION

- 1.1. Kahatagaha mine is a graphite mine located at the village of Maduragoda, Dodangaslanda in Kurunegala District, North Western Province of Sri Lanka. Currently, it is managed by Kahatagaha Graphite Lanka Limited (KGLL) which is a fully government owned limited liability Company, established under the Companies Act No. 07 of 1987 and reregistered under the Companies Act No. 07 of 2007 of Democratic Socialist Republic of Sri Lanka.
- 1.2 KGLL is functioning under the purview of the Ministry of Industries and the Head Office of the company is situated at No. 561/3, Elvitigala Mawatha, Narahenpita, Colombo 05, Sri Lanka. The major shareholder of the company is the Secretary to the Treasury and main policymaking body of KGLL is the Board of Directors, headed by an Executive Chairman.
- 1.3. KGLL has a graphite mine and processing plant. Monthly production capacity of underground mine is 65 - 70 tones and maximum capacities of powder processing plant and chip plant are 100 tones & 300 tons per month respectively.
- 1.4. Kahatagaha mine is approximately 100 km far from the Capital of Colombo and the elevation of the mine is 25 meters.
- 1.5 Sri Lanka is the only commercial source of supply of high carbon natural crystalline vein graphite and particularly Kahatagaha mine is capable for mining high purity Natural Vein Graphite with 90- 92 C%, 92 – 95 C %, 95 – 97 C%, 97 – 99 c % and over 99% carbon, in fully crystallized form. It is found as chips, lumps, flakes and powder forms, enjoying monopoly of high carbon crystalline vein graphite with low ash content having a proven reputation of world market acceptance as a unique product. KGLL has exported their Graphite products mainly to Japan and Australia during past several years.

**SECTION -02: INVITATION FOR BIDS (IFB)**

2.1 The Chairman of the Ministry Tender Committee, on behalf of Kahatagaha Graphite Lanka Limited, invites international bids from the parties interested in buying following Graphite products available at the Kahatagaha Mine of Sri Lanka. The Local Parties, who have achieved the eligibility criteria for submission of bids and interested to purchase the Graphite products and export or add further value to those products, could also submit their bids.

2.2 Interested parties can deliver their bids through online or by hand. (Please see sections 2.9, 2.10 & 2.11)

2.3 The Graphite Products on Sale and other relevant details;

Table 01

Se. No	GRAPHITE PRODUCTS	QUANTITY ON SALE (MT)	BID SECURITY PER MT (LKR or USD)	PACKAGES & DELIVERY	Delivery Terms	DATE & TIME OF BID SUBMISSION & CLOSING
1.	90-92 C% Graphite Chip (HS 25041090)	*1000 MT	USD 18 or 6,014.48 LKR	1MT Jumbo bag	Ex – works Kahatagaha Mine, Kurunegala	27.11.2023 at 10.00 a.m. of Colombo, Sri Lanka
2.	90-92 C% Graphite Powder (HS 25049010)		USD 19 or 6,348.62 LKR			
3.	92-95 C% Graphite Chip (HS 25041090)		USD 24 or 8,019.31 LKR			
4.	92-95 C% Graphite Powder (HS 25049010)		USD 25 or 8,353.45 LKR			
5.	90-95 C% Graphite (HS 25041090)		USD 16 or 5,346.21 LKR			

2.4 \*Remarks:

2.4.1 Kahatagaha Graphite Lanka Limited is able to produce any type of product mentioned in the Table 01 within the quantity limit of 1000 MT. Therefore, the bidders could submit bids for purchasing of any Graphite product upon their requirement subject to number of products on sale and available quantity of 1000 MT.

2.4.2 Total suppliable graphite quantity is 1000 MT. Therefore, quantity segregation will be considered from high priced product to low priced product at the evaluation of the tender. However, the Final decision on the sale will be taken by the Ministry Tender Committee.

2.4.3 The order quantity is customized and it is 20MT in minimum for each and every graphite product. No award is permitted more than the tonnage on the bid offered by the bidder and bid security kept originally.

- 2.4.4 The bid security per tonnage of each and every Graphite Product is mentioned in the Table-01. The bid security should be calculated in accordance for the required quantity by the buyer.
- 2.4.5 Maximum capacity of powder plant and chip plant are 100 tones and 300 tons per month respectively. Hence supplying time period will be varied according to the product and the quantity. For further information on the above remarks, please contact Processing Executive, Kahatagaha Graphite Lanka Limited on email: [infokgllbid@gmail.com](mailto:infokgllbid@gmail.com) Phone: +94706666850/ +94742024751
- 2.5 The complete Bidding Document, consisting of Introduction, Invitation for Bids, Specifications of products, Terms & Conditions and Bidding Forms, is published in the official websites [www.industry.gov.lk](http://www.industry.gov.lk) and [www.https://kgraphite.lk/](https://kgraphite.lk/) and Sri Lankan Missions Overseas as well. The Interested Parties could visit the websites and download the bidding document free of charge. Further, the bidding document could be obtained from the Ministry Tender Committee free of charge as an alternative by submitting an official request to email [infokgllbid@gmail.com](mailto:infokgllbid@gmail.com) on or before 23.11.2023.
- 2.6 Pre bid meeting is scheduled to be held on 13.11.2023 at 10.00 am of Colombo, Sri Lanka at the Auditorium of the Ministry of Industries, No. 73/1, Galle Road Colombo 03, Sri Lanka and scheduled to be conducted physically and virtual platform. Bidders can be obtained relevant information and link by forwarding a request to e-mail [infokgllbid@gmail.com](mailto:infokgllbid@gmail.com) on or before 12.11.2023.
- 2.7 The bid should accompany the bid security in the amount as specified against the products on sale above and the copies of documents specified in the sub-clause 4.6.7 of clause 4.6, Preparation of Bids under Section 04. The bid security should be in cash by fund transfer / telegraphic transfer or in the form of bank guarantee issued by licensed, commercial bank in Sri Lanka against the counter guarantee of buyer's rated bank which is reputed one acceptable to the seller.
- 2.8 The bid security in cash will only be accepted upon credit of the payment to the bank account of the seller mentioned in the sub-clause 4.6.6 of clause 4.6 of the bidding document and confirmed the bank guarantee by the seller's bank.
- 2.9 A single PDF of prepared consisting with the bid form duly filled in & signed by the signatory accompanied the foregoing supported documents that is protected by the bidder himself positing time to be opened at 10.00 a.m. of Colombo, Sri Lanka on 27.11.2023 or retaining own password for opening the bid should be sent on email [icbp\\_kahatagaha@industry.gov.lk](mailto:icbp_kahatagaha@industry.gov.lk) with mandatorily copy to [kgllgraphitebid@gmail.com](mailto:kgllgraphitebid@gmail.com) to receive on or before 10.00 am Colombo, Sri Lanka on 27.11.2023. The bidder should use a valid domain for email in accordance with the high security information rules.
- 2.10 The bidder, who submitted the bid by protecting with their own password, should send their password on same email [icbp\\_kahatagaha@industry.gov.lk](mailto:icbp_kahatagaha@industry.gov.lk) with mandatorily copy to [kgllgraphitebid@gmail.com](mailto:kgllgraphitebid@gmail.com) within 10.00 a.m. - 10.15 a.m. of Colombo, Sri Lanka on 27.11.2023
- 2.11 The bidders who wish to submit their bids by hand, should submit the bid duly completed with the prescribe bidding forms and required documents in one envelope and then, put the same into a suitable another envelope and sealed and marked "Sale of Kahatagaha Graphite" and Tender Number "KGLL/MTC/01/2023" on the top left hand corner of the envelope, should either be forwarded under registered post, courier to the Chairman, Ministry Tender Committee, Ministry of

Industries, P.O. Box 570, No: 73/1, Galle Road, Colombo -03, Sri Lanka or be deposited by hand in the tender box placed at the Restructuring Division of the above Ministry to receive on or before 10.00 a.m of Colombo, Sri Lanka on 27.11.2023

2.12 The bids not complying with the above instructions, and the late bids and the bids without password within 10.00 a.m. – 10.15 a.m. of Colombo, Sri Lanka on 27.11.2023 will be rejected and not considered for evaluation. Therefore, bidders should be well aware to send their bids correctly and with password on time.

