

## CSIR TERMS AND CONDITIONS: CONSTRUCTION

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 in respect of the Project as embodied herein, read with the Purchase Order and/or the Letter of Appointment, embodying the Scope of Work and the Special Conditions;
- 1.2 "Contractor" means the building contractor and supplier of the Material and/or Services, as specified on the Purchase Order and/or Letter of Appointment;
- 1.3 "Contract Price" means the total price payable by the CSIR to the Contractor in respect of the Material and/or Services to be provided in respect of the Project and within the time frames as specified in the Purchase Order and/or Letter of Appointment ;
- 1.4 "CSIR" means the CSIR, a statutory council, duly established under Act No 46 of 1988 of the Republic of South Africa;
- 1.5 "Effective Date" means the date of commencement of the Project as specified in the Purchase Order and/or Letter of Appointment, or the date of the response to the Purchase Order and/or Letter of Appointment by the Contractor through the delivery of the Material and/ or the rendering of the Services as identified therein, whichever occurs first in time;
- 1.6 "Material and/or Services" means the building material and construction and related services required for the execution of the Project, as specified in the Purchase Order and/or Letter of Appointment ;
- 1.7 "Insurance" means the professional liability insurance and employers' liability Insurance and/or Contractors All Risk Insurance to be taken out by the Contractor to cover its obligations under the Project, as specified in the Purchase Order and/or Letter of Appointment;
- 1.8 "Invoice" means a valid tax invoice issued in terms of and complying with the VAT Act of the Republic of South Africa;
- 1.9 "Letter of Appointment" means the letter, if any, in terms of which the CSIR appoints the Contractor to execute the Project, and includes a description of the Scope of Work and other accompanying documents and drawings, if any;
- 1.10 "Penalty" means the penalty, if any, payable by the Contractor to the CSIR in the event of late delivery of the Material and/or late rendering of the Services, as specified in the Letter of Appointment or the Special Conditions;
- 1.11 "Project" means the building project as more fully specified in the Purchase Order, the Scope of Work contained therein and/or the Letter of Appointment ;
- 1.12 "Project Manager" means the CSIR employee or agent appointed to oversee the execution of the Project, as designated in the Purchase Order and/or Letter of Appointment;
- 1.13 "Purchase Order" means the official, electronically generated CSIR purchase order accompanying these Terms and Conditions of Construction, specifying the Project/ Project title, the Scope of Work and the Contract Price;
- 1.14 "Scope of Work" means the Material and/or Services to be provided in respect of the Project, as more fully detailed in the Purchase Order and/or the Letter of Appointment, as well as any accompanying documents and drawings, if applicable;
- 1.15 "Special Conditions" means any special conditions, if any, relating to the Project varying or adding to these general terms and conditions as documented in a separate annexure or as contained in the Letter of Appointment.

### 2. APPOINTMENT OF CONTRACTOR

In terms of Regulations 4(1)(a) and 5 of the Construction Regulations, 2003 issued under the Occupational Health and Safety Act, (Act 85 of 1993) the Contractor is appointed as the Principal Contractor for purposes of the Project as at the Effective Date.

### 3. MATERIAL AND SERVICES

- 3.1 The Contractor agrees to provide the Material and/or Services in accordance with, and within the time frame, as set out in the Purchase Order and/or Letter of Appointment, as read with these terms and conditions, as well as the Special Conditions.
- 3.2 By responding to the Purchase Order and/or Letter of Appointment through the delivery of the Material and/ or the rendering of the Services as identified therein, the Contractor will be deemed to have accepted and agreed to these terms and conditions.

### 4. DELIVERABLES: TIME OF THE ESSENCE

- 4.1 Delivery of the Material and/or rendering of the Services shall occur pursuant to the Scope of Work as specified in the Purchase Order and/or Letter of Appointment and against payment of the Contract Price.

- 4.2 It is recorded that the timely execution by the Contractor of the Project and its obligations as required by this Agreement, is material and of the essence to this Agreement.

