

CSIR TERMS AND CONDITIONS OF PURCHASE

In these general contract conditions, "CSIR" means The CSIR, a juristic person, established in accordance with the Scientific Research Council Act, Act No. 46 of 1988.

1. DEFINITIONS

- 1.1 "Agreement" means the agreement between the parties as embodied herein, together with the Purchase Order;
- 1.2 "Goods and/or Services" means the Goods and/or Services as specified on the Purchase Order;
- 1.3 "Purchaser" means the CSIR, a statutory council, duly established under Act No 46 of 1988 of the Republic of South Africa;
- 1.4 "Purchase Order" means the Purchase Order accompanying these Terms and Conditions of purchase, specifying the Goods and Services, purchase price and delivery dates;
- 1.5 "Seller" means the supplier of Goods and/or Services, as specified on the Purchase Order;
- 1.6 "Shipping" means the delivery of the Goods either by the Seller directly to the Purchaser, or via a forwarding agent for conveyance by land or water, and "Shipment" or "Shipped" shall have a similar meaning; and
- 1.7 "Invoice" means, as the case may be, either a valid tax invoice issued in terms of and complying with the VAT Act of the Republic of South Africa; a "Shipping Invoice" issued specifically for customs purposes, in order to properly allow for customs duties and taxes; and/or an invoice issued by a supplier who is either not a registered VAT Vendor or a foreign supplier.

2. GOODS AND SERVICES

- 2.1 The Seller agrees to provide the Goods and/or Services in accordance with the Purchase Order and these Terms and Conditions.
- 2.2 By responding to the Purchase Order, by delivering the Goods and/or rendering the Services as identified therein, the Seller will be deemed to have accepted and agreed to these Terms and Conditions.

3. PASSING OF RISK OF LOSS AND OWNERSHIP

- 3.1 The risk of loss of or damage to the Goods shall pass to the Purchaser when such Goods are Shipped under this Purchase Order in accordance with the Shipping instructions specified on the face of the Purchase Order.
- 3.2 Title to the Goods shall pass to the Purchaser only upon delivery thereof to the Purchaser's specified end destination, regardless of risk of loss.

4. INSPECTION

- 4.1 The Purchaser shall have a reasonable time after receipt of the Goods and before payment to inspect the Goods so as to ensure conformity with the specifications of the Purchase Order, and Goods received prior to inspection shall not be deemed accepted until the Purchaser has run an adequate test to determine whether the Goods indeed conform to such specifications.
- 4.2 Use of a portion of the Goods for the purposes of such testing shall not constitute an acceptance of the Goods by the Purchaser.
- 4.3 If Goods tendered by the Seller do not wholly conform to the specifications of the Purchase Order, the Purchaser shall have the right to reject such Goods. Non-conforming Goods will be returned to the Seller, freight collect, and risk of loss will pass to the Seller upon the Purchaser's delivery to the common carrier.

5. REJECTIONS

- 5.1 If any of the Goods furnished and/or Services rendered hereunder are found at any time to be defective in material or workmanship or otherwise not in conformity with the specifications of the Purchase Order, the Purchaser (in addition to any other rights which it may have under all applicable warranties or otherwise) may at its option correct or have corrected the nonconformity at the Seller's expense, or reject and return such Goods and/or discontinue such Services at the Seller's expense. Such Goods shall not be replaced and Services not be continued without authorisation from the Purchaser.
- 5.2 The Purchaser may accept, without prejudice, a portion of the Goods, and, at its option, have the Seller repair or replace any non-conforming portion of the Goods, at the Seller's expense. Items rejected shall be removed promptly by the Seller at its expense and at its risk.
- 5.3 Final acceptance shall not be conclusive with respect to latent defects, fraud or such gross mistakes as amount to fraud or with respect to the Purchaser's rights under the "Warranty" clause, clause 10 below.

6. PAYMENT

- 6.1 The Purchaser shall pay the Seller the amount agreed upon and specified in the Invoice issued on strength of the Purchase Order.
- 6.2 Payment shall, however, not constitute acceptance of the Goods and/or Services.
- 6.3 The Seller shall, within sixty (60) days of delivery of the Goods and/or rendering of the Services, issue an Invoice to the Purchaser in respect thereof, such Invoice to reference the applicable Purchase Order.

- 6.4 The Purchaser reserves the right to return any incorrectly issued Invoice to the Seller. Unless otherwise specified on the Purchase Order, the Purchaser shall pay the invoiced amount within forty-five (45) days after receipt of a valid Invoice at the Accounts Payable Office of the Purchaser, subject thereto that the Goods and/or Services fully complied with the specifications of the Purchase Order.

7. DELIVERY

- 7.1 Delivery of the Goods and/or rendering of the Services shall occur pursuant to the Purchase Order.

8. SHIPMENT

- 8.1 The Goods shall be properly and appropriately packed for Shipment, i.e. in suitable containers to permit safe transportation and handling. Packaging material shall fully comply with the applicable legislation of the relevant authorities of the importing country.
- 8.2 A Shipping Invoice shall accompany every international consignment, which shall in all respects be a true reflection of the values as indicated on the Invoice.
- 8.3 The Purchaser's Purchase Order number must appear on all Shipping containers, packing sheets, delivery tickets, bills of lading, and Invoice.
- 8.4 The Seller shall comply with the Purchaser's standard routing and Shipping instructions as they appear on the Purchase Order.
- 8.5 Notwithstanding the provisions of clause 3 above, any loss of or damage to the Goods, whenever occurring, which results from the Seller's improper packaging or crating shall be borne solely by the Seller.