2.13 The received bids will be opened by the Bid Opening Committee at the Auditorium of the Ministry of Industries, No. 73/1, Galle Road Colombo 03, Sri Lanka at 10.15 a.m. of Colombo Sri Lanka on 27.11.2023. The bidder or his authorized representative who chooses to attend at the opening of bids is permitted by the Ministry Tender committee. The Ministry Tender Committee will acknowledge the receipt of the bid to the bidders no sooner the bids are opened.

For further information, and clarification on submission of bids, please contact Deputy Director, Restructuring Division of the Ministry of Industries on phone +94112432705 and email infokgllbid@gmail.com and further information and clarification on technical matter of bidding document please contact Processing Executive, Kahatagaha Graphite Lanka Limited on phone +94706666850 or +94742024751 and email kgllbid@gmail.com

Chairman,  
Ministry Tender Committee,  
Ministry of Industries,  
PO Box 570, No.73/1,  
Galle Road,  
Colombo -03,  
Sri Lanka.



b) Analysis Report for 90-95% C Graphite



**භූ විද්‍යා සමීක්ෂණ හා පතල් කායකිංශය**  
**புவிச்சரிதவியல் அளவை சுரங்கங்கள் பணியகம்**  
**GEOLOGICAL SURVEY & MINES BUREAU**

නො. 569, ඒපිටමුල්ල පාර,  
 පිටකෝට්ටේ, ශ්‍රී ලංකා.  
 இல. 569, எப்பிட்டமுல்ல வீதி,  
 பிடகோட்டே, இலங்கை.  
 No. 569, EPITAMULLA ROAD,  
 PITAKOTTE, SRI LANKA.

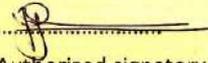
**Laboratory Reference No.** : AL/23/97/GEN- 44  
**Sample description** : Graphite powder: about 500 g  
**No. of Samples** : 01  
**Sample labels** : No label  
**Submitted by** : Kahatagaha Graphite Lanka Limited  
**Submitted Date** : 15.06.2023  
**Test dates** : From 15.06.2023 to 20.06.2023

**Results of Chemical Analysis :-**

Constituent determined	Content % (w/w)	Test Method
Volatiles	0.22	Gravimetry
Carbon	93.40	
Ash	6.38	
<b>Ash analysis</b>		
Silicon as SiO <sub>2</sub>	45.65	Gravimetry
Total Iron as Fe <sub>2</sub> O <sub>3</sub>	25.20	Acid Digestion and Atomic Absorption spectrometry
Aluminum as Al <sub>2</sub> O <sub>3</sub>	8.04	
Potassium as K <sub>2</sub> O	2.08	
Sodium as Na <sub>2</sub> O	2.84	
Calcium as CaO	6.67	
Magnesium as MgO	8.20	
Manganese as MnO	0.16	
Phosphorus P <sub>2</sub> O <sub>5</sub>	0.36	Acid Digestion and UV/VIS
Titanium as TiO <sub>2</sub>	0.78	Spectrophotometry

Note: The analysis was performed on the powdered sample dried at 105<sup>0</sup>-110<sup>0</sup>C.

  
 H N Kithugoda  
 Analyst  
 Date : 20/06/2023

  
 Authorized signatory  
 Date : 20/06/2023

Y.P. Shamalie Siriwardana  
 Director (Laboratory & Material Testing)  
 Geological Survey & Mines Bureau  
 No. 569, Epitamulla Road  
 Pitakotte

## SECTION 04 - TERMS AND CONDITIONS OF SALE

### 4.1 DEFINITIONS

The following words and expressions shall have the meanings hereby assigned to them:

- a) “Seller” is Kahatagaha Graphite Lanka Limited as specified in the contract of sale.
- b) “Interested Party” is defined as the party who has potential for purchase of Graphite products.
- c) “Bidder” is the party who interested to purchase of the product and submitted the bid
- d) “Buyer/ Purchaser” means the bidder who was successful in the bid and accepted for award of tender on purchase of any product, signed the contract upon award of tender or part of tender and settle the contract value fully
- e) “Foreign Buyer” is the party who submit the bid has business entity (Company/Partnership/Individual Proprietorship) or individual person from outside of Sri Lanka
- f) “Local Buyer is the party who submit the bid has local business entity (Company/ Partnership/Individual Proprietorship) or individual person from Sri Lanka
- g) “Contract” means the contract of sale entered into between the buyer and the seller with the bidding documents and contract documents including any appendices and all attachments thereto and the declaration of the bid form
- h) “Contract Documents” means the documents & correspondence listed in the Sales Agreement, including the amendments thereto dealt on the sales
- i) “Contract Value” means the value of sales order payable to the seller by the buyer under the contract as specified in the Sales Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- j) “Day” means calendar day unless otherwise specified in detail. The working days will be the official days in Sri Lanka on which banks are opened for business
- k) “Obligations” means the services & responsibilities incidental to the imports and exports of Products that should be performed by the seller and buyer under the contract.
- l) “Stock” means the product reserved for buyer for shipment.
- m) “T&CS” means the Terms & Conditions of Sale.
- n) “Products” means all of the commodities that the Seller is required to sell and deliver to the buyer under the Contract.
- o) “Related Services” means the services incidental to the imports and exports of the products such as insurance, transport of and other obligations of the Seller and Buyer under the Contract.
- p) “Successful Bidder” means the entity or individual person selected by the seller for purchasing the products and accepted the award and related Services, as specified in the Products for Sale and Related Services and further denied in the T&CS.
- q) “Kahatagaha mine” where applicable, means the place named as the delivery point of products.
- r) The “Global Market” means the prices of Graphite products published by any reputed source of reviewing the Graphite based industry and is the source acceptable to Kahatagaha Graphite Lanka Ltd.
- s) “Subcontractor” means any natural person, private or government entity, or combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is Sub contracted by the Seller or Buyer.

## 4.2 ETHICS, FRAUDS AND CORRUPTIONS

- 4.2.1 The attention of the Bidder/Buyer is drawn to the following guidelines and shall ensure to smooth governing of the sales process.
- a) Parties associated with sales actions, namely, Bidder/Buyer and Officials shall ensure that they maintain strict confidentiality throughout the process;
  - b) Officials shall refrain from receiving any personal gains from any sale action. No gifts or inducement shall be accepted. Bidder/Buyer are liable to be disqualified from the bidding process if found offering any gift or inducement which may have an effect of influencing a decision or impairing the objectivity of an official.
- 4.2.2. The Seller requires the Bidders/Buyers to observe the highest standard of ethics during the sale and execution of such contracts. In pursuit of this policy:
- a) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the sales process or in contract execution;
  - b) “Fraudulent practice” means a misrepresentation or omission of facts in order to influence a Sale process or the execution of a contract;
  - c) “Collusive practice” means a scheme or arrangement between two or more Bidders, with or Without the knowledge of the Seller to establish bid prices at artificial, noncompetitive levels;
- And
- d) “Coercive practice” means harming or threatening to harm, directly or indirectly, persons or the property to influence their participation in the sales process or affect the execution of a sales agreement.
- 4.2.3. If the Seller found any unethical practices as stipulated under sub-clause 4.2.2 above, that a Bidder directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question, the bid will be rejected.

