

## General Conditions of Purchase (governing tenders, contracts / orders for equipment, parts, material and/or services)

### 1 Definitions

In these Conditions, and for the purpose of the Contract, unless inconsistent with the context, the following words and expressions shall have the meaning hereby ascribed to them:

- 1.1 "Acceptance" means in relation to Products which have been Delivered to the company, that the Company has not within 30 days of Delivery, issued a formal communication to the effect that, on inspection the Products were found to be defective, provided that such acceptance shall relate only to the question of physical Delivery and quantities ordered and shall not prejudice the Company's right to reject Products as contemplated in clause 18 hereof;
- 1.2 "Communicated Order" means, in the case of an order transmitted electronically, the point in time when the complete data message comprising the completed Order in electronic format, enters an information system designated or used for that purpose by the Seller, and is capable of being retrieved and processed by the Seller. In the case of Delivery of the Order it is that point in time when the Order is physically delivered to the Seller. Where an Order is dispatched by post, it is deemed to have been communicated to the Seller at the time of posting thereof. Actual acknowledgement of receipt of the Order is not necessary to give legal effect to the Contract, and acknowledgement of receipt may be given and shall be inferred by any communication of the Seller, or any conduct of the Seller which is sufficient to indicate to the Company that the Order has been received;
- 1.3 "Company" means AfriSam (South Africa) (Pty) Ltd ("AfriSam South Africa") acting as principal and includes any business unit of AfriSam South Africa, or where AfriSam South Africa acts as the agent of any of its subsidiaries or associated companies or a joint venture/consortium in which AfriSam South Africa has an interest, such subsidiary, associated company or joint venture/consortium as may be indicated in the Order;
- 1.4 "Contract" means the agreement between the Company and the Seller for the purchase and sale of Products incorporating the information referred to in the Order and these General Conditions of Purchase and, where applicable, information (excluding any terms and conditions) set out in the Seller's written quotation or tender. Where any terms and conditions specified in the Order conflict with the terms and conditions set out herein, the terms and conditions stipulated in the Order shall prevail;
- 1.5 "Date of the Contract" means the date of Contract formation as confirmed by a Communicated Order;
- 1.6 "Delivery Address" means the address designated as the place of delivery as specified in the Order;
- 1.7 "Delivery" means either delivery of the Products to the Company or its agent as per relevant Incoterm specified in the Order or, where no Incoterm is specified in the Order, delivery of the Products to the company or its agent at the Delivery Address as specified in the Order and by whatsoever mode specified in the Order without there necessarily being Acceptance on the part of the company, and "Delivered" shall have a corresponding meaning. Where no Incoterm or Delivery Address is specified in the Order, the Delivery Address shall be deemed to be the Company's domicilium as referred to in clause 3 hereof. However, any special delivery instructions set out in the Order shall take precedence and be of application to the Contract;
- 1.8 "Incoterms" means the official rules for the interpretation of trade terms as issued by the International Chamber of Commerce as revised from time to time. Any reference in these conditions to Incoterms is a reference to the current version of Incoterms incorporating all revisions and amendments as at the date of the Communicated Order;
- 1.9 "Order" means a written or electronic Order for Products issued by the Company on an official AfriSam (South Africa) (Pty) Ltd order form to one or more Sellers. An Order which has been communicated to the Seller either electronically, by delivery or through the post constitutes acceptance by the company of any quotation or tender submitted by the Seller to the Company for the supply of the equipment, parts, material and/or services detailed in such quotation or tender, and confirmed in the Order;
- 1.10 "Parties" means the Company and the Seller;
- 1.11 "Products" means all equipment, parts, materials and/or services specified in the Order by the Company. All Products (excluding services) shall be new unless otherwise specified in the Order;
- 1.12 "Seller" means a natural or legal person who has quoted or tendered to supply equipment, parts, materials and/or services to the Company, which quotation or tender has been accepted by the Company in terms of a Communicated Order addressed to the Seller by the company as contemplated herein;
- 1.13 "Specification of Products" means the specification, quality and description and where applicable, the brand name or trademark of the Products as stipulated in the Contract. Such brand name or trademark shall be indelibly stamped or embossed on the Products themselves and/or the containers in which the Products are packed by the manufacturers. Where no specification is expressly stipulated for the Products, they shall be of such good quality as may reasonably be expected in the normal course of business;
- 1.14 ZAR means South African Rand.



## 2 Variations and interpretations

- 2.1 No amplification, variation or substitution nor any purported amplification, variation or substitution of these Conditions shall be of any force or effect unless specifically agreed to in writing by the Company.
- 2.2 Unless the contrary is recorded in writing and signed by an authorised representative of the Company, every contract of purchase between the Company and the Seller shall be governed by these terms, which shall override any terms and conditions purported to be imposed by the Seller.
- 2.3 If any condition stipulated herein is invalid and unenforceable, or becomes such, such invalid provision shall be severable from the remainder of this Contract which shall nevertheless be valid and binding. The Parties hereto shall be obliged to replace the invalid provision with an alternative provision having similar economic consequences, provided that such replacement does not lead to a material alteration of the Contract.
- 2.4 If any provision in the definition is a substantive provision conferring rights or opposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Contract.

