CONTRACT FOR THE PROCUREMENT OF VARIOUS OFFICE FURNITURE, FIXTURE AND EQUIPMENT FOR THE PORT MANAGEMENT OFFICE OF BATANGAS (LOT NOS. 1 AND 2)

This Contract made and entered into this JAN 0 6 2017, in the City of Batangas, Philippines, by and between:

PHILIPPINE PORTS AUTHORITY, PMO-BATANGAS a government instrumentality created under Presidential Decree No. 857, as amended, with principal office at PPA New Administration Building, Diversion Rd., Calicanto, Batangas City, represented herein by its Port Manager, **LEOPOLDO C. BISCOCHO JR.**, and hereinafter referred to as "**PPA**";

- and -

FILCRAFTERS, INC., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at 484 G. Araneta Ave., Brgy. Dona Imelda, Quezon and represented herein by its duly authorized representative, **JENELYN U. DAVID**, authorized for this purpose as per Secretary's Certificate dated January 18, 2017, and hereinafter referred to as the **"SUPPLIER"**

WITNESSETH

WHEREAS, PPA desires to enter into a Contract for the **PROCUREMENT OF VARIOUS OFFICE FURNITURE, FIXTURE AND EQUIPMENT FOR THE PORT MANAGEMENT OFFICE OF BATANGAS** to replace the existing ones that are already dilapidated;

WHEREAS, in accordance with Republic Act No. 9184 and its Revised Implementing Rules and Regulations, the PMO Batangas Bids and Awards Committee for the Procurement of Goods (BAC-PG) posted in the PhilGEPS and PPA website as well as in its bulletin board;

WHEREAS, in response thereof, three (3) bidders, namely: Berto Lucci Builders & Supply submitted its bid for Lots No. 1, 2, 5, 6 and 7; Unimarc Enterprises submitted its bid for Lot Nos. 3 and 4; and the SUPPLIER submitted its bid for Lot Nos. 1 and 2;

WHEREAS, after opening of bids on December 12, 2016, the SUPPLIER was declared eligible to bid and its bid offer for Lot Nos. 1 and 2 in the amount of **ONE MILLION THREE HUNDRED ELEVEN THOUSAND TWO HUNDRED FORTY EIGHT PESOS and 31/100 (P1,311,248.31),** and **TWO MILLION TWO HUNDRED NINETY TWO THOUSAND SEVEN HUNDRED NINETY TWO PESOS (P2,292,792.00)** Philippine Currency, respectively, or a total **of THREE MILLION SIX HUNDRED FOUR THOUSAND FORTY PESOS and 31/00 (P3,604,040.31)** is found to be lower than the bid of Berto Lucci Builders & Supply as well as the Approved Budget for the Contract (ABC) for each lot;

WHEREAS, Unimarc Enterprises was declared as the Single Calculated Bid for Lot Nos. 3 and 4 while Berto Lucci Builders & Supply was declared the Single Calculated Bid for Lot Nos. 5, 6 and 7;

WHEREAS, pursuant to BAC Resolution No. 18-2016, award of the contract was made to the SUPPLIER in a Notice of Award dated December 21, 2016;

WHEREAS, the SUPPLIER duly accepted the award by signing in the "Conforme" on the said Notice of Award (NOA);

NOW, THERFORE, for and in consideration of the foregoing premises, mutual covenants, stipulations and agreements, PPA and the SUPPLIER have agreed, as they do hereby agree, and contract as follows:

ARTICLE I
CONTRACT DOCUMENTS

1.01 The following documents shall constitute integral parts of this Contract, as fully as if the contents of said documents are reproduced, incorporated and set forth herein, to wit:

a. Invitation to Bid;
b. Authority of Signing Official;
c. Bid Documents consisting the following:
    1. Instruction to Bidders
    2. Bid Data Sheet
    3. General Conditions of Contract
    4. Special Conditions of Contract
    5. Schedule of Manpower Requirements
    6. Technical Specification [Terms of Reference] and its Annexes
d. Addenda and/or Supplemental/Bid Bulletins, if any;
e. CONTRACTOR's Bid Proposal consisting of two [2] envelopes, namely: 1st Envelope-Eligibility and Technical Requirements; and 2nd Envelope-Financial Proposal, including all the documents/statements contained therein;
f. Performance Security
g. Computed Net Financial Contracting Capacity (NFCC)
h. Notice of Award of Contract and the CONTRACTOR's "Conforme" thereto;
i. Notice to Proceed; and
j. Other pertinent documents as may be required by existing laws and/or of PPA.

1.02 All contract documents are and shall remain as property of PPA.

1.03 The words and expressions in this Contract shall have the same meaning respectively assigned to them in the contract documents referred to above.