## 4.3. BIDDING DOCUMENT

- 4.3.1. Bidding Document consists with Invitation for Bids, Introduction, Specifications of the products on sale, Terms & Conditions of Sales, Bidding Forms and Sales Agreement.
- 4.3.2. Throughout these bidding process the term “in writing” means communicated in written form by mail (including electronic mail) or hand delivered with proof of receipt.
- 4.3.3 If the context so requires, “singular” means “plural” and vice versa; and “day” means calendar day unless otherwise specified clearly as working days.
- 4.3.4 The communication language is English and therefore, every document and correspondence should be written in English.

#### 4.4. ELIGIBLE BIDDERS

- 4.4.1. All bidders shall process legal right to buy full or part of the graphite stock as specified in the table 01 of section 02 of the bidding document. The bidders shall also not be debarred or blacklisted in any country. The bidders should not have a conflict of interest and ineligibility at the date of submission of the bid & award of sales. The bidders found to have conflict of interest and ineligible shall be disqualified.
- 4.4.2. Buyers are allowed to export the graphite products using the export license of the KGLL within reasonable specified period mentioned in the sales agreement. The bidders, who wish to export the product by re-selling or use locally should obtain a trading license from Geological Survey & Mines Bureau (GSMB), Sri Lanka with the assistance of the KGLL. While the party who wish to add further value to the product purchased, should have facility for value- addition locally and the Government permission.
- 4.4.3. The respective addresses and the contact details given and set out by the bidder in the bid form will be considered for all purposes. The parties choose their respective addresses set out in the contract for all purposes arising out of or in connection with this agreement, at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the bidder.

#### 4.5. RESPONSIBILITY OF BUYER & SELLER

- 4.5.1 The product is guaranteed to the quality published by the seller with the product specification unless otherwise stated no warranty and delivered on Exw- Kahatagaha Mine (INCOTERM-2010). The obligations of the seller and buyer in respect of the sales agreement is governed in terms of sales agreement. All trade terms used in the sales agreement will be governed by and interpreted in accordance with the International Rules published by the International Chamber of Commerce in 2010 Year.
- 4.5.2 The seller will be responsible for assisting the buyer for obtaining of inland transport licenses for transport of product till Port of loading or buyer's local destination from the Factory in term of delivery mode of Exw basis. The loading of product, for the transport means of the buyer available at the Kahatagaha Mine, is seller's responsibility
- 4.5.3. The seller is responsible for issues of the pro-forma invoice, commercial invoice, weighing certificate, packing list, certificate of origin, material safety data sheet, quality certificate, regulatory permits including the certificate on free / preferential trade agreement other than the quarantine certificate.
- 4.5.4. The buyer who is with an intension for re-sale of the product to their foreign party, should export the products on their own under export license obtained from Geological Survey & Mines Bureau (GSMB). Seller will not be liable for the buyer in obtaining of their export license from GSMB.
- 4.5.5. The buyer is liable for settlement of payment on time in term of payment as mentioned in the sub-clause 4.13.2 of clause 4.13 - Contract Price, Payment Term & Settlement of Payment and thereafter, removal of product purchased within the time frame. The inland transports, exports & imports customs clearance, inspection of product & additional analysis of product (if required), cargo insurance and possession of regulatory permits necessary for

imports/exports of the products to the final destination are on account of buyer as vested the responsibility.

- 4.5.6. The copies of all shipping documents of the consignment cleared for export should be submitted to seller by the buyer himself or per their freight forwarder for verification of seller & record no sooner the transactions of each consignment is completed.
- 4.5.7 The royalty has to be borne by the buyer in addition to the bid price. Accordingly, buyers for export should pay 9% of FOB price as the royalty. Buyers for local usage should pay 7% of EXW price for local usage.
- 4.5.8. Throughout the sales agreement, seller should ensure to fulfil all of the objectives on the sales maintaining adequate transparency, responsibility, consistency accountability at the seller's end to secure the confidence.
- 4.5.9. The sales agreement is constituted with the buyer & seller on the sale of product with effect from the issues of proforma invoice upon acceptance of bidder in writing to the notification made on award by the seller notwithstanding to the signing of formal sales agreement.

#### 4.6. PREPARATION OF BIDS

- 4.6.1. The bidding process is conducted through the International Competitive Bidding (ICB) procedure through e-mail, by hand, by registered post or courier service.
- 4.6.2. The buyers (those who qualified in term of clause 4.4 - Eligible Bidders) should submit the bid for the product and the quantity they are interested for purchase. The bid should strictly be subjected to the Terms & Conditions of the bidding document.
- 4.6.3. The bidder or interested party, who chooses to analyze the product, could take sample for their own analysis. The sample could be obtained during any working day from the Marketing Division of the Kahatagaha Graphite Lanka Limited at upon submission of a written request subject to normal formalities. Sample Price for 1kg of respective graphite products is given bellow;

Se.No	Graphite Products (1 KG)	Sample Price (USD or LKR)
1.	90-92 C% Graphite Chip (HS 25041090)	USD 4.00 or 1,336.55 LKR
2.	90-92 C% Graphite Powder ( HS 25049010)	USD 4.50 or 1,503.62 LKR
3.	92-95 C% Graphite Chip (HS 25041090)	USD 5.50 or 1,837.76 LKR
4.	92-95 C% Graphite Powder ( HS 25049010)	USD 6.00 or 2,004.83 LKR
5.	90-95 C% Graphite (HS 25041090)	USD 3.50 or 1,169.48 LKR

- 4.6.4. Bidders should furnish the value of the bids in USD.
- 4.6.5. The bid should be submitted on or before 10.00 a.m of Colombo, Sri Lanka on 27.11.2023

4.6.6. The bid security is refundable. It should be computed as per table 01 of Section – 02 of Invitation of Bids an amount against the product and tonnage upon submission of bid. The bid security should be furnished by the foreign bidders in USD & the local bidders could furnish it by USD or LKR with the validity date 22.01.2024. The bid security value should be remitted by fund transfer or telegraphic transfer either to the Rupee Account No: 1630567 or United States Dollar Account No: 3630165 (Swift Code BCEYLKX) maintained by the seller at the Bank of Ceylon, Branch of Kollupitiya Super Grade Branch, Sri Lanka. The payment on bid security should have credited to the seller's account before 9.30 a.m of Colombo, Sri Lanka on 27.11.2023. Therefore, the buyer should take prior arrangement to remit this payment in advance and be ensured of its credit to the seller's account through their bankers. The bank guarantee should be a one issued by licensed commercial bank in Sri Lanka counter against rated bank of the bidder & the reputed. The bank guarantee should also be unconditional & payable on first demand of the Seller, It should be furnished in favor of Chairman, Kahatagaha Graphite Lanka Ltd. The copy of remittance advice and or original bank guarantee should be attached to the Bid Form.