## 3 Domicilium and notices

- 3.1 For all purposes arising out of the Contract, the physical address of the Seller as confirmed in the Order shall serve as the Seller's domicilium citandi et executandi.
- 3.2 The Company chooses its domicilium citandi et executandi as Constantia Park, Corner 14<sup>th</sup> Avenue and Hendrik Potgieter Street, Weltevredenpark, Roodepoort, 1715, Republic of South Africa. All communications shall be marked for the attention of the "Supply Chain Manager" and shall include a reference to the tender or quotation number, or where the same has been confirmed by the Company's Order, such order number.
- 3.3 All notices and court process must be served at a Party's domicilium citandi et executandi as contemplated above. Notices may be served on a party electronically, by fax or email, or by registered mail, but in all such events the onus of proving receipt by the addressee shall be borne by the addressor.

## 4 Prices

- 4.1 Prices confirmed in the Order shall remain firm prices for the entire Contract and no variation or escalation thereof shall be permitted unless agreed between the Company and the Seller in writing.
- 4.2 Subsequent price changes of any description by the Seller (even if arising from any alteration in execution of the Contract requested by the Company) shall only be binding on the Company with its prior written consent.
- 4.3 Unless otherwise stated in the Contract or agreed in writing by the Company, prices shall include any sales tax, value added tax, product or service tax and all export charges, duties, levies, tariffs, insurance and the like, including any delivery costs, where appropriate. All such costs must, however, be itemised separately.
- 4.4 The Company shall have the right at any time during the term of the Contract to extend the benefit of the Contract to any subsidiary or associated company of the Company as well as any joint venture or consortium in which the Company has an interest ("Additional Purchasers") upon the same terms and conditions as are set out in the Contract, provided that such extension takes place during the period that the Contract is being executed by the Seller and not after such execution has already been completed. Should the Company avail itself of this right, the price to be paid for Products so purchased shall be the purchase price applicable to the Contract, duly adjusted to take into account altered delivery costs due to the geographical location of such Additional Purchasers, and, where such Additional Purchasers are situated outside the boundaries of the RSA, the adjustment shall include any customs, duties, import surcharges, clearing or freight charges and the like.

## 5 Exclusivity

Any Contract concluded with a Seller shall only be an exclusive supply contract if specifically recorded in the Contract or Order and will only be for the term of the Contract. Notwithstanding the conclusion of an exclusive supply contract, the Company shall have the right to purchase a portion of its contractual requirements for Products from suppliers other than the Seller on the basis that such purchases from all other sources shall, at the expiry date of the Contract, not have exceeded 15% by value of all annual purchases of products made by the Company from the seller in terms of the contract, or such other value as may be agreed by the Company and the Seller considering the special circumstances prevailing at the time.


## 6 Order number, delivery note and Invoice

- 6.1 The order number shall appear on all deliveries, consignment notes and invoices, and no Products shall be accepted by the company nor shall payment be made unless the said number is quoted.
- 6.2 Every consignment of Products delivered to the Company shall be accompanied by at least one Delivery note.
- 6.3 Invoices (which shall specify at the least, Order number, description of Products and quantities) shall be sent to the Company after dispatch of the Products and shall under no circumstances accompany the Products.

## 7 Payment

- 7.1 Republic of South Africa ("RSA") Contracts/Orders

Payment shall be made by the Company, 30 days from end of month of invoice date, subject to any trade or settlement discounts as specified in the Contract or Order. Invoices from Sellers not meeting the minimum business requirements of the Company from a legal or BBBEE requirements perspective will only be considered for payment 45 days from end of

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month of invoice date. The Seller's minimum BBBEE requirement will be a Level 4 status with a minimum of 25% black ownership.

Approved terms and conditions with Sellers will be loaded onto the Company's vendor master data. Any requests for early payments will be treated as an exception and settlement discounts will be negotiated.

Invoices must be sent to the Company's domicilium and must be reflected on the Seller's monthly statement for payment to be effected. Failure to comply with these instructions may result in delay in payment. The Company reserves the right to delay payment for such period as may be required for the purpose of checking the invoiced details against the actual Delivery of the Products covered by the Contract, without incurring any interest for late payment. Input tax credits cannot be claimed by the Company without a valid tax invoice from the Seller, unless the Seller has SARS approval for electronic invoicing. Accordingly, and in absence of the relevant SARS approval, the Company may withhold payment in respect of a Contract for Products supplied from within the RSA, and the invoice relating thereto, until a valid tax invoice for the transaction has been received by the Company.

**7.2 PAYE deducted from Payments**

Where the Seller is a personal services company or labour broker, SARS legislation requires the procuring company to deduct PAYE from payment to such suppliers. In terms of this legislation, the Company will deduct PAYE tax from payments to these Sellers in the absence of a valid IRP30 certificate or an IRP3 Tax directive from the Seller.

**7.3 Foreign Contracts/Orders**

Unless specifically stated to the contrary in any special conditions of Contract/ Order, payment shall be made 30 days after receipt of a full set of negotiable shipping documents and in the manner set out in the Contract.

**7.4 Exchange Control approval**

Contracts with Sellers domiciled outside the RSA are subject to approval by the Exchange Control authorities of the RSA and shall be deemed to have commenced on the date of such approval or the date of the Communicated Order, whichever is the later, and no payments shall be made in terms of the Contract until such Exchange Control authority has been granted. If the Company fails to obtain Exchange Control approval within 60 (sixty) days of the Date of the Contract, the Contract shall lapse and be of no further force or effect unless the aforesaid period is extended by mutual agreement between the Parties.

