

In these general contract conditions, "CSIR" means **The CSIR Purchaser**, 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, Works 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;
- 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; and
- 1.8 **"Confidential information"** means any information received or obtained by the Parties: (i) as a result of entering into this Agreement; or (ii) in connection with the business of either of the Parties relating to this agreement, including, without limitations, any past, present or future research, development, business activities, commercial, financial, marketing, products, services, technical, or other data, know-how, trade-secrets or any other information of whatever nature in whatever form.

2 GOODS AND SERVICES

- 2.1 The Seller agrees to provide the Goods and/or Services in accordance with the Purchase Order, the CSIR's Safety Health Environment Quality standards & norms as well as 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 OWNERSHIP AND RISK

- 3.1 The Goods supplied shall be and remain at the sole risk of the Seller and the Seller shall be responsible for and bear all and any costs whatsoever arising from or in respect of all losses of and damages to such Goods and/or destruction thereof, until such Goods are supplied to the Purchaser, whereupon risk of such loss, damage and/or destruction shall pass to the Purchaser.
- 3.2 Ownership of the Goods supplied shall pass to the Purchaser upon delivery or payment therefor (whichever occurs first), and the Seller hereby expressly waives any lien or any claim to a lien of any nature, in respect of such Goods upon the passing of ownership as aforesaid. Such passing of ownership shall be without prejudice to any right of subsequent rejection of the Goods supplied by the Purchaser.
- 3.3 Signature of a delivery notice by a representative of the Purchaser shall not prevent the Purchaser from claiming that the Goods were short-supplied, incorrectly supplied or delivered late and all the Purchaser's rights in this regard are strictly reserved.
- 3.4 Where the Goods or any part thereof are to be supplied by a third party:
 - 3.4.1 the Seller must ensure that ownership in and to the Goods or any part thereof passes to the Seller from such third party upon delivery to, or upon payment therefor by the Purchaser to the Seller, whichever is the earlier;
 - 3.4.2 the Purchaser will not be entitled or obliged, to pay such third party directly in respect of the Goods or any item thereof; and

- 3.4.3 where the Seller is sequestrated or liquidated, and the Purchaser has paid the Seller for the Goods or any part thereof at the time of such insolvency or liquidation, but the Seller has failed to pay the third party in respect thereof, the Seller indemnifies the Purchaser against any claim that can be made by the third party.

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 QUALITY ASSURANCE

- 5.1 The Seller hereby warrants, represents and undertakes in favour of the Purchaser that:
 - 5.1.1 it shall execute the Goods under this Agreement:
 - 5.1.1.1 in a cost-effective manner and timely manner, the Seller acknowledging that time is of the essence in terms of the execution of the Goods to the Purchaser; and
 - 5.1.1.2 in a manner which ensures that the Purchaser receives "value for money".
- 5.2 The Goods provided under this Agreement:
 - 5.2.1 conform in all respects with the Purchase Order, and have been manufactured, inspected, tested and supplied in accordance therewith;
 - 5.2.2 comply with Applicable Laws;
 - 5.2.3 are up-to-date and reliable;
 - 5.2.4 comprise new and unused materials of the most suitable grade;
 - 5.2.5 are fit for the purposes for which they are being acquired by the Purchaser; and
 - 5.2.6 the workmanship is of the best quality and in accordance with Best Industry Practice.

6 DELAY DAMAGES

If any Goods are not delivered / executed on or before the delivery dates stipulated in the Purchase Order ("the Delivery Dates"), or where the Goods do not conform in a material respect to the terms of this Agreement, the Seller shall pay to the Purchaser an amount equal to 1,5% (one and a half per centum) of the value of the Goods in question, as delay damages for such default, for every day which shall elapse between the Delivery Dates and the dates of actual delivery of the Goods in question, subject to a limit equal to 10% (ten per centum) of the value of the Contract Price. The Purchaser may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or which become due to the Seller.

7 DEFECTS LIABILITY

- 7.1 The Seller shall, at the request of the Purchaser, and on such date and time, as may be agreed to between the Parties in writing (taking into consideration the necessity of any repairs, replacement or remedy to any Goods), but in any event, not later than 30 (thirty) days after the Purchaser has made such request to the Seller, at the sole discretion of the Purchaser, either:
 - 7.1.1 remedy all defects or damages to any Goods; or
 - 7.1.2 replace any damaged or defective Goods; or

7.1.3 credit the Seller for any defective or damaged Goods, during the warranty period.