1.04 It is expressly agreed and understood that in case of any irreconcilable conflict between this Contract and the provisions of any of the Contract Documents, the former shall be controlling.

ARTICLE II
SCOPE OF WORK

2.01 The SUPPLIER in consideration of the payment to be made PPA to the SUPPLIER, as stated in the Contract Documents in this Contract, the latter hereby covenants to execute and complete the supply, delivery and installation of the subject items, in conformity in all respects with the provisions of this Contract and the Contract Documents, as follows:

Lot No.	Quantity	Unit	Item
1	7,579.47	Sq.ft.	Cobi Blinds
2	166	units	5 Seater Gang Chair
ALL ITEMS SHALL BE BRAND NEW AND HAVE AT LEAST A ONE (1) YEAR WARRANTY			

2.02 The SUPPLIER guarantees and warrants the availability, quality and genuineness of all supplied and delivered items.

2.03 The SUPPLIER shall hold and save PPA, its officers, consultants and employees harmless from any liability of any nature or kind, including costs or expenses, for or on account of infringement of any copyrighted compositions, secret processes, patented or unpatented inventions, or articles manufactured or used in the performance of this Contract.

2.04 The SUPPLIER recognizes the position of trust and confidence reposed on it under this Contract, and agrees to perform its obligations hereunder in the most efficient and competent manner, use its skill and good judgment, always set in good faith, and carry out the execution of this Contract in the most sound, expeditious and economical manner consistent with the interest of PPA.

2.05 The SUPPLIER warrants that the items supplied under this Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials.

ARTICLE III
CONSIDERATION

3.01 For and in consideration of the full, satisfactory and faithful performance of the SUPPLIER of all its undertakings provided under this Contract, PPA hereby agrees to pay the SUPPLIER the total mount mentioned hereunder:

Lot No.	Quantity	Unit	Item Description	Unit Price (Pesos)	Amount
1	7579.47	Sq.ft.	Combi Blinds	173.00	P1,311,248.31
2	166	units	5 Seater Gang Chair	13,812.00	P2,292,792.00
TOTAL AMOUNT					**P3,604,040.31**

3.02 The aforementioned amount for each lot shall be inclusive of twelve percent [12%], Value Added Tax. Except as provided for under existing laws, it is hereby expressly agreed upon and understood that the stipulated contract amount shall not be subject to upward adjustment for any cause or reason.

It is hereby expressly agreed upon and understood that the any payment shall not be construed as acceptance of defective units or any of its accessories.

3.03 Payment of Ninety Nine Percent (99%) of the stipulated contract price shall be made to the SUPPLIER within a reasonable time after the issuance of PPA of the Certificate of Completion and Acceptance. The One Percent (1%) balance thereof shall be withheld by PPA as retention money which shall only be released after the lapse of the warranty period specified in Article II, Section 2.01 hereof. The SUPPLIER may, however, request for the substitution of the aforesaid retention money with a special bank guarantee of the same amount which shall serve the purpose for which the retention money is intended.

The retention money or special bank guarantee, as the case may be, shall be released only after the expiration of the warranty period, provided that the items or its accessories subject of this Contract is free from defect, and that all the conditions imposed under this Contract are met or complied with.

3.04 The warranty period for the items delivered shall commence upon acceptance thereof by PPA.

3.05 PPA shall promptly notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall, within three (3) days and with all reasonable speed, test, repair, or replace the defective items, accessories or parts thereof, without cost to PPA.

3.06 Any payment due and payable to the SUPPLIER may be set off against liquidated damages payable to PPA by the SUPPLIER under this Contract.

3.07 All payments shall be subject to existing government accounting and auditing rules and regulations.

ARTICLE IV
PERFORMANCE SECURITY

4.01 To guarantee the faithful performance of the SUPPLIER under the contract, it shall post, upon the signing of the contract a performance security in the form of cash, manager's check, cashier's check, irrevocable letter of credit issued by the Government Service Insurance System (GSIS) or any surety company duly accredited by the Office of the Insurance Commission in accordance with the following schedule:

a. Cash, manager's check, cashier's check, issued by a Universal or Commercial Bank – Five Percent (5%) of the total contract price,

b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank – Five Percent (5%) of the total contract price,

c. Surety bond – thirty percent (30%) of the total contract price

d. Any combination of the foregoing – proportionate to share of form with respect to total amount of security.

4.02 This performance security shall be posted in favor of the PPA and shall be forfeited in the event it is established that the SUPPLIER is in default in any of its obligations under this Contract.

4.03 In the execution of the performance security, the following conditions shall be complied with:

a. It shall be executed in accordance with the form as prescribed in Section 4.01 hereof;

b. It shall be at least co-terminus with the final acceptance of the units and its accessories subject of this Contract.