**8 Currency fluctuations**

8.1 Where the price of Product is expressed in a currency other than ZAR, the Seller (unless stipulated otherwise in the Order) shall procure forward cover to mitigate losses due to currency fluctuations arising between the Date of the Contract and the date of payment as contemplated in clause 7.

8.2 Where the Company stipulates in the Order that it shall procure the forward cover contemplated in clause 8.1, the Seller shall be relieved of its obligations under clause 8.1.

**9 Foreign sellers**

Where a Contract is concluded with a Seller domiciled outside the RSA, the Seller shall notify the Company of any duly authorised representative in the RSA of the Seller who may act as process agent on behalf of the Seller.

**10 Marking and packing lists**

10.1 Weatherproof labels shall be securely affixed to each package, case or container and shall clearly show the name of the Company, the delivery address, the Seller's name, Contract number and the job number and description and mass of the Products.

10.2 Each package, case or container, shall contain a packing list in duplicate clearly describing the components and contents as well as identifying them with the Products for which the components are intended. A copy of such packing list shall also accompany invoices.

10.3 Except where specially provided, no charge shall be allowed for containers and packing materials, which shall become the property of the Company upon delivery, and the Seller shall be responsible for ensuring that the Products is sufficiently and properly packed to guard against loss or damage or injury during transport and subsequent storage at destination.

10.4 [Multiple] packages must be numbered consecutively.

10.5 The Company shall be entitled to recover from the Seller all loss and damage of whatsoever nature which the Company has suffered arising from the Seller's failure to comply with the provisions of this clause 10.

**11 Delivery**

11.1 Unless specified to the contrary in the Order, Products which are to be Delivered direct to the Company shall only be accepted by the Company during ordinary business hours (as ascertained from the Company in respect of the facility of the Company where Delivery is to be effected) Mondays to Fridays, public holidays excluded.

11.2 Where a Delivery time is stipulated in the Order, time shall be deemed to be of the essence of the Contract, entitling the Company to cancel such Order without further notice should Delivery not take place by the specified time. Where no Delivery time has been specified, the Products must be supplied within a reasonable period of the Date of the Contract.

11.3 All Products shall be suitably packaged in accordance with the Company's specific requirements. Where no such specific requirements are specified by the Company, the Products shall be suitably packaged (where appropriate) or otherwise prepared for shipment by the Seller at its expense so as to secure competitive transportation and insurance rates and in accordance with the carrier's requirements and consistent with the need to ensure damage prevention and safe handling. The Seller shall be liable for all damage to the Products as a result of failure to comply with the foregoing, whether such damage occurs before or after Delivery to the Company.

- 11.4 All costs of Delivery to the Company at its domicile or the venue specified in the Order, and all transport costs including packaging, storage and other related costs, shall be borne by the Seller unless there is agreement to the contrary in writing.
- 11.5 It is agreed that Acceptance of the Products shall be made on the basis that the Company shall first have an opportunity to inspect the Products or a sample thereof, the sample size of which shall be determined at its own discretion. The Company shall not be obliged to issue a formal acknowledgement of receipt and acceptance of the Products, and the Seller may, if it does not within 30 (thirty) days of Delivery receive a formal written communication from the Company to the effect that the Products are defective, assume that there has been acceptance by the Company relating to the question of physical delivery and quantities ordered, only.
- 11.6 Only Delivery notes signed by an authorised employee of the Company shall be binding upon it and the Company shall not be obliged to sign any documentation tendered by the Seller in connection with the Delivery of Products, nor shall it be competent for the Seller to impose any terms and conditions in relation to the Delivery of such Products which are not stipulated herein.
- 11.7 No Products returned as defective shall be replaced without confirmation by the Company that replacement is required.
- 11.8 Where the Seller utilises a sub-contractor in order to effect Delivery in terms of the Contract, the use of such sub-contractor shall not in any way exonerate the Seller from its obligations in terms of the Contract.
- 11.9 Except in circumstances where a more expensive method of Delivery is necessitated due to the Seller failing to initially accomplish Delivery within the time limit specified in the Order, if the Company requires Delivery by methods other than those stipulated in the Order, any additional costs so incurred shall be for the account of the Company.

## 12 Road transportation

- 12.1 Where Products are delivered to the Company and/or empty containers are collected from the Company by means of road transportation, the following provisions shall apply:
- 12.1.1 it shall be the responsibility of the Seller to ensure that all necessary permits in terms of relevant legislation are held by the Seller or, where applicable, by the Seller's agents or by any sub-contractor employed for such purpose. The Seller hereby indemnifies the Company against all and any loss which the Company may suffer (including the forfeiture of any Products and/or empty containers) by reason of any contravention of the provisions of the relevant legislation;
- 12.1.2 the Seller shall be responsible for all loss of or damage to property and/or injury to persons caused by the Seller or any sub-contractor or by their servants or agents and/or transport vehicles, engaged in and upon the loading and/or offloading and transportation of Products and/or empty containers, whether such loss, damage or injury is caused within the boundaries of the areas owned, leased or occupied by the Company or outside such boundaries. The Seller hereby indemnifies the Company against all loss suffered by or claims made against the Company of whatsoever nature in respect of such loss, damage and/or injury and shall upon written request by the Company, submit proof to the satisfaction of the Company that the Seller has, at its own expense, made provision for adequately insuring the Company against any such loss and claims which may be made against the Company whether at common law or under any statutory provision.
- 12.2 Where provision is made in the Contract for road delivery, it is understood that should legislation be amended during the currency of the Contract so as to preclude road delivery, the alternative methods of delivery and any consequent price adjustments shall be the subject of discussion between the Seller and the Company. Should the Seller and the Company be unable within a reasonable time to reach agreement regarding alternative methods of delivery and any consequent price adjustments, the Company shall be entitled but not obliged to terminate the Contract forthwith without payment of any amounts or damages of whatsoever nature to the Seller.