7.2 All work referred to in this Clause 7 (Defects Liability) will be executed by the Seller at its own cost, unless the necessity for such remedying of defects or damage is due to an act or omission on the part of the Purchaser.

7.3 If the Seller fails to remedy any defect or damage or replace any Goods or components thereof which require replacement, within a reasonable time, the Purchaser may, at its sole discretion carry out the work itself or have the work carried out by others in a reasonable manner and at the Seller's risk and cost, or replace the Goods or components in question.

8 REJECTIONS

8.1 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.

8.2 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 and safely disposed by the Seller at its expense and at its risk.

8.3 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 14 below.

9 PAYMENT

9.1 The Purchaser shall pay the Seller the amount agreed upon and specified in the Invoice issued on strength of the Purchase Order.

9.2 Payment shall, however, not constitute acceptance of the Goods and/or Services.

9.3 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.

9.4 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.

10 DELIVERY AND PACKAGING

10.1 The Seller shall deliver the Goods to the Purchaser at the Site, or such other place as may be designated by the Purchaser in writing from time to time.

10.2 On delivery of the Goods by the Seller to the Site, the Purchaser shall execute a delivery notice, acknowledging receipt of the Goods. The Purchaser's signature (or that of its representative) given on any delivery note or other documentation presented for signature in connection with delivery of the Goods, is evidence only that certain Goods have been received. In particular, it shall not be evidence that the correct quantity of Goods has been delivered or that the Goods delivered are in good condition or of the correct quality.

10.3 The delivery of the Goods shall only be deemed to have occurred when the Purchaser actually accepts the Goods in question and has duly executed an acceptance certificate in respect of the Goods.

10.4 All Goods must be adequately and securely packed in such a manner as to prevent damage in transit.

10.5 Unless otherwise stipulated in the Agreement, the Charges will be deemed to include the cost of all packing materials and containers, which will become the property of the Purchaser.

10.6 The Seller must identify each and every package, bundle, bag, carton, container or article by means of either suitable labels securely attached thereto or indelible painting thereon, with a

description of the Goods, name of the Seller, name of the Purchaser, Agreement number, and net mass of contents (where purchased by mass).

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

10.8 Delivery of goods to all CSIR premises shall be done in accordance to CSIR's Safety Health Environment and Quality protocols.

11 SHIPMENT

11.1 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.

11.2 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.

11.3 The Purchaser's Purchase Order number must appear on all Shipping containers, packing sheets, delivery tickets, bills of lading, and Invoice.

11.4 The Seller shall comply with the Purchaser's standard routing and Shipping instructions as they appear on the Purchase Order.

11.5 Notwithstanding any other provisions in this Agreement, 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.

12 CONFIDENTIALITY

12.1 Insofar as the Seller may acquire knowledge of Confidential Information of the Purchaser in connection with its performance hereunder, it agrees to keep such Confidential Information in confidence during and following termination or expiry of this agreement.

12.2 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 Confidential Information except in the course of performing hereunder and undertakes not to use such Confidential Information for its own benefit or for the benefit of any third party or any other manner which may be deemed unlawful.

12.3 The Parties agree that all Personal Information will be dealt with strictly within the parameters of POPI, all processing of information (as defined in POPI) will be done in accordance with POPI and that all reasonable security safeguards are in place to comply with POPIA.

13 PROTECTION OF PERSONAL INFORMATION

13.1 The Receiving Party undertakes to:

13.1.1 Comply with the provisions of PoPIA as well as all applicable legislation as amended or substituted from time to time;

13.1.2 Treat all Personal Information strictly as defined within the parameters of PoPIA;

13.1.3 Not transfer any Personal Information to any third party in a foreign country unless such transfer complies with the relevant provisions of PoPIA regarding Transborder information flows; and

13.1.4 Not retain any Personal Information for longer than is necessary for achieving the purpose in terms of this Agreement or in fulfilment of any other lawful requirement.