4.6.7. The documents accompanied the bid are as follows

- i. Proven document for particular bid security (copy of TT / Fund Transfer or copy of Bank Guarantee)
- ii. If a business entity,
  - a) Copy of valid business registration/ company registration along with the associated documents of shareholders'/ owner's with specimen signatures therein to be proved the authority.
  - b) Copies of National Identity Card/ Passport of the Head of Company and the signatory authorization for representative if authorization is granted to work on behalf of the owner/shareholders (if applicable)
  - c) The collective agreement of the Consortium/Association / Joint Venture (if applicable) by designating of leading party so as to grant authorization to work on.

Or

iii) If an individual,

- a) Copy of the National Identity Card / Passport

4.6.8. The buyer, at any stage of transfer of funds or payment through bank, should bear all charges levied by the bank.

4.6.9. The buyer may review the Greenwich Mean Time (GMT) and ensure to post the correct time at their location that is corresponding to the deadline 10.00 a.m of Colombo, Sri Lanka on 27.11.2023 at the sending of bid to just open at the deadline.

#### 4.7. AMENDMENT TO BIDDING DOCUMENT

- 4.7.1. Amendment to the bidding document could be made by the seller and it will only be 5 working days prior to deadline for opening of the bids providing buyer reasonable time to take an addendum into account in preparation of their bids. The seller may, at its discretion, extend the deadline for submission of bids. Any addendum issued shall be part of the bidding documents and shall be published in the websites already uploaded the bidding document. In which cause all rights and obligations of the seller and bidders previously subject to the deadline shall thereafter, be subject to the deadline extended. The concurrence of the buyer shall not be required to modify the bidding document. Clarification in regard to the bid document should be raised on or before 12.00 noon of Colombo, Sri Lanka on 24.11.2023
- 4.7.2. In exceptional circumstances, prior to the expiration of the bid validity and bid security, seller may request buyer to extend the period of validity of their bids & bid security. The request shall be made in writing. If such a request, it shall also be extended for a corresponding period.

#### 4.8. SUBMISSION OF BIDS

- 4.8.1. The bidder should fill out the Bid Form with all the details requested by the seller and attached the documents and correspondence as specified in the sub-clause 4.6.7 of clause 4.6, Preparation of Bids. The submission of incomplete bid form and not receiving the bid on time will result rejection of bid. Therefore, it is compulsory for the bidder to fill the Bid Form correctly and attach the documents required completely.
- 4.8.2. The bidders who wish to submit their bids online, the single Portable Document Format - Adobe Acrobat (PDF) prepared as detailed in the clause 2.5, 2.7 & 2.8 of Section 02, Invitation for Bids should be emailed to icbp\_kahatagaha@industry.gov.lk with mandatorily copy to kgllgraphitebid@gmail.com on or before 10.00 a.m of Colombo, Sri Lanka on 27.11.2023.
- 4.8.3. The bidders who wish to submit their bids by hand, should submit the bid duly completed document as detailed in the clause 2.5 & 2.7 of Section 2 with the prescribe bidding forms and required documents in one envelope and then, put the same into a suitable another envelope and sealed and marked “Sale of Kahatagaha Graphite” and Tender Number “KGLL/MTC/01/2023 ” on the top left hand corner of the envelope, should either be forwarded under registered post, courier to the Chairman, Ministry Tender Committee, Ministry of Industries, P.O. Box 570, No: 73/1, Galle Road, Colombo -03, Sri Lanka or be deposited by hand in the tender box placed at the Restructuring Division of the above Ministry to receive on or before 10.00 a.m of Colombo, Sri Lanka on 27.11.2023.
- 4.8.4. Where the alteration is in the filling of bid form, the bidder should endorse the same for evidence.
- 4.8.5. The bidders are not allowed to submit multiple bids.

#### 4.9. WITHDRAWAL & MODIFICATION TO THE BIDS

4.9.1. Bidders are not allowed to withdraw, modify the bids and / or submit a substitute.

#### 4.10. OPENING OF BIDS

4.10.1 The bids will be opened at the Auditorium of the Ministry of Industries, P.O.Box 570, No. 73/1, Galle Road Colombo 03, Sri Lanka at 10.15 a.m of Colombo, Sri Lanka on 27.11.2023 as specified in the Section 02, Invitation for Bids.

4.10.2 The bids not complying with the instructions in the Invitation for Bids, late and incomplete bids will not be considered for evaluation and same will be rejected. Regarding late and incomplete bids and the bidders who unsuccessful in the bids, seller will inform in writing parallel to the notification on award to the successful buyers.

#### 4.11. BID EVALUATION & CRITERIA

4.11.1. Evaluation on received bids will be done by the Technical Evaluation Committee appointed for this Tender.

4.11.2 The bid substantially responsive to the bidding document will be taken for evaluation based on the quoted bid price, the quantity requested and other eligibility requirements.

4.11.3 No any domestic preference is given for evaluation of bids.

4.11.4. The Ministry Tender Committee reserves the right to award of sales tender or cancel.

#### 4.12. SALES AWARD & CONTRACT

4.12.1. The seller shall award the sales agreement to the bidders whose offers have been determined to be the evaluated substantial responsive bids.

4.12.2. Seller conveys the notification on award in writing or by email to the successful buyer on or before 20.12.2023. The notification will consist of the letter of award with the specific terms & conditions of sales agreement for acceptance of the successful buyer. The acceptance to the award should be submitted by the successful buyer in writing to the seller within 14 days from the date of award of the contract.

4.12.3. The seller & buyer will enter into the sales agreement on sale and purchase of the product. It will constitute and bind upon consecutive order of submission of bid by the bidder, issues of notification on award by the seller to the successful buyer, submission of the buyer's acceptance to notification on award in writing and issues of pro forma invoice by the seller. The other documents and correspondence dealt with the both parties of buyer and seller with the consent & acceptance of the sales entity and the terms & conditions of the bidding document will be the evidence for governing the sales agreement. No other facts or documents irrelevant will be constituted for governing of the sales agreement.

4.12.4. The seller will promptly notify each unsuccessful bidder the position of their bid and reasons to be unsuccessful in the bid.

#### 4.13. CONTRACT PRICE, PAYMENT TERM & SETTLEMENT OF PAYMENT

4.13.1. The bid price offered by the bidder for the product and the levy and taxes incurred over obligations and compulsory of the buyer shall be the contract value as mentioned in the sub-clause 4.14.2 of clause 4.14 – Royalty, Taxes and Duties.

4.13.2. The buyer shall pay 50% of sales value within 10 calendar days from the date of pro forma invoice. Balance payment should be paid as per the sales agreement. If the buyer fails to fulfill the conditions of the sales agreement, the initial payment (50% of sales value) will not be refunded.

4.13.3. The payment term is on advance by TT or fund transfer and the value mentioned in the sub clause 4.13.2. There is no permission to settle the payment by a third party in favor of buyer. The contract value should be paid fully in to the United States Dollar Account No: 3630165 (Swift Code BCEYLKXLX) maintained by the seller at the Bank of Ceylon, Branch of Kollupitiya Super Grade Branch, Sri Lanka. Only local buyers for local usage are allowed to make payment in LKR to the Rupee Account No: 1630567 maintained by the seller at the Bank of Ceylon, Branch of Kollupitiya Super Grade Branch, Sri Lanka and the value mentioned in the sub clause 4.13.2. No performance security is requested in addition to the contract value paid on advance.

4.13.4. The seller acknowledges to the buyer the receipt of payment no sooner the payment is credited of the seller's Account.