## 13 Quantities

Where definite quantities of Products are specified in the form of tender, such quantities must be supplied by the Seller in accordance with the terms of the Contract. Where the quantities in the form of tender are described as estimated quantities and subject to a stipulated variation under or over such estimated quantities, the Company shall order up to the minimum estimated quantity and may continue to requisition until the maximum estimated quantity is reached. The maximum shall not be exceeded without the consent of the Seller, such consent shall be implied from the continued delivery of Products on the part of the Seller after such maximum has been reached. When quantities are not expressly stated in the form of tender, the Company shall order and the Seller shall supply such quantities as may be required by the Company during the period stipulated in the Contract.

## 14 Inspection

- 14.1 The Company reserves the right to send a representative to the Seller's works (or the works of any Sub-Contractor) for the purposes of inspecting the Products (at any stage of manufacture), which are the subject of the Contract. The Seller shall afford such Representative access to the Products and all facilities for the purpose of such inspection. Inspection by such Representative shall in no way relieve the Seller from responsibility under the Contract as provided in these Conditions or disentitle the Company from exercising its right of rejection. Such inspection may be made at any stage before final Acceptance and in any manner the Company considers appropriate, and the Company may reject any Products which are found to be incomplete or defective or in any way not in conformity with the terms of the Contract. The Seller shall free of charge, provide all tools, gauges, templates and other equipment which may be required for checking the Products, shall provide the labour necessary for inspecting in accordance with the requirements specified in the Contract and shall render all reasonable assistance in carrying out such checking and inspection.
- 14.2 The Seller shall prepare and supply, without charge to the Company, all test pieces, samples and specimens of Products required by the Company. Where, in any special conditions of the Contract, inspections are provided for or where the Company has requested an inspection, the Seller shall promptly notify the Company when the Products are ready for inspection, unless otherwise agreed during contract negotiations.

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## 15 Material and workmanship

All Products and specifications shall be in accordance with the Specification of Products and workmanship shall be of a standard acceptable to the Company in every respect. Where this is covered in whole or part by appropriate standard specifications, these standard specifications shall be deemed to apply. If no standard specifications are applicable, Products and workmanship shall be in accordance with and equal in all respects to the sample, patterns, drawings and specifications referred to in the Contract, and to the satisfaction and approval of the Company, payments being contingent upon this approval. Any expense the Company may be put to in remedying a Seller's error, defective Products and/or workmanship shall be for the account of the Seller and shall be in addition and without prejudice to any other rights and remedies of the Company in terms hereof or in law.

## 16 Responsibility under Contract

The Seller accepts full responsibility for the supply and delivery of the Products and for the efficiency and capacity of any design, and in the event of defect in design, materials or workmanship relating to the Products, or in the event of any variation not required by the Company, the Seller shall be responsible for rectification and compensation to the Company in accordance with the Contract, without prejudice to any other rights of the Company against the Seller or any Sub-Contractor.

## 17 Breach, termination and damages

### 17.1 If the Seller either:

17.1.1 where time is deemed to be of the essence, fails to deliver the Products or to perform the services by the time specified in the Order or any extension thereof authorised by the Company in writing, or, at the Company's discretion, it has ascertained that the Seller has failed to commence work on the Products or to make satisfactory progress thereon and in the opinion of the Company, Delivery shall not be effected within the period specified in the Order; or

17.1.2 is in breach of any of the other provisions of the Contract and fails to remedy such breach within ten (10) days after receipt from the Company of a written notice calling upon it to do so;

then the Company may by written notice forthwith cancel the Contract in whole or in part without prejudice to the Company's rights to recover all loss and damage which it may sustain by reason of the Seller's breach of the Contract, whether actual or consequential.

17.2 Should the Seller commit any act of insolvency, permit the judgment of any competent court or arbitration award which has been given against it or the manufacturer of the Products to remain unsatisfied for a period in excess of fourteen (14) days from the date of granting of such judgment/award (without initiating application proceedings for the rescission of that judgment), be sequestrated or placed in liquidation (whether provisionally or finally) or, where applicable, under judicial management, business rescue or similar proceedings, then the Company shall be entitled to terminate the Contract by giving written notice to this effect to the Seller.

## 18 Non-compliance with specification of products

18.1 Notwithstanding any inspection certificate or receipt that may have been issued or payment made by or on behalf of the Company either in the RSA or overseas, Products shall be accepted in accordance with applicable Incoterm (where relevant) or at the place of Delivery, only as regards quantities and outward condition of the Products, and the Company retains the right to reject any Products supplied on or after arrival at the place to which they are consigned or after they have been placed in use by the Company, should it be discovered that the Products are defective or that their quality, workmanship or design is insufficient or inferior to that called for in the Specification of Products or that they are otherwise not in accordance with the Contract requirements.