### 5. CONFIDENTIALITY

- 5.1 Insofar as the Contractor may acquire knowledge of confidential information of the CSIR in connection with its performance hereunder, it agrees to keep such information in confidence during and after termination or expiry of this Agreement, until such information has become available in the public domain
- 5.2 The Contractor agrees to limit its internal distribution of the CSIR's confidential information to Contractor'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 specifically undertakes not to use such information for its own benefit; for the benefit of any third party or to the detriment of the CSIR.

### 6. GUARANTEES AND WARRANTIES

- 6.1 The Contractor warrants that it has clear title to all Material furnished hereunder and that the same are being delivered free and clear of any encumbrances.
- 6.2 The Contractor warrants that the Services will be provided in a timeous, proper and workmanlike manner.
- 6.3 The Contractor further warrants that all Material, as well as the Services, shall conform to the CSIR's specifications, the requirements of the Purchase Order and/or Letter of Appointment and approved sample or samples, if any, and further, that such shall be merchantable and fit for the CSIR's intended use and shall be free from defects in design, material and workmanship (collectively, "the Contractor's Warranty").
- 6.4 The Contractor's Warranty shall remain in effect for a one (1) year period after acceptance of the Material and/or Services by the CSIR or for such longer period of time as an item is normally warranted.
- 6.5 The Contractor hereby guarantees: i) that as at the Effective Date it is, and undertakes that it will remain for the duration of the Project compliant with all legislation applicable to the Material and/or Services (specifically but not limited to the Occupational Health and Safety Act, No 85 of 1993, as well as the Construction Regulations issued under Section 43 thereof); and ii) hereby acknowledges that failure to so comply with the aforesaid legislation will constitute a material breach of this Agreement, which will forthwith entitle the CSIR to cancel this Agreement in terms of the provisions of Clause 11 below.
- 6.6 Acceptance of the Material and/or Services as provided for in clause 7 below shall not release or discharge the Contractor from liability for damages resulting from any breach of the Contractor's Warranty.
- 6.7 If any defect, failure or other non-conformity appears, the CSIR shall have the right to take the following actions: (1) retain such defective items or portion of the Material, in which event an equitable adjustment will be made in the price for such defective items; (2) require the Contractor to repair or replace such defective items or portion of the Material, at the Contractor's sole expense, including all transportation, and installation costs, if applicable; or (3) correct or replace such defective items or portion of the Material with similar items and recover the total cost thereof from the Contractor.
- 6.8 The aforesaid warranties shall survive acceptance and payment; shall operate in favour of the CSIR and shall not be deemed to be exclusive, but shall be in addition to the CSIR's other rights under this Agreement or at law.

### 7. INSPECTION

- 7.1 The CSIR shall have a reasonable time upon or after receipt of the Material and/or performance of the Services before effecting payment, so as to inspect the same to ensure conformity with the specifications of the Scope of Work. Material received and/or Services rendered prior to such inspection shall not be deemed accepted until the CSIR has completed the inspection to determine whether the Material and/or Services indeed conform to such specifications.
- 7.2 Use of a portion of the Material and/or Services for the purposes of such inspection shall not constitute an acceptance of the Material by the CSIR.
- 7.3 If Material tendered or Services rendered by the Contractor do not wholly conform to the specifications of the Scope of Work, the CSIR shall have the right to reject such Material and/or Services.

### 8. REJECTIONS

- 8.1 If any of the Material furnished and/or Services rendered hereunder are found, either prior to or at the time of the inspection as envisaged by clause 7 above, or within a reasonable time thereafter, to be defective in material or workmanship or otherwise not in conformity with the

specifications of the Scope of Work, the CSIR (in addition to any other rights which it may have under the Contractor's Warranty or otherwise) may at its option correct or have corrected the nonconformity at the Contractor's expense, or reject and return such Material to the Contractor at the latter's cost and risk and/or discontinue such Services at the Contractor's expense pursuant to the provisions of clause 11.3 below. In such an event, such Material shall not be replaced and Services not be continued without prior written authorisation from the CSIR.

- 8.2 The CSIR may accept, without prejudice, a portion of the Material/Services, and, at its option, have the Contractor repair or replace any non-conforming portion of the Material/Services, at the Contractor's expense. Items rejected shall be removed promptly by the Contractor 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 gross negligence or fraud or with respect to the CSIR's rights under the "Warranty" clause, clause 6 above.