4.13.5. The buyer will be liable for any delay in the settlement of payment. Where the request for extension is from the buyer, it will be accepted only under acceptable reasons prevalent. The extension if any, it will be limited to 07 calendar days maximum and where no extension it will be subjected to charge of 0.1% interest for due payment per day. The additional invoice is issued for this surcharge.

4.13.6. The failure of successful buyers either to submit their acceptance to the contract award or settlement of payment of the sales agreement within the agreed time frame or any other payment thereof will constitute sufficient ground for the annulment of the award and forfeiture of the bid security or performance security.

#### 4.14. ROYALTY, TAXES AND DUTIES

- 4.14.1. The export customs clearance, royalty, taxes & levies and any other charges incurred at the Ports and Customs are on account of the buyer.
- 4.14.2. The seller issues the Tax Invoice on sales of the products. The Government Taxes, CESS & other Levy on sale and export of product should be borne by the buyer as per the delivery term of the products and their responsibility. The value added tax (VAT) is 15% of the total value of the sales agreement. However, VAT is currently Zero percent for export of mineral products as per the VAT Act 14 of 2002. The levies and taxes are subjected to imposed and revised by the government time to time.
- 4.14.3. The government royalty is 9% on FOB value regarding the exports and 7% on Exw for local usage.

#### 4.15. DISCHARGE OF BID SECURITY

- 4.15.1. The bid security will be returned only to the bank and the account of the buyer that is given with the bid form by the buyer
- 4.15.2. No sooner the intimation of the notification on award of sales tender, the bid security of the unsuccessful bidder could be withdrawn. However, the bid security will be released only upon receipt of request from the unsuccessful bidder in writing. The bid security will be returned within 10 calendar days of the receipt of withdrawal notice from the bidder.
- 4.15.3. The bid security of successful bidder will be released only upon settlement of the total sales agreement value within which the period approved for settlement and fulfillment of the obligations of the buyer thereon.

#### 4.16. TRANSPORTATION

- 4.16.1 Where the sale tender is awarded under the Ewx basis, the inland transport will be under responsibility of the buyer meantime the seller could also facilitate necessary transport arrangements upon the request of the buyer. The seller is responsible to provide necessary documents for obtaining of the transport licenses from GSMB.
- 4.16.2 Inland transport of product in term of FOB is under the responsibility of the seller.
- 4.16.3. The products purchased under this tender should not be sold or transported to any countries which are currently under international trade sanctions and embargo

#### 4.17. PROCESSING, PACKING & CLEARANCE OF STOCK

4.17.1 The buyer is liable to provide the suitable containers/vessels for loading from the Kahatagaha mine.

4.17.2. The stock will be issued on request of buyer. The buyer is permitted to remove the stock only upon settlement of full sales value and should commence & clear the stock purchased within the agreed time.

<b>Product /40mt with two working shifts</b>	<b>Processing time and packing time</b>	<b>Loading time</b>	<b>Total working time to dispatch</b>
KC 90-92	4 days	4hrs	4 and half days
KP 90-92	14 days	4hrs	14and half days
KC 92-95	4 days	4hrs	4 and half days
KP 92-95	14 days	4hrs	14 and half days
90-95 C% Graphite	2 days	4hrs	2 and half days

4.17.3. Seller delivers the product in bagged as specified in the Invitations for Bids. The seller, despite to the mode of package specified, could accept the alternative packaging of products if the buyer will bear the additional cost of packages & packaging.

4.17.4. The seller is liable to calibrate and service the weighing equipment located at the Kahatagaha mine and the updated certificates should be furnished to the buyer for his acceptance.

4.17.5. The approved period for removal of purchased products is mentioned in the sub-clause 4.17.2 of clause 4.17. The buyer is permitted for partial shipment.

4.17.6 The buyer is liable not to change of ownership of the sales agreement. Where an assignment has been made by the buyer with another party by their internal arrangement or agreement, seller is not responsible for any of the defaults arisen. The seller issues necessary documents for shipment subject to the sub-clause 4.5.3 of Clause 4.5 Responsibility of the Buyer & Seller

4.17.7. At the exports of products by the buyers, Bill of Lading (surrendered) and CUSDEC (party's copy) should be submitted to the seller for every consignment for record of the seller and issues of the shipping documents. The original export license and inland transport license will be facilitated by seller. The seller, notwithstanding to the order placed by the buyer, reserves the right to decide for authenticating of the Bill of Lading in each consignment cleared for export by the buyer. If the buyer will not submit these documents even after cleared & completed the export, it will be considered as failure and default of the buyer and an appropriate action will be taken by the seller either by imposing suspension for

participation in the next sales or ban for considerable period. Further, it may extend to blacklist of the company for participating in the sales.

4.17.8. The buyer should take every effort to clear the stock within the particular period pursuant to sub-clause 4.17.2 of clause 4.17 unless otherwise extension has been granted by the seller. The demurrage will be levied at USD 2.00/MT or equivalent in LKR for retaining the stock per week after expiring of stipulated period. It will be subjected to mandatory demurrage and accordingly, seller, reserves the right to recover the demurrage from the stock purchased by the buyer in the event of failure of the buyer to settle the demurrage charges. Where the stock remaining further after completion of particular period, the seller reserves the right to forfeit of the stock remains and terminate the sales agreement.

4.17.9. The products sold on exports basis should not be stored by the buyer anywhere in the local warehouse /yard if the export is under the export license provided by KGLL.

4.17.10. Processing priority will be given based on the quoted price, quantity and the value of contract.

#### 4.18. CONTRACT DOCUMENTS

4.18.1. Subject to the order of precedence set forth, the sales agreement constitutes with the Bidding Document, the bid submitted by the bidder, award of sales tender by the seller, the acceptance of buyer to the award and the pro forma invoice issued by the seller All documents forming the agreement (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The sales agreement shall be read as a whole.

#### 4.19. LANGUAGE

4.19.1 The sales agreement as well as all correspondence and documents relating to the agreement exchanged by the seller and the buyer, shall be written in English language. The supporting documents and printed literature that are part of the agreement may be in another language provided are accompanied by an accurate translation of the relevant passages certified by an authorized translator in the language specified and in which case, for purposes of interpretation of the agreement, this translation shall govern.

4.19.2 The buyer shall bear all costs of translation to the governing language and all risks of the accuracy of such translation for documents provided by the buyer.

#### 4.20. JOINT VENTURE, CONSORTIUM OR ASSOCIATION

4.20.1. If the buyer is an entity of joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the seller for the fulfillment of the provisions of the contract and shall designate one party to act as leader with legal authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium or association shall not be altered without the prior consent of the seller.

4.20.2. The bid submitted by the party should accompany the power of attorney.

#### 4.21. SPECIFICATIONS AND STANDARDS OF THE PRODUCT

4.21.1 The composition of the graphite product is guaranteed and certified to the specifications provided. The product, unless otherwise stated no warranty is delivered on guarantee.in pursuant to sub-clause 4.5.1 of clause 4.5 Responsibility of Buyer & Seller.

4.21.2. The product, offered for sale in terms of no warranty will be delivered “AS IS” in the existing condition.

#### 4.22. INSPECTIONS AND TESTS

4.22.1 The seller shall, at its own expenses and at no cost to the buyer carry out analysis and/or inspections of the stock at the Seller’s premises before the shipment of product subject to the warranty discussed in the Section 3, Specifications of Products. If the buyer needs to analyze the product on their own expenses, the seller will grant permission for their analysis.

4.22.2. The buyer or its designated representative shall be permitted to attend for the test and/or inspections. If such instant, the buyer shall bear all of its costs and expenses incurred in connection with such visiting including but not limited to, all traveling and board and lodging expenses.