18.2 Should the Seller deliver any Products which do not comply with the Specification of Products, the Company shall have the right to, notwithstanding actual Delivery of the Products to the Company, reject them if an inspection of the Products delivered to the Company shows that they do not conform with the Specification of Products. In the event of such rejection, the affected Products shall be held at the risk and expense of the Seller who, before such Products are released, shall pay full transport costs (including full freight and insurance charges incurred and any handling, storage, loading and landing charges, import surcharges and customs duties (if applicable) incurred by the Company after Delivery and the Company shall furthermore be entitled, without prejudice to its rights in terms of clause 18.3 below:

18.2.1 to require the Seller to remove and the Seller shall be obliged to remove such Products at the cost and expense of the Seller; and failing removal of the Products by the Seller within such time as may be stipulated by the Company, to arrange for removal of the Products and the Seller shall be liable for all costs relating to such removal, including demurrage;

18.2.2 in its sole and absolute discretion, to require the Seller to replace and the Seller shall be obliged to replace such rejected Products with Products complying with the Specification of Products, the Seller alone being liable for all costs of and incidental to such replacement; or

18.2.3 in its sole and absolute discretion and upon giving notice to the Seller confirming that the defective Delivery of Products amounts to a repudiation of the Contract which has been accepted by the Company, that the Products have been rejected ("the Rejected Products"), and the Contract summarily cancelled by the Company, acquire Products complying with the Contract Specification from another source in order to replace such Rejected Products. In such event the Company shall be entitled to recover from the Seller any amount by which the price paid for Products so purchased from an alternative source ("the Replacement Products"), exceeds the price payable for the Rejected Products, as well as all costs of delivery of the Rejected Products and the costs of removal, disposal or return of the Replacement Products. Where the Company has paid to the Seller the purchase price of Products which are subsequently, upon inspection, rejected in terms of the foregoing, the Seller shall upon demand refund such purchase price to the Company as well as all other costs incurred by the Company in respect of the Rejected Products.

18.3 Should any dispute arise as to whether or not Products rejected in terms of clause 18.2 comply with the Specification of Products, the Seller may within seven (7) days of refusal or rejection arrange for tests and/or analyses to be undertaken by a recognised authority or body to be nominated by the Company, and the result of such tests and/or analyses shall be final and binding on the parties to the Contract. The costs of such tests and/or analyses shall initially be borne by the Seller, but

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in the event of the tests and/or analyses proving that such Products do comply with the Specification of Products, the Company shall refund to the Seller all costs incurred by it in respect of such tests and/or analyses. Should the Seller fail to arrange for such tests and/or analyses to be undertaken within the said period of seven (7) days, the Seller shall be deemed to have accepted that the Products do not comply with the Specification of Products.

- 18.4 Acceptance by the Company of any Products not complying with the Specification of Products shall not prejudice or affect the Company's right to refuse or reject any subsequent deliveries of Products not complying with the Specification of Products.
- 18.5 In the event of any latent defects manifesting themselves in the Products which a responsible inspection of them by the Company, its employees, or agents at the time of Delivery would not have revealed, the Company shall give written notice to the Seller that it requires the Seller to replace and the Seller shall be obliged to replace such defective Products. The Seller shall be liable for and shall pay all costs of and incidental to such replacement. The foregoing provisions of this sub-clause shall not be construed as a waiver by the Company of its common law rights in respect of latent defects. Where any Products have been replaced or defective workmanship or design remedied in terms of this clause, the same terms and conditions shall apply to the items replaced or remedied for a further 12 (twelve) month period commencing from the date of completion of such replacement or remedy.
- 18.6 Should any dispute arise as to whether latent defects are present in the Products referred to in clause 18.5, the Seller may within seven (7) days of the date of receipt of the notice referred to in clause 18.5 arrange for tests and/or analyses to be undertaken, and the provisions of clause 18.3 shall mutatis mutandis apply.
- 18.7 Any failure on the part of the Company to invoke the provisions of clause 18.5 in respect of any Products in which latent defects are present shall not prejudice or affect the Company's right to invoke the said provisions in the event of latent defects being present in any subsequent deliveries of Products.

## 19 Delays in delivery

- 19.1 Should delivery of the Products be delayed beyond the period or date stipulated in the Contract, the Company shall without canceling the Contract in terms of clause 17.1, be entitled:
- 19.1.1 to require the Seller to effect and the Seller shall be obliged to effect Delivery of the Products by means other than those stipulated in the Contract and any costs so incurred shall be for the account of the Seller, unless the failure to deliver is attributable to force majeure; or
- 19.1.2 to deduct from the Contract price an amount equal to 1% thereof for each completed week of delay beyond the specified time of Delivery as liquidated damages, or by way of a penalty or (if agreed upon between the Seller and the Company) as payment in respect of the prejudice agreed upon as being suffered by the Company as a result of such delayed Delivery; or
- 19.1.3 to require the Seller to effect, and the Seller shall be obliged to effect Delivery from, the Seller's other sources of supply, or any other alternative sources of supply (subject to approval by the Company), failing which the Company shall be entitled, at its sole and absolute discretion, to purchase its requirements from other sources, and provided that the failure to deliver is not attributable to force majeure – the Company may recover from the Seller any amount by which the price so paid exceeds the contract price in respect of the Products not delivered. The cost of delivery of product so purchased shall be taken into account in determining the amount of any such excess.
- 19.1.4 the Seller hereby indemnifies the Company against any claims by third party, contractors or suppliers engaged by the Company to supply Products to the Company pursuant to clause 19.1.3.
- 19.2 Acceptance by the Company of any Products in respect of which delivery has been delayed beyond the period or date stated in the Contract, shall not prejudice or affect the Company's right to implement the provisions of clause 19.1 in the event of any subsequent deliveries of Products being delayed beyond the period or date stated in the Contract.
- 19.3 The Seller shall be liable for all damages, actual or consequential, suffered by the Company as a result of delayed Delivery where time is deemed to be of the essence of the Contract as contemplated in 11.2.