9. CONFIDENTIALITY

- 9.1 Insofar as the Seller may acquire knowledge of confidential information of the Purchaser in connection with its performance hereunder, it agrees to keep such information in confidence during and following termination or expiry of this agreement.
- 9.2 The Seller agrees to limit its internal distribution of Purchaser's confidential information to Seller's employees, agents and advisors who have a need to know, and further agrees not to use such information except in the course of performing hereunder and undertakes not to use such information for its own benefit or for the benefit of any third party.

10. WARRANTY

- 10.1 The Seller warrants that it has clear title to all Goods furnished hereunder and that the same are being delivered free and clear of any encumbrances.
- 10.2 The Seller further warrants that all such Goods shall conform to the Purchaser's specifications, the requirements of the Purchase Order and approved sample or samples, if any, and further, that such shall be merchantable and fit for the Purchaser's intended use and that such items shall be free from defects in design, material and workmanship (collectively, "the Seller's Warranty").
- 10.3 The Seller's Warranty shall remain in effect for a one (1) year period after acceptance of the Goods by the Purchaser, or for such longer period of time as the item is normally warranted.
- 10.4 Neither approval by the Purchaser of the Seller's design nor acceptance of the Goods shall release or discharge the Seller from liability for damages resulting from any breach of Seller's Warranty.
- 10.5 If any defect, failure or other non-conformity appears, the Purchaser shall have the right to take the following actions: (1) retain such defective items or portion of the Goods, in which event an equitable adjustment will be made in the price for such defective items; (2) require the Seller to repair or replace such defective items or portion of the Goods, at the Seller's sole expense, including all Shipping, transportation, and installation costs, if applicable; or (3) correct or replace such defective items or portion of the Goods with similar items and recover the total cost thereof from the Seller.
- 10.6 The aforesaid warranties shall survive acceptance and payment and shall operate in favour of the Purchaser and shall not be deemed to be exclusive, but shall be in addition to the Purchaser's other rights under the terms of the Purchase Order or under these Terms and Conditions or at law.
- 10.7 The Seller furthermore warrants that the Services will be rendered in a proper and workmanlike manner and that, as at the date of conclusion of this Agreement, it is - and will for the duration thereof remain - compliant with all applicable legislation, including but not limited to the Occupational Health and Safety Act, Act No 85 of 1993, as well as the Construction Regulations issued under Section 43 thereof.

11. TERMINATION FOR BREACH

- 11.1 In the event of either of the parties ("the defaulting party") committing a material breach of any of these Terms and Conditions, and remaining in default for a period of seven (7) calendar days after receipt by it of written notice from the other party ("the innocent party") calling for such breach to be remedied, the innocent party shall be entitled, without prejudice to any other rights it may have in terms of this agreement or in law, to terminate this agreement by written notice to that effect given to the defaulting party.
- 11.2 Either party may terminate this Agreement at any time by giving to the other ("the defaulting party") notice of such termination if:
- 11.2.1 the defaulting party is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation or under judicial management or under receivership or under the equivalent of any of the foregoing;
- 11.2.2 the defaulting party makes any arrangement or compromise with its creditors generally, or ceases, or threatens to cease, to carry on business.
- 11.3 Neither the termination nor expiry of this Agreement shall absolve the Seller from the obligation to observe the confidentiality measures and other restraints as set out herein. It is specifically recorded that the provisions of clauses 9, 10, 12, 13 and 14 shall survive, in perpetuity, the termination or expiry of this Agreement for whatever reason.

12. GOVERNING LAW AND DISPUTE RESOLUTION

- 12.1 This Agreement and any dispute arising therefrom shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 12.2 In the event of any dispute arising from this Agreement, such dispute shall be adjudicated by a competent High Court in South Africa (unless otherwise agreed between the parties at the time by means of a written arbitration or other agreement) and for these purposes the parties agree to the exclusive jurisdiction of South African courts for the adjudication of such disputes.

13. INDEMNITY

- 13.1 The Seller shall indemnify, hold harmless, and at the Purchaser's request, defend the Purchaser, its agents and employees, from and against all claims, liabilities, damages, losses and expenses, including attorneys' fees on the scale as between attorney and client, arising out of or in any way connected with the Goods provided and/or Services rendered under this Agreement, including, without limitation, any claim by a third party against the Purchaser alleging that the Goods provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes.

14. PROTECTION OF THE PARTIES' NAME AND LOGOS

- 14.1 No reference may be made by either party to the other party's name or logos in any marketing or promotional material, or for any other purpose whatsoever without such party's prior written consent.

15. DOMICILIUM CITANDI AND EXECUTANDI AND NOTICES

- 15.1 The Parties hereto respectively choose as their *domicilium citandi et executandi* for all purposes of, and in connection with this Agreement, the physical addresses as they appear on the Purchase Order.
- 15.2 Any notice to be given hereunder shall be given in writing and may be given either personally (i.e. per hand or courier) or may be sent by registered post and addressed to the relevant party at its *domicilium* or to such other address as shall be notified in writing by either of the parties to the other from time to time. Any notice given by registered post shall be deemed to have been served on the expiry of 7 (seven) calendar days after same is posted. Any notice delivered personally shall be deemed to have been served at the time of delivery.

16. ASSIGNMENT

- 16.1 The Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of the Purchaser.
- 16.2 Any assignment or transfer without such written consent shall be null and void.

17. NO WAIVER

- 17.1 A waiver of any defaults hereunder or of any term or condition of this Agreement by either party shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

18. ENTIRE AGREEMENT

- 18.1 This document and the Purchase Order constitutes the entire agreement between the parties in regard to the subject matter thereof and neither party shall be bound by any undertaking, representation or warranty not recorded herein.

- 18.2 No alteration, variation, addition or agreed cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by both parties and their duly authorised signatories.

19. CONFLICT

- 19.1 In the event of any conflict between the provisions of the Purchase Order and these General Conditions of Purchase, the provisions of the Purchase Order shall prevail.