#### **9. PAYMENT**

- 9.1 Subject to clause 7.1 above, the Contractor shall, within sixty (60) days of delivery of the Material and/or rendering of the Services, or as otherwise indicated in the Purchase Order and/or Letter of Appointment issue an Invoice(s) to the CSIR in respect thereof, such Invoice to be addressed to the Project Manager, and to reference the applicable Purchase Order, the Project's allocated contract number, as well as the CSIR's VAT Registration number, being 4470114283.
- 9.2 The CSIR shall pay the Contract Price to the Contractor as specified in the Invoice(s) issued on strength of the Purchase Order and/or Letter of Appointment, provided that the Material and/or Services for which payment is due have been rendered in a proper and workmanlike manner and to the satisfaction of CSIR.
- 9.3 The CSIR reserves the right to return any incorrectly issued Invoice to the Contractor.
- 9.4 Unless otherwise specified on the Purchase Order, the CSIR shall pay the invoiced amount within forty-five (45) days after receipt of a valid Invoice at the Accounts Payable Office of the CSIR, subject thereto that the Material and/or Services fully complied with the specifications of the Purchase Order and/or Letter of Appointment

#### **10. COPYRIGHT**

The Contractor hereby irrevocably cedes, assigns, and transfers to CSIR all of its rights, title and interest in and to any and all copyright in all works which are or may become eligible for copyright under the laws of the Republic of South Africa and which arises directly from or incidental to the Services provided by the Consultant in terms of this Contract. In addition the Contractor grants to CSIR the sole and exclusive right to alter and adapt the copyrighted work for its own purposes and hereby waives the moral rights conferred upon it as author by section 20(1) of the Copyright Act, No. 98 of 1978, as amended.

#### **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 The CSIR reserves the right to, at any time, in writing, cancel / postpone/suspend the Project at its convenience, in which event it will reimburse the Contractor for Material satisfactorily supplied and/or Services satisfactorily rendered to date of such cancellation/postponement/suspension, upon payment of which it shall have no further obligations towards the Contractor.
- 11.4 Neither the termination nor expiry of this Agreement shall absolve the Contractor from the obligation to observe the confidentiality measures and other restraints as set out herein. It is specifically recorded that the provisions of clauses 5, 6, 10, 11, 12, 13, 14 and 16 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 AND INSURANCE**

- 13.1 The Contractor shall indemnify, hold harmless, and at the CSIR's request, defend the CSIR, 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 Material provided and/or Services rendered under this Agreement, including, without limitation, any claim by a third party against the CSIR alleging that the Material or Services provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party.
- 13.2 The Contractor shall obtain the required Insurance and shall provide documentary proof of the existence of the same to the CSIR upon request.

#### **14. 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, nor shall either party issue any press release in regard to the Project without the other'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 in the Letter of Appointment or as provided in the Special Conditions.
- 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.
- 15.3 For the sake of efficient administration of the Project, liaison with the CSIR shall take place via the Project Manager.

#### **16. ASSIGNMENT**

- 16.1 The Contractor may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the CSIR and any assignment or transfer in the absence of such written consent shall be null and void.
- 16.2 The Contractor may, upon having informed the CSIR in writing, and in advance, subcontract a portion of the provision of the Material and/or the rendering of the Services, provided that any such subcontracting shall occur in writing and on the same terms and conditions as contained in this Agreement; and further provided that no such subcontracting shall divest the Contractor of its responsibility towards the CSIR concerning the full execution of and delivery under the Project.

#### **17. 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.

#### **18. ENTIRE AGREEMENT**

- 18.1 This document, the Purchase Order and/or the Letter of Appointment, including the Scope of Work and any accompanying documents and drawings, as well as the Special Conditions, constitute the entire agreement between the parties in regard to the Project and 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, subject thereto that a variation order will only be accepted if authorised in writing by the Project Manager.

**19. CONFLICT**

In the event of any conflict between the provisions of these General Conditions and the provisions as contained in the Special Conditions = the provisions of the Special Conditions shall prevail.