## 20 Force majeure

- 20.1 Where a party (the "Affected Party") is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this agreement by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of the Affected Party, the Affected Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other party may suffer due to or resulting from delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the Affected Party.
- 20.2 The Affected Party shall upon termination of any event giving rise to force majeure, forthwith give written notice thereof to the other party.
- 20.3 Should such force majeure continue for a period of more than 60 (sixty) days then either party shall be entitled forthwith to cancel the Contract in respect of any obligations still to be performed hereunder.

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**21 Pro rata supply**

Should the Seller be unable to comply with all of its obligations under the Contract due to any of the circumstances of force majeure, but be in a position to deliver a portion only of the Products required to be supplied under the Contract, the Seller shall supply the Company with a pro rata quantity of Products which shall bear the same proportion to the total quantity of Products which the Seller has available for all sales, as the average monthly purchases made by the Company in terms of the Contract bears to the Seller's average monthly total sales during the period from the date on which the Contract commenced until the time of the Seller's inability to deliver. In such event, it shall be incumbent upon the Seller to notify the Company in writing of the total quantity which the Seller has supplied to other parties since the date on which the Contract commenced and the reduced quantity which the Seller proposes to supply to the Company.

**22 Code of Ethics**

22.1 Should the Seller, and where applicable, the Seller's agents or sub-contractors including any director/employee or any other person acting or purporting to act on behalf of the Seller:

22.1.1 fraudulently deliver or attempt to deliver short masses and/or measures of Products, or falsely state masses and/or measures of Products in the documentation contemplated in these Conditions;

22.1.2 pay or offer to pay, give or offer to give any money or make any gift of whatsoever nature, whether by way of commission, gratuity or otherwise or lending or offering to lend any money, or giving or offering to give any other valuable consideration to any person in the employ of the Company; or

22.1.3 in any way materially breach the provisions of the Company's Code Of Ethics And Business Conduct, a copy of which [is attached hereto] and which shall be binding upon the Seller with necessary changes required by the context ,

then the Company shall be entitled to summarily cancel the Contract and any other contract in force between the Seller and the Company, without payment to the Seller of any damages whatsoever including without limitation, consequential damages, loss of business and/or profits resulting from such termination.

**23 Intellectual property**

23.1 By accepting the Order or performing under it, the Seller:-

23.1.1 agrees to indemnify and hold harmless the Company, its successors and customers against all actions at law and from all damages arising out of such actions or claims for actual or alleged direct or contributory infringement of, or inducement to infringe, any South African or foreign patent, trademark or copyright by reason of the manufacture, use or sale of the Products, including infringement arising out of compliance with Specification of Products furnished by the Company;

23.1.2 hereby grants to the Company a non-exclusive, royalty free, irrevocable licence to repair and have repaired, to reconstruct and have reconstructed the Products ordered hereunder. The Seller furthermore hereby assigns to the Company all right, title and interest in and to copyright in any material capable of copyright and created or produced for the Company under the Contract.

23.2 The Seller shall treat as strictly confidential the Contract and the work arising therefrom, including, but not limited to, all relevant documents, devices, tools. The samples, drawings and other documents as well as directives given by the Company are the only standards for the kind of production and quality of the Products to be supplied.

23.3 Should the Company require it, the Seller shall furnish a certificate of conformance with the Specification of Products in respect of the Products at or before the time of their Delivery, and by furnishing such certificate, the Seller shall be deemed to have warranted the contents thereof as a material term of the Contract.

23.4 The Company shall (at its entire discretion) be entitled to refer a sample of the Products for expert examination and analysis so as to verify conformity with the Specification of Products. In the event of the Products being found to be in conformity with the Specification of Products, the Company shall pay the costs of inspection and analysis, and in all other instances such costs shall be for the account of the Seller.

23.5 The Seller is obliged to notify the Company immediately if the Seller becomes aware of any potential infringement in respect of the Products supplied by the Seller, whether manufactured to drawings and models supplied by the Company or not.

23.6 Means of production such as dies, gauges, matrices, models, samples, tools, drawings, other documents and the like put at the disposal of the Seller by the Company in connection with the execution of the Contract are held at the risk of the Seller, remain the property of the Company and must be returned to it after completion of the Order unless retained by the Seller on behalf of the Company at the request of the Company, in which event they may not be used to manufacture any Products for any third party without the written consent of the Company, and they shall be maintained, stored and serviced in a responsible manner.

**24 Supply of manuals**

The Seller shall upon request supply the Company with full maintenance and operating manuals in English in respect of any Products supplied in terms of the Contract.

**25 Confidentiality**

The Seller shall not disclose the content of any Order without written consent of the Company except as required by law and except as to a limited number of employees of the Parties on a "need to know" basis, and their advisors, as maybe necessary to obtain professional advice.



**26 Drawings for products and variations thereof**

26.1 The drawings show generally the character of the work to be executed by or on behalf of the Seller. In all cases figured dimensions are to be adhered to, and if necessary additional detailed drawings or sketches may be issued at any time to further explain the work, without prejudice to the Contract.