4.04 Subject to the conditions of the Contract, the performance security may be released by PPA after the issuance of the Certificate of Final Acceptance of the items and its accessories subject of this contract, provided that there are no claims against the SUPPLIER on the performance security provider of the SUPPLIER.

4.05 Should any surety upon the bond for the performance of this Contract become unacceptable to PPA, the SUPPLIER shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original surety.

ARTICLE V
DELIVERY PERIOD; LIQUIDATED DAMAGES

5.01 The SUPPLIER agrees and obligates itself to supply, deliver and install the items specified in Article II, Section 2.01 of this Contract within thirty (30) calendar days (including Sundays and Holidays) from the date of receipt of the SUPPLIER of the Notice to Proceed. Delivery thereof shall be made during office hours at PMO – Batangas Office, PPA Administration Bldg., Port Access Road, Calicanto, Batangas City.

5.02 Should the SUPPLIER refuse or fail to satisfactorily comply with its undertaking, and is hereby in default under the Contract, the SUPPLIER shall be liable for damages for the delay and shall pay PPA for liquidated damages and not by way of penalty, an amount equivalent to one-tenth [1/10] of one percent (1%) of the cost of the unperformed portion thereof, for every day of delay until the same is finally performed/completed and accepted by PPA.

5.03 It is understood that the damages herein provided are fixed and to be entitled to such damages, PPA need not prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the SUPPLIER under the contract and/or collect such liquidated damages from the securities or warranties posted by the SUPPLIER, whichever is convenient to PPA.

5.04 In no case, however, shall the total sum of liquidated damages exceed ten percent [10%] of the total contract price, in which event the Contract shall automatically be terminated by PPA and the erring SUPPLIER's performance security shall be forfeited. The amount of the forfeited performance security shall be aside from the amount of the liquidated damages that the SUPPLIER shall pay PPA under this section and other appropriate sanctions that may be imposed to the former.

ARTICLE VI
SUPPLIER'S LIABILITY

6.01 The Parties likewise, hereby agree and understood that the employees of the SUPPLIER are not employees of PPA, hence, PPA shall not in any way be liable or responsible for any personal injury or damage, including death sustained or caused by any of the employees of the SUPPLIER during the performance of their duties. The SUPPLIER agrees and binds itself to indemnify PPA for whatever injuries or damages caused by occasion or contributed to by the failure, negligence or conduct of the SUPPLIER and/or its employees, agents, suppliers or consultants arising out or in connection with or on the occasion of the performance of this Contract. The SUPPLIER shall at all times, stand solely liable and/or responsible for the enforcement of, and compliance with all existing laws, rules and regulations and binds itself to save and hold PPA free and harmless from any and all liability in respect thereof and/or arising therefrom and/or by reason of this Contract and its implementation.

6.02 The SUPPLIER agrees and binds itself to hold PPA free and harmless from any damage, claims and rights to action by third parties arising out of or by reason of this Contract and all injuries that may be suffered by PPA and/or its employees due to failure, negligence, delay, or conduct on the part of the SUPPLIER and its employees in the performance of their obligations under this Contract.

ARTICLE VII
REMEDY AND RELIEF

7.01 Should there be any dispute or controversy in connection with this Contract or difference between the Parties arising from the interpretation of this Contract, the Parties hereto shall, as far practicable, settle the same amicably. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to arbitration in the Philippines in accordance with the provisions of Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004". Provided, that the arbitration proceeding shall be without prejudice to the right of PPA to rescind or terminate this Contract.

7.02 Should PPA be constrained to resort to court to enforce or safeguard its rights and interests under this Contract, the SUPPLIER shall be liable to PPA for attorney's fees in an amount equivalent to twenty percent [20%] of the total sum claimed in the complaint, exclusive of other damages and expenses of litigation. Venue of all court actions in connection with arising out of this contract shall be laid exclusively in the proper court of the City of Batangas.

ARTICLE VIII
OTHER COVENANTS

8.01 It is expressly agreed and understood that in the case of irreconcilable conflict between the provisions of this Contract and the provisions of any of the contract documents, the former shall be controlling.

8.02 It should also be clearly understood that any payment or failure of the PPA to demand compliance with any of the terms and conditions of this Contract or any act of liberality

on the part of the PPA shall not be construed or considered as waiver on the part of PPA for the enforcement of this Contract, nor it shall relieve the SUPPLIER of any of its obligations provided thereunder.