4.22.3. The seller shall, on request of the buyer, provide the detailed report of analysis of the product and the results of any test and/or inspection carried out.

#### 4.23. ELIGIBILITY OF THE PRODUCT

4.23.1. The stock delivered under this sales agreement shall be complied with the specifications provided unless otherwise stated the product has no warranty.

4.23.2. In the issues and export of the product, where it found the absence of standards, the products should be tested at the independence laboratory acceptable to both seller and buyer before shipment within the validity period for removal of stock.

4.23.3. The buyer has no permission to reject any products after imported to their destination.

#### 4.24. GOVERNING LAW

4.24.1 The sales agreement shall be governed by and interpreted in accordance with the laws of the Democratic Socialist Republic of Sri Lanka.

#### 4.25. SETTLEMENT OF DISPUTES

4.25.1. The seller and the buyer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the sales agreement.

4.25.2. In the event any disputes between the parties hereto arising under or in connection with this agreement including but not limited to its existence validity or termination such disputes may be settled by negotiation and unless otherwise settled within 30 days such dispute shall be adjudicated under and in terms of the provisions of the arbitration Act No: 11 of 1995 of Sri Lanka and be referred to by the parties hereto or either of them for settlement by Arbitration. It is hereby agreed that if either party refuses and/or fails to appoint an Arbitrator within Thirty (30) days of receipt of a reference to Arbitration an Arbitrator appointed by the other party shall be deemed to be the sole Arbitrator and shall be entitled to proceed with the Arbitration in absence of such party and make an award. The relevant provisions of the Arbitration Act No: 11 of 1995 or any statutory enactment of modification for the time being in force in so the same may be applicable shall govern and shall be applicable to such arbitration. The decision of the Arbitration panel so appointed shall be final and binding on the parties hereto. The seat of Arbitration shall be Colombo, Sri Lanka.

4.25.3. Notwithstanding any reference to arbitration herein,

- (a) the parties shall continue to perform their respective obligations under the sales agreement unless they otherwise agree; and
- (b) the buyer shall pay the Seller any monies due the Seller.

#### 4.26. CONFIDENTIAL INFORMATION

4.26.1. The seller and the buyer shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the sales agreement

4.26.2. The buyer shall not use such documents, data, and other information received from the Seller for any purposes unrelated to the sales agreement. Similarly, the seller shall not use such documents, data, and other information received from the buyer for any purpose other than the performance of the sales agreement.

4.26.3. The above provisions shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the sales agreement in respect of the sale or any part thereof.

4.26.4. The provisions of Terms & Conditions of Contract of Clause 4.26 shall survive for completion or termination, for whatever reason, of the sales agreement.

#### 4.27 INSURANCE

4.27.1. Unless otherwise specified in the Clause 4.5, Responsibility of the Buyer & Seller in respect of the obligations vested with the insurance, the seller will only be account for the product until such a period of which product is delivered to the buyer or their transport contractor. Thereafter, the responsibility upon any loss or damage incidental thereto in acquisition, transportation, storage and freight is vested with the buyer.

#### 4.28. FORCE MAJEURE

- 4.28.1. The seller and buyer are liable to perform their obligations of the sales agreement. In such a situation of force Majeure, each party should promptly notify the other party in writing of the condition and the cause thereof. Unless otherwise agreed by the both parties to reach for compromise in this regard or provide a redress or alternative in writing, each party shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure.
- 4.28.2. For purposes of this Clause, “Force Majeure” means epidemic, act of God, strike, lockout, labour condition, unavailability of materials, transportation, power or other commodity, delay of common carrier, civil disturbance, riot, war or armed conflict (whether or not there has been an official declaration of war), the enactment of any law, the issuance of any executive or judicial order or decree, or other similar occurrence beyond the control of seller, which causes an interruption of or materially hampers or materially interferes with the production of the material.
- 4.28.3 The COVID-19 or any pandemic is exemption of the force majeure unless otherwise inland transport restriction or total lockdown to the normal functions of the public is declared by the government of Sri Lanka.
- 4.28.4 The buyer, in pursuant to addressing in the sub-clause 4.28.1 above, is liable for execution of his obligations of the sales agreement. Without prejudice to the addressing, the seller could cancel the sales tender awarded wholly or by partly, where the obligations of the sales agreement are not performed in a manner by the buyer with an expected advantage of the seller.

#### 4.29 EXTENSION OF TIME & DEMURRAGE

- 4.29.1. There is no any extension for removal of stock or settlement of payment where there is no acceptable reasons and / or situation of Force Majeure.
- 4.29.2. The demurrage will be charged for the stock not removed within the approved period at USD 2.00 per MT or LKR equivalent for retaining a week referred to the sub-clause 4.17.8 of Clause 4.17, Packing & Clearance of Stock.
- 4.29.3 Where the extension is approved, it will be limited to 07 days in maximum from the deadline. However, the seller will not be account for contamination or loss to the stock not removed within the period originally allowed for removal. In the case of remaining stock after expiry of the maximum period allowed by the seller for removal, the seller reserves the right to forfeit the stock and accordingly, terminates the sales tender. 4.30.

#### 4.30 TERMINATION

##### 4.30.1 Termination for Default

- (a) The seller, at his discretion, without prejudice to any other remedy for breach of sales agreement, by written notice of default sent to the successful buyer, may terminate the sales agreement in whole or in part and further legal actions appropriate.

- i). if the successful buyer fails to settle the sales agreement value fully within the stipulated period or within any extension thereof granted by the seller
- ii). if the successful buyer fails to remove and clear any or all of the stock within the period specified in the sales agreement, or within any extension thereof granted by the seller.
- iii).if the successful buyer fails to perform any obligation under the sales agreement; or breach the terms and conditions stipulated to the bidding document
- iv).if the buyer, in the judgment of the seller has engaged in practices unethical, fraud and corruption in completing for or executing the sales agreement as defined in sub-clause 4.2.1, 4.2.2 & 4.2.3 of Clause 4.2 Ethics, Frauds & Corruptions under Section 4 , Terms & Conditions

4.30.2. The seller is of the right to deprive the opportunity for participating in the tender for consecutive two tenders ahead to whom the buyer who breached the terms and conditions of the sales agreement and the parties not submit the shipping documents and return the permits that were provided by seller pursuant to the sub-clause 4.17.7 of Clause 4.17 Packing & Clearance of Stock on exports of the consignment.

4.30.3. Where the breaching of obligations of the sales agreement by the buyer or the parties who have been entrusted the services to by the buyer and deliberately causing loss to the seller and dishonor, seller could take appropriate actions either by disciplinary and / or legally in addition to the annulment of the award of tender.

4.30.4. The Ministry Tender Committee will be the decisive Authority at any resolution sought on the post administrative work of sale tender those arisen under terms and conditions and issues beyond the provisions discussed in the bidding document.

#### 4.31 ASSIGNMENT

4.31.1. Neither the seller nor the buyer shall assign, in whole or in part, their obligations under this sales agreement, except with prior written consent of the other party.



DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

MINISTRY OF INDUSTRIES

**KAHATAGAHA GRAPHITE LANKA  
LIMITED**



**Bid Submission Form**

Tender No.: KGLL/MTC/01/2023

**DETAILS OF THE BIDDER**

Name of Company:

Address : .....

Telephone General..... Fax..... Mobile  
T.P.....

Email..... Website.....