Should it transpire that anything has been omitted from the drawings and/or Specification of Products (the intent to include which can be clearly inferred and which is necessary for the proper execution and completion of the work), the same shall be regarded as having been provided for in the quotation tender on which the Contract is based.

Should any discrepancy, ambiguity or want of agreement in dimensions, descriptions or quantities occur between the drawings and/or the Specification of Products, the matter shall be referred to the Company for resolution before proceeding with the work in which such discrepancy, ambiguity or want of agreement exists. The decision given by the Company in this regard shall be final and binding on the Parties.

26.2 The Company reserves the right to make any alterations to or deviations from the original drawings and Specification of Products. Should the original price confirmed in the relevant Order be thereby varied, the Seller and the Company shall forthwith negotiate with each other and settle by agreement between them the exact scope of such variation and corresponding amendment required to the price. All such variations in the Contract price must be confirmed in writing. If the Parties cannot agree on the amendments concerned, the Seller may cancel the Contract in respect of the Products affected by such amended drawings or Specification of Products only.

26.3 Where drawings have to be prepared by the Seller for the work covered in the Contract the Company shall be furnished with a reproducible copy of each drawing. Where the Company's drawings are used, the Company shall be furnished with at least two marked-up prints for site use.

26.4 When drawings are revised for any reason (whether changes made by the Company or on the part of the Seller) details of such revision shall be noted on the drawings together with the date on which the revision was made.

26.5 When drawings prepared by the Seller contain levels and locational references, such information shall be to the same datum and/or grid as that used on the Company's drawings.

26.6 Where any drawings, designs or sketches prepared by the Seller are signed or approved by a representative of the Company, such signature or approval shall not relieve the Seller of any responsibility with regard to any defects, latent or patent, relating to the Products to which such signed or approved drawings, designs or sketches relate.

**27 Environmental protection**

27.1 Without prejudice to any warranties, representations and covenants on the part of the Seller in the Contract, and in addition to the Seller's obligations in terms of the Company's Code Of Ethics And Business Conduct the Seller represents and warrants to the Company that the Seller currently possesses, and shall at all times during the term of the Contract possess all permits, licences and consents which are required pursuant to all national, provincial and local applicable laws and regulations, as well as any other requirements of governmental bodies relating to pollution or protection of the environment, including without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or hazardous or toxic materials or wastes into ambient air, surface water, ground water or lands, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or hazardous or toxic material or wastes (collectively, "Environmental Laws").

27.2 In relation to the Products, the Seller represents and warrants to the Company that it is now, and shall at all times during the term of the Contract be, in full compliance with all terms and conditions of any required permits, licences and consents, and in full compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in Environmental Laws or contained in any regulation, code, plan, order, decree, judgement, notice or demand letter issued, entered, promulgated or approved thereunder.

27.3 The Seller confirms that it is not aware of, nor has it received notice of, any past, present or future events, conditions, circumstances, activities, practises, incidents, actions or plans which may interfere with or prevent continued compliance, or which may give rise to any legal liability, or otherwise form the basis of any claim, action, suit, proceedings, hearing or investigation against the Seller or the Company, based on or related to the actual or alleged violation of an Environmental Law, or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant, or hazardous or toxic material or waste pursuant to any applicable, Environmental Laws or other requirement.

27.4 The Seller warrants that it shall do all things necessary to protect the environment and prevent environment pollution. Waste shall be properly processed in compliance with relevant Environmental Laws and the Seller shall be solely responsible for complying with such Environmental Laws and shall fully indemnify the Company with respect to any claim, liability or obligation arising with respect thereto.

**28 Stocks to be maintained**

The Seller shall maintain in stock such quantities of Products as may be required for the proper execution of the Contract, at the various supply depots from which Delivery shall be made.

**29 Insurance of products**

29.1 RSA Contracts/Orders:

29.1.1 all Products shall be fully covered by the Seller under the Seller's insurance policy until Delivery has been effected at the Delivery Address as specified in the Contract.

29.1.2 the Seller shall, upon demand, submit proof to the Company that it carries adequate insurance cover in relation to claims which may arise from the Company.



## 29.2 Foreign Contracts/Orders:

All shipments shall be covered by the Company's open marine policy, unless specified otherwise by the applicable Incoterms.

## 30 Ownership, risk and loss

- 30.1 Save where provided to the contrary by Incoterms incorporated into the Contract, ownership in and of the Products shall pass to the Company on receipt thereof by the Company or any other agent and/or transporter nominated by the Company to receive such Products.
- 30.2 Notwithstanding anything to the contrary contained in the Contract, all risk in and to the Products, shall nevertheless be and remain with the Seller, and the Seller shall bear any and all costs whatsoever arising from or in respect of all losses of or damage or destruction of the Products, until such time as the Products have been Accepted by the Company as contemplated in clause 1.1.

## 31 Modification and waiver of rights

- 31.1 No modification, variation or waiver of any provision of the Contract, or consent to any departure therefrom, shall in any way be of any force or effect unless confirmed in writing by the Company and then such modification, variation, waiver and consent shall be effective only in the specific instance and for the purpose and to the extent for which it is made or given.
- 31.2 The waiver (whether expressed or implied) by any party to the Contract of any breach of the terms or conditions of the Contract by any other party shall not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms and conditions of the Contract.
- 31.3 No favour, delay, relaxation or indulgence on the part of any party to the Contract in exercising any power or right conferred on such party in terms of the Contract shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any other power or right under the Contract.
- 31.4 The expiry or termination of the Contract shall not prejudice the rights of any party in respect of any antecedent breach or non-performance by any other party of any of the terms or conditions of the Contract.