8.03 Notwithstanding any provision to the contrary, the PPA has the right to terminate, cancel and/or rescind this Contract *motu proprio*, in case of breach thereof by the SUPPLIER, or upon failure of the SUPPLIER to comply strictly with any of the terms and conditions of this Contract, without need of judicial action by giving at least fifteen (15) days written notice to the effect to the SUPPLIER, which Notice shall be final and binding on all parties.

Within fifteen (15) days after termination, cancellation or rescission of this Contract, the Parties shall settle their respective accountabilities as of the date of termination, cancellation or rescission.

8.04 The SUPPLIER shall provide and do everything necessary to perform its obligations under this Contract according to the true intent and meaning of all the Contract Documents taken together.

8.05 No payment of the Contract shall be made to the SUPPLIER without the Certificate of Completion and/or Acceptance from PPA. The Certificate of Completion and/or Acceptance will be issued after all the items and accessories thereof are completely delivered, inspected and accepted by PPA and provided that the SUPPLIER had submitted the required Guarantee Certificates thereof.

8.06 The SUPPLIER shall not assign, transfer, subcontract, or make any other disposition of its interest in this Contract. Any assignment, transfer, sub-contract, or any other disposition shall be sufficient ground for PPA to terminate or cancel this Contract, *motu proprio* without the need of judicial action pursuant to Article VIII, Section 8.03 hereof.

8.07 All taxes, licenses, permits, fees or charges of whatever form, kind or nature or which may be due to the national or local government units and/or its instrument/agencies in account of the performance and completion of the work stipulated herein, and all necessary and incidental expenses relative thereto, including the cost of notarization of this Contract shall be borne and paid for by the SUPPLIER on its own account. Should PPA completed to advance the same, PPA is hereby authorized to deduct the amount advance from whatever amount due the SUPPLIER from the PPA.

ARTICLE IX
SPECIAL REPRESENTATION

9.01 The SUPPLIER hereby represent that all the documents it submitted which form integral parts hereof are authentic and duly executed with all the required formalities for the same, and that the facts and/or data contained therein are true and correct. A breach of this representation including all misrepresentation in the documents or suppression of material facts therein, which if known, could have disqualified the SUPPLIER such that this Contract would not have been made or entered into, gives the PPA the immediate right or recourse to motu proprio rescind, abrogate, or otherwise terminate the Contract without need of judicial intervention.

9.02 Pursuant to Section 47 of the Revised IRR of R.A. No. 9184, SUPPLIER further represent that all its officers, directors, controlling stock holders and representatives are not related to by consanguinity or affinity up to the third [3rd] civil degree to PPA's General Manager, including any of its officers or employees having direct access to the conducted bidding.

If in any event, it is determined that the aforestated representation was violated, PPA shall have the right to terminate or cancel this Contract without the need of judicial action anytime before its expiration.

9.03 The SUPPLIER shall strictly comply with all the pertinent existing laws, rules and regulations.

X
EFFECTIVITY

10.01 This Contract shall become effective upon signing by the Parties hereof.

IN WITNESS WHEREOF, the Parties have hereto signed this Contract on the date and place first above-mentioned.

PHILIPPINE PORTS AUTHORITY
PMO-BATANGAS

By:

LEOPOLDO C. BISCOCHO JR.
Port Manager

FILCRAFTERS, INC.,

JENELYN U. DAVID
Authorized Representative

Signed in the presence of:

JEFREN P. PANGANIBAN

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
City of Batangas) S.S.

BEFORE ME, a Notary Public for and in the City of Batangas, this JAN 06 2017, personally appeared the following:

NAME	PROOF OF IDENTITY	DATE/PLACE
LEOPOLDO C. BISCOCHO JR.	Pass Port – EB0288587	May 29, 2010/ DFA Batangas
JENELYN U. DAVID	VIN : 3905-1668A - G0466JUD20000	

known to me to be the same persons who executed the foregoing instrument and acknowledged to me that the same is their own free act and deed as well as the free and voluntary act of the entities they represent and that they are duly authorized to represent the same.

This foregoing instrument is a Contract for the **CONTRACT FOR THE PROCUREMENT OF VARIOUS OFFICE FURNITURE, FIXTURE AND EQUIPMENT FOR THE PORT MANAGEMENT OFFICE OF BATANGAS (LOT NOS. 1 AND 2)** consisting of eight (8) pages, including this page on which this Acknowledgment is written, signed by the parties and their instrumental witnesses on each and every page thereof.

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

ELISEO G. LONTOK
NOTARY PUBLIC
UNTIL DEC 31, 2017
NOTARIAL COMM. NO. 2016-16
PTR NO. [illegible]
ISSUED ON JAN. 3 2017
ISSUED AT BATANGAS CITY
MCLE COMPLIANCE NO. -V-0001169
JANUARY 9,2014

NOTARY PUBLIC

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