WhatsApp /chat of the Head of Company.....

	PRODUCT	QUANTITY (Metric Tonne)	BID PRICE PER METRIC TONNE (Exw) (Without Royalty)		BID PRICE PER METRIC TONNE (FOB) (Without Royalty)	
			USD	Cts	USD	Cts
01	92-95 C% Graphite Powder (HS 25049010)					
02	92-95 C% Graphite Chip (HS 25041090)					
03	90-92 C% Graphite Powder (HS 25049010)					
04	90-92 C% Graphite Chip (HS 25041090)					
05	90-95 C% Graphite (HS 25041090)					

PASTE HERE AS APPROPRIATE THE PHOTOCOPY OF PAYMENT ADVICE ISSUED BY THE BANK UPON PAYMENT IN CASH OR ATTACH THE ORIGINAL OF THE BANK GUARANTEE FURNISHES OR THE BID SECURITY.

In addition to the above, the copies of the documents mentioned in the clause no. 4.6.7 of section 4 – ITB & BD

**Authorized Signatory**

1. Name.....

Designation.....

Address.....

.....

Specimen Signature .....

NIC / Passport No. ....

No.....

*(attach a copy )*

Contact Details.....

.....

.....

.....

2.Name.....

Designation.....

Address

.....

Specimen Signature .....

NIC / Passport

*(attach a copy)*

Contact Details

**Authorization of the Owner / Shareholder of Company / Leading Party of Consortium, Joint Venture or Association**

I /we hereby agree with the terms and conditions stipulated in the tender document and abide to the terms and condition and complying with the instructions to bidder and duly authorized to the above nominees to sign the correspondence in respect of this tender on behalf of ..... our/ my Company.

Name in Full .....

Capacity / Designation .....

NIC/ Passport No. .... *(please attach a copy)*

Signature..... Date .....

Common Seal of the  
Authorized Company

# SPECIMEN BID GUARANTEE

[This Bank Guarantee form shall be filled in accordance with the instructions indicated in brackets]

----- [ Insert issuing agency's name and address / branch  
or office]

-----  
-----

-----[ Insert name & address of Beneficiary]

-----  
-----

The Chairman, Kahatagaha Graphite Lanka Limited

Date: ----- [insert (by issuing agency) date]

BID GUARANTEE No.: ----- [insert (by issuing agency) number]

We have been informed that -----  
-----[insert (by issuing agency) name of the Bidder; if a joint venture, list complete legal names of partners] (hereinafter called "the Bidder") has submitted to you its bid dated ----- [insert date (by issuing agency)] (hereinafter called "the Bid") for the purchase of -----  
[insert name of product (s)] under Invitation for Bids No. ----- [insert IFB number] ("the IFB").

Furthermore, we understand that, according to your conditions, Bids must be supported by a Bid Guarantee.

At the request of the Bidder, we -----  
----- [insert name of issuing agency] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ----- [insert amount in figures] --  
-----[insert amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- a) has withdrawn its Bid during the period of bid validity specified; or
- b) does not accept the correction of errors in accordance with Bid Evaluation Criteria or
- c) having been notified of the acceptance of its Bid by the Purchaser/ Buyer during the period of bid validity,
  - (i) fails or refuses to execute the Contract Form, if required, or
  - (ii) fails or refuses to settle the tendered value within the stipulated period, in accordance with the 4.13.2 & 4.13.5 of Section 04

This Guarantee shall expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the Contract signed by the Bidder and of settled the tendered value in full within the time frame by the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder that the Bidder was unsuccessful, otherwise it will remain in force up to 22.01.2024.

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

-----  
[Signature(s) of authorize

## SALES AGREEMENT

This Sales Agreement is made the ..... day of 2023

by and between,

(1)..... a company registered under the Company Act ..... The Democratic Socialist Republic of Sri Lanka and having its principal place of business at ..... Sri Lanka (hereinafter called “the Seller”), and

(2)..... bearing registration No./National Identity Card No./ Passport No. .... and having its principal place of Business / residence at ..... (Hereinafter called “the Buyer/Purchaser”)

WHEREAS modus operandi in the contract agreement is that the seller invites bids for sale of 1000 MT of graphite under tender no KGLL/MTC/2023/01 (here after called and referred to as “the product”) and the successful bidder (hereafter called and referred to as “buyer/purchaser”) upon a price inclusive of all relevant taxes (herein after called and referred to as “contract value”) adhering to the tentative schedule embodied in the Bidding Document and both seller and Purchaser agree that this contract agreement to term as a forward sales agreement of which shall last for a period of ..... from the date of signing.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

### 1. Terms & Conditions of Contract

In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Terms & Conditions of Contract referred to as follows:

- a) “Seller” is Kahatagaha Graphite Lanka Limited as specified in the contract of sale.
- b) “Interested Party” is defined as the party who has potential for purchase of Graphite products.
- c) “Bidder” is the party who interested to purchase of the product and submitted the bid
- d) “Buyer/ Purchaser” means the bidder who was successful in the bid and accepted for award of tender on purchase of any product, signed the contract upon award of tender or part of tender and settle the contract value fully
- e) “Foreign Buyer” is the party who submit the bid has business entity (Company/Partnership/Individual Proprietorship) or individual person from outside of Sri Lanka
- f) “Local Buyer is the party who submit the bid has local business entity (Company/Partnership/Individual Proprietorship) or individual person from Sri Lanka
- g) “Contract” means the contract of sale entered into between the buyer and the seller with the bidding documents and contract documents including any appendices and all attachments thereto and the declaration of the bid form
- h) “Contract Documents” means the documents & correspondence listed in the Sales Agreement, including the amendments thereto dealt on the sales
- i) Contract Value” means the value of sales order payable to the seller by the buyer under the contract as specified in the Sales Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

- j)“Day” means calendar day unless otherwise specified in detail. The working days will be the official days in Sri Lanka on which banks are opened for business
- k)“Obligations” means the services & responsibilities incidental to the imports and exports of Products that should be performed by the seller and buyer under the contract.
- l)“Stock” means the product reserved for buyer for shipment.
- m)“T&CS” means the Terms & Conditions of Sale.
- n)“Products” means all of the commodities that the Seller is required to sell and deliver to the buyer under the Contract.
- o)“Related Services” means the services incidental to the imports and exports of the products such as insurance, transport of and other obligations of the Seller and Buyer under the Contract.
- p)“Successful Bidder” means the entity or individual person selected by the seller for purchasing the products and accepted the award and related Services, as specified in the Products for Sale and Related Services and further defined in the T&CS.
- q)“Kahatagaha mine” where applicable, means the place named as the delivery point of products.
- r) The “Global Market” means the prices of Graphite products published by any reputed source of reviewing the Graphite based industry and is the source acceptable to Kahatagaha Graphite Lanka Ltd.
- s) “Subcontractor” means any natural person, private or government entity, or combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is Sub contracted by the Seller or Buyer.

## **2. Supporting Documents**

Seller and purchaser agree that the following documents listed below is which is an integral part of the tender procedures in respect of this transaction and pledge to adhere and to respect to the terms, conditions, rulings and requirements of the documents that are integrated to this sales agreement and undertake not to violate any of these conditions.