## 32 Guarantee

The Seller, when called upon to do so, shall provide security to the satisfaction of the Company for the due fulfillment of the Contract in such form as the Company may require. The security may be applied in whole or in part at the discretion of the Company to make good any loss or damage which the Company may sustain or any claim which the Company may have in consequence of any breach of the Contract or any part thereof by the Seller. The security shall be in such amount as may be stipulated in the special conditions of the Contract or as may be decided by the Company, but shall not exceed 10% of the value of the Contract unless otherwise stipulated in the form of tender. Unless otherwise specially provided, the security furnished in terms hereof shall remain effective and enforceable until delivery of the Products has been effected in terms of the Contract, and for the period during which the Company has the right, under the Contract to call upon the Seller to replace or remedy any defect or until the expiration of the maintenance period (if any) provided for under the Contract whichever is the longer.

## 33 Law governing Contract

- 33.1 Where the Contract contains Incoterms, the legal effect of such Incoterms on the Contract shall be construed in accordance with the applicable rules of the International Chamber of Commerce, to the exclusion of the RSA Common Law.
- 33.2 Subject to 33.1 above, the Contract shall be read, construed, governed and performed in accordance with the laws of the RSA.

## 34 Indefinite contracts – termination on notice

Should the Contract be entered into for an indefinite period, either the Seller or the Company shall be entitled to terminate the Contract at any time on giving to the other not less than three month's prior written notice of termination.

## 35 Arbitration

- 35.1 In the event of any dispute or difference as to any matter or thing arising between the Parties hereto relating to or arising out of this Contract, including the implementation, execution, interpretation, rectification, validity, enforceability, termination or cancellation of this Contract, the Parties shall forthwith meet to settle such dispute or difference, and failing such agreement within a period of 14 (fourteen) days, the said dispute or difference shall, if demanded by any party on written notice to the other parties, be submitted for arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa Limited (or its successors) ("AFSA"), as amended from time to time, by an arbitrator or arbitrators appointed by AFSA, and otherwise in accordance with the provisions of the Arbitration Act No. 42 of 1965, as amended.
- 35.2 The decision by the Arbitrator appointed by AFSA shall be final and binding upon the parties. No dispute or reference to arbitration shall entitle the Seller to discontinue or suspend the execution of any work under the Contract.
- 35.3 The foregoing provisions of this clause shall not preclude either Party to the Contract from obtaining injunctive relief from a court of competent jurisdiction in situations of urgency pending resolution of any dispute by way of arbitration. For this purpose the Parties hereby consent to the jurisdiction of the High Court of South Africa, Witwatersrand Local Division for the adjudication of such application.

## 36 Costs

Should a Party be obliged to enlist the services of legal practitioners for the purpose of enforcing its rights arising out of the Contract as a result of default on the part of the other party (the "Defaulting Party"), the Defaulting Party shall be obliged to pay all such costs and expenses of the Aggrieved Party on the scale as between attorney and own client.

**37. Protection Of Personal Information Act, 2013**

- 37.1. The Seller acknowledges that the Company will require certain Personal Information as defined in the Protection of Personal Information Act, 2013 ("POPI") from the Seller.
- 37.2. The Seller agrees that the Company requires such Personal Information for purposes of:
- 37.2.1. Creating a database of Sellers;
  - 37.2.2. Concluding a supply contract with the Seller;
  - 37.2.3. Effecting payment to the Seller;
  - 37.2.4. Compiling statistical and SAP reports; and
  - 37.2.5. Complying with its obligations under relevant legislation.
- 37.3. By issuing a written quotation or tender to the Company, or by completing the vendor application form (if applicable), the Seller consents to:
- 37.3.1. The Company processing the Seller's Personal Information for the purposes set out above, as applicable; and
  - 37.3.2. The Company's use of third party Operator, as defined in POPI, to process the Seller's Personal Information, which processing will be in line with the purpose for which it was collected, as set out above.
- 37.4. The Seller's failure to supply the Personal Information requested by the Company will result in the company being unable to place an Order with the Seller.
- 37.5. The Seller will have the right to:
- 37.5.1. access any Personal Information pertaining to it that the Company has in its possession;
  - 37.5.2. rectify or correct any such Personal Information in the event that it, at any stage, becomes outdated or incorrect for whatever reason;
  - 37.5.3. request the destruction or deletion of its Personal Information by the Company;
  - 37.5.4. be informed by the Company in the event that its Personal Information has been accessed or acquired by an unauthorised person;
  - 37.5.5. object to the processing of its Personal Information by the Company on any reasonable grounds. On receipt of such objection, the Company will no longer process the Seller's Personal Information, which will unfortunately result in the Seller's vendor application being denied, if applicable, and the Company being unable to place an Order with the Seller;
  - 37.5.6. object to the processing of its Personal Information at any time for purposes of direct marketing;
  - 37.5.7. to submit a complaint to the Regulator regarding an alleged interference with the protection of the Seller's Personal Information or to submit a complaint to the Regulator in respect of a determination of an adjudicator as provided for in POPI; and
  - 37.5.8. to institute civil proceedings regarding the alleged interference with the protection of its Personal Information as provided for in POPI.

  
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Head of Procurement

28/03/2017.  
Date

  
\_\_\_\_\_  
Acting - Chief Executive Officer

28/03/2017.  
Date