13.2 The Party(ies) undertake(s) to ensure that all reasonable measures are taken to:

13.2.1 Identify reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control;

13.2.2 Establish and maintain appropriate security safeguards against the identified risks;

13.2.3 Ensure that the security safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;

- 13.2.4 Provide immediate notification to the CSIR where there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person;
- 13.2.5 Remedy any breach of a security safeguard in the shortest reasonable time and provide the CSIR with the details of the breach and, if applicable, the reasonable measures implemented to address the security safeguard breach;
- 13.2.6 Provide immediate notification to the CSIR where the receiving party has, or reasonably suspects that, Personal Information has been processed outside of the purpose agreed to or consented to;
- 13.2.7 Provide the CSIR, upon request, with all information of any nature whatsoever relating to the processing of the Personal Information for the purpose in terms of this Agreement and any applicable law; and
- 13.2.8 Notify the CSIR, if lawful, of receipt of any request for access to Personal Information, in its possession and relating to the CSIR.

- 13.3 The CSIR reserves the right to inspect the Personal Information processing operations, as well as the technical and organisational information security measures employed by the contracting Party to ensure compliance with the provisions of Clause 13.
- 13.4 Upon termination of this Agreement for any reason, Personal Information will be returned to the CSIR. In the case of data in electronic form, such data shall be erased from the data files maintained by the Supplier after a copy has been returned to the CSIR in such electronic form as the CSIR may reasonably request together with written confirmation signed by an authorised signatory, confirming the destruction of CSIR data.
- 13.5 The provisions of Clause 13 shall survive the termination of this Agreement, regardless of cause, in perpetuity.

14 WARRANTY

- 14.1 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.
- 14.2 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").
- 14.3 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.
- 14.4 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.
- 14.5 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.
- 14.6 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.
- 14.7 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.

15 TERMINATION FOR BREACH

- 15.1 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.

- 15.2 Either party may terminate this Agreement at any time by giving to the other ("the defaulting party") notice of such termination if:
 - 15.2.1 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; or
 - 15.2.2 the defaulting party makes any arrangement or compromise with its creditors generally, or ceases, or threatens to cease, to carry on business.

- 15.3 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, 12, 13, 14 and 16 shall survive, in perpetuity, the termination or expiry of this Agreement for whatever reason.

16 GOVERNING LAW AND DISPUTE RESOLUTION

- 16.1 This Agreement and any dispute arising therefrom shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 16.2 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.

17 INDEMNITY

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 or personal right of a third party, whether such are provided alone or in combination with other products, software or processes.

18 PROTECTION OF THE PARTIES' NAME AND LOGOS

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.

19 DOMICILIUM CITANDI ET EXECUTANDI AND NOTICES

- 19.1 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.
- 19.2 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.

20 ASSIGNMENT

- 20.1 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.
- 20.2 Any assignment or transfer without such written consent shall be null and void.

21 NO WAIVER

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.

22 ENTIRE AGREEMENT

- 22.1 This document and the Purchase Order constitute 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.
- 22.2 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.

23 CONFLICT

In the event of any conflict between the provisions of the Purchase Order and these CSIR Terms and Conditions of Purchase, the provisions of the Purchase Order shall prevail.

24 RESTRICTION OF SUPPLIER

- 24.1 In accordance with National Treasury Regulations, CSIR may restrict suppliers, shareholders, and directors from future business with all organs of state.
- 24.2 Grounds for such restriction include but are not limited to:
 - 24.2.1 Failure to honour an awarded contract, even after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
 - 24.2.2 Failure to execute or perform the deliverables (in whole or partially) according to the agreed scope or specification (Poor Performance) or for breaching a condition of the contract;
 - 24.2.3 Collusive bidding;
 - 24.2.4 Acting in a fraudulent manner;
 - 24.2.5 Misrepresentation of facts;
 - 24.2.6 Fronting or providing false information regarding B-BBEE status level of contributor, local production and content, or any other matter required in terms of the Preferential Procurement Regulations;
 - 24.2.7 Failure to declare sub-contracting arrangements;
 - 24.2.8 Offering or giving bribes to CSIR staff;
 - 24.2.9 Causing CSIR damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor; and/or
 - 24.2.10 Litigating against CSIR in bad faith.