A). Tender Notice

B). Bidding Document consist with the following supporting documents

- a) Specifications of the product provided by the Seller
- b) Terms & Conditions of Contract
- c) Bid guarantee
- d) Bid Submission Form

C) Notification of Award of the Seller and Acceptance of Buyer/Purchaser for the same

D) Pro-forma Invoice

## **3. Settlement of Payment**

The buyer /Purchaser shall pay 50% of sales value within 10 calendar days from the date of pro forma invoice. Balance payment should be paid by the buyer/ purchaser, before dispatch of the first consignment from the Kahatagaha Mine with regard to the initial payment (50% of sales value). If the buyer/ purchaser fails to fulfill the conditions of the sales agreement, the initial payment (50% of sales value) will not be refunded.

#### **4. Supply & Delivery of Products**

Seller undertakes to supply & delivery of .....MT of ..... within..... the time period mentioned in the clause 4.17.2 of section- 4 in the bidding document and to ensure the loading without delay and to consider for extension where there is any delay occurred at the end of Seller.

#### **5. Clearence of Stock**

The Buyer/ Purchaser undertakes to remove the stock within the 14 days of period mentioned in clause 4 of the Sales Agreement unless otherwise extension for removal of the product was not provided by the Seller.

#### **6. Demurrage**

The buyer/ purchaser should take every effort to clear the stock within the particular period pursuant to the sales agreement sub-clause 4.17.2 of clause 4.17 in the bidding document unless otherwise extension has been granted by the seller. The demurrage will be levied at USD 2.00/MT or equivalent in LKR for retaining the stock per week after expiring of stipulated period. It will be subjected to mandatory demurrage and accordingly, seller, reserves the right to recover the demurrage from the stock purchased by the buyer/ Purchaser in the event of failure of the buyer/ Purchaser to settle the demurrage charges. Where the stock remaining further after completion of particular period, the seller reserves the right to forfeit of the stock remains and terminate the sales agreement.

#### **7. Export License**

The buyer/ Purchaser is only allowed to use the export license of the KGLL within 30 days after the time period mentioned in the clause 4 of Sales Agreement.

#### **8. Supporting Services**

Seller will issue commercial invoice, the certificate of origin, packing list with the weighing certificate for the product issued and cleared for export, quality certificate for the product of guaranteed (Specifications), the copy of export license and regulatory permits as required to the buyer / purchaser other than quarantine certificate for each consignment of the product on receipt of the bill of lading to the Seller.

#### **9. Pre- shipment survey and pre- analysis of the product**

Pre- shipment survey and pre - analysis of the product if required could be carried out by the buyer/ purchaser before the removal of the stock at the buyer/ Purchaser's expenses.

#### **10. Governing Law**

The sales agreement shall be governed by and interpreted in accordance with the laws of the Democratic Socialist Republic of Sri Lanka.

## **11. Settlement of Disputes**

11.1 The seller and the buyer/ purchaser shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the sales agreement.

11.2 In the event any disputes between the parties hereto arising under or in connecting with this agreement including but not limited to its existence validity or termination such disputes may be settled by negotiation and unless otherwise settled within 30 days such dispute shall be adjudicated under and in terms of the provisions of the arbitration Act No: 11 of 1995 of Sri Lanka and be referred to by the parties hereto or either of them for settlement by Arbitration. It is hereby agreed that if either party refuses and/or fails to appoint an Arbitrator within Thirty (30) days of receipt of a reference to Arbitration an Arbitrator appointed by the other party shall be deemed to be the sole Arbitrator and shall be entitled to proceed with the Arbitration in absence of such party and make an award. The relevant provisions of the Arbitration Act No: 11 of 1995 or any statutory enactment of modification for the time being in force in so the same may be applicable shall govern and shall be applicable to such arbitration. The decision of the Arbitration panel so appointed shall be final and binding on the parties hereto. The seat of Arbitration shall be Colombo, Sri Lanka.

11.3 Notwithstanding any reference to arbitration herein,

11.3.1 the parties shall continue to perform their respective obligations under the sales agreement unless they otherwise agree; and

11.3.2 the buyer/ purchaser shall pay the Seller any monies due the Seller.

## **12. Force Majeure**

12.1. The seller and buyer/ purchaser are liable to perform their obligations of the sales agreement. In such a situation of force Majeure, each party should promptly notify the other party in writing of the condition and the cause thereof. Unless otherwise agreed by the both parties to reach for compromise in this regard or provide a redress or alternative in writing, each party shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure.

12.2. For purposes of this Clause, "Force Majeure" means epidemic, act of God, strike, lockout, labour condition, unavailability of materials, transportation, power or other commodity, delay of common carrier, civil disturbance, riot, war or armed conflict (whether or not there has been an official declaration of war), the enactment of any law, the issuance of any executive or judicial order or decree, or other similar occurrence beyond the control of seller, which causes an interruption of or materially hampers or materially interferes with the production of the material.

12.3 The COVID-19 or any pandemic is exemption of the force majeure unless otherwise inland transport restriction or total lockdown to the normal functions of the public is declared by the government of Sri Lanka.

12.4 The buyer/ purchaser, in pursuant to addressing in the sub-clause 4.28.1 in the bidding document, is liable for execution of his obligations of the sales agreement. Without prejudice to the addressing, the seller could cancel the sales tender awarded wholly or by partly, where the obligations of the sales agreement are not performed in a manner by the buyer/ purchaser with an expected advantage of the seller.

### **13. Termination**

#### 13.1 Termination for Default

(a) The seller, at his discretion, without prejudice to any other remedy for breach of sales agreement, by written notice of default sent to the successful buyer, may terminate the sales agreement in whole or in part and further legal actions appropriate.

i) if the successful buyer fails to settle the sales agreement value fully within the stipulated period or within any extension thereof granted by the seller

ii) if the successful buyer fails to remove and clear any or all of the stock within the period specified in the sales agreement, or within any extension thereof granted by the seller.

iii) if the successful buyer fails to perform any obligation under the sales agreement; or breach the terms and conditions stipulated to the bidding document

iv) if the buyer/ purchaser, in the judgment of the seller has engaged in practices unethical, fraud and corruption in completing for or executing the sales agreement as defined in sub-clause 4.2.1, 4.2.2 & 4.2.3 of Clause 4.2 Ethics, Frauds & Corruptions under Section 4 , Terms & Conditions in the bidding document.

13.2 The seller is of the right to deprive the opportunity for participating in the tender for consecutive two tenders ahead to whom the buyer/ purchaser who breached the terms and conditions of the sales agreement and the parties not submit the shipping documents and return the permits that were provided by seller pursuant to the sub-clause 4.17.7 of Clause 4.17 Packing & Clearance of Stock on exports of the consignment in the bidding document.

13.3 Where the breaching of obligations of the sales agreement by the buyer/ purchaser or the parties who have been entrusted the services to by the buyer/ purchaser and deliberately causing loss to the seller and dishonor, seller could take appropriate actions either by disciplinary and / or legally in addition to the annulment of the award of tender.

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

For and on behalf of the Seller

1. ....

2. .... (Signature)

.....

..... (Name in Full)

In the capacity of Chairman

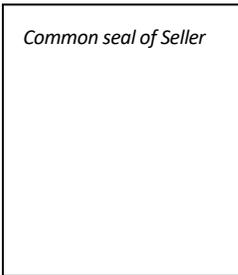
In the capacity of Director

In the presence Mr.....

General Manager.....

NIC /Passport No..... issued on .....

Signature .....



for and on behalf of the Buyer

1. ....

2.....

Signature)

.....

.....

(Name in Full)

Authorized Signatory

Authorized Signatory

In the capacity of .....

.....

In the presence of Mr./ Mrs.

.....(capacity) of

..... NIC/ Passport No.....

Issued on (date) .....

Signature.....

