

Standard Terms & Conditions

1. Formation and scope of contract

- 1.1 Upon acceptance of a quotation, alternatively tender, or upon submitting a purchase order, accepting delivery or paying any part of a Contract Price, the Customer agrees to the incorporation of these Conditions in place of any printed provisions on Customer's documents.
- 1.2 This Contract sets out and contains all of the terms and conditions relating to the supply of the Product and/or the Services.
- 1.3 All terms, conditions, warranties, guarantees and representations whether express or implied and not contained herein are expressly excluded.
- 1.4 All illustrations and descriptions in the Suppliers price lists, catalogues or sales literature are approximate and may not be relied on by the Customer.

2. Interpretation and definition

In this Contract unless clearly inconsistent with or otherwise indicated by the context –

- 2.1 **“Contract”** means the quotation, alternatively tender, contained in Schedule “I” together with the Standard Terms & Conditions contained herein.
- 2.2 **“Completion”** means the date upon which the Supplier executed the Works and thus the Project, as determined in accordance with provisions set out elsewhere in the Contract or if none, as notified by the Supplier to the Customer;
- 2.3 **“Economic Hardship”** means an occurrence of any nature whatsoever affecting the cost of the delivery of the Product and/or rendering of the Services by the Supplier to the extent that such occurrence increases the price of the Product and/or the Services.
- 2.4 **“Works”** mean all works executed by the Supplier through and/or by means of delivery of the Product and/or the rendering of the Services and/or execution of the Project.
- 2.5 **“VAT”** means Value Added Tax as per the Value Added Tax Act, Act 89 of 1991.

3. Contract price

- 3.1 Unless otherwise stated elsewhere in the Contract, the Contract Price:
 - 3.1.1 excludes VAT or other applicable taxes or duties;
 - 3.1.2 excludes any unforeseen cost and expenses incurred by the Supplier in the delivery of the Product and/or Services;
 - 3.1.3 may, subject to the provisions of clause 5, be varied by the Supplier to take account of any increases in wages, material or other costs or any changes in legislation or standards after the date of the Supplier's quotation, alternatively tender;
 - 3.1.4 is subject to correction on account of typographical errors and omissions.
 - 3.1.5 unless otherwise indicated excludes “Preliminary and General” (P&G) costs allowing for transport, meal and accommodation allowance etc.
 - 3.1.6 is subject to change, either caused by a variation in the Product and/or Services and/or Project and/or Works originally tendered by the Supplier or effected due to new requirements imposed by the Customer. For purposes of this clause 3.1.6 any changes will be founded on the cost, expense and fees of the Supplier for purposes of effecting and incorporating the change and/or variation into the Project and/or Works.

- 3.2 The Contract Price may be varied at any time to take account either of any increase in cost to the Supplier which results from any delay, default, act or omission on the part of the Customer and/or of any variation in the Contract in accordance with these Conditions and/or resulting from any delay caused by the Customer or any person. associated to the Customer and/or contracted by the Customer.
- 3.3 VAT is calculated at the current official VAT rate as at the date of acceptance of the quotation, alternatively tender, by the Customer and such rate be increased or reduced and such increase or reduction is by law made applicable to the Contract and/or the Contract Price, then, notwithstanding anything to the contrary contained or implied herein, the VAT payable on the Contract Price will be recalculated and:
- 3.3.1 any shortfall will be paid by the Customer to the Supplier upon request; or
- 3.3.2 any excess will be repaid by the Supplier to the Customer; provided the Customer shall have first received payment of the full Contract Price.

4. Customer's responsibilities

The Customer agrees and undertakes to:

- 4.1 To provide 3 phase 64 Amp power with 2 x 32 Amp 5 pin welding plugs. This can be supplied at an additional cost
- 4.2 Waste removal in the form of a dumping area, skip or otherwise is to be provided for. Any removal of waste will be charged for.
- 4.3 Adequate lighting is to be provided for, if additional lighting is to be supplied by the contractor it will be charged for accordingly.
- 4.4 Ensure that the Site is available and accessible for purposes of enabling the Supplier to execute the Works.
- 4.5 Perform all obligations and responsibilities, at its own cost and by the time specified in the Contract for such compliance or, if no time is stated, in good time to allow the Supplier to execute the Works.
- 4.6 The Customer shall be responsible for all reasonable costs which accrue to the Supplier as a result of the Customer's delay, negligence or default. Unless and to the extent otherwise stated elsewhere in the Contract, the Customer is responsible for the giving of all notices and the obtaining of all licenses, consents, authorizations and permits required for the Supplier to perform its obligations and/or the execute the Works and/or the Project.
- 4.7 If the Contract does not specify that the Customer is to provide certain services or facilities, the Customer shall provide such services and/or facilities as the Supplier reasonably requires.
- 4.8 Except where the Contract expressly provides that the Supplier is responsible for site safety, the Customer shall ensure that the Site is safe.
- 4.9 Perform, at its own cost and expense, such tasks and/or execute such mandates as the Supplier may reasonably impose purposes of execution of the Works.
- 4.10 Only liaise with the Supplier through the means established and communicated by the Supplier to the Customer in writing and under no circumstances give instructions to any employees, agents or contractors of the Supplier unless such persons is authorised for such purposes as hereinbefore contemplated.
- 4.11 Under no circumstances appoint and/or contract any employee, agent or contractor of the Supplier for purposes of rendering any services and/or products which are similar to the services and products rendered and delivered by the Supplier in and through the course of its business and business activities.
- 4.12 At all times, upon the Customer becoming aware of any matter and/or circumstances that may lead to and/or constitute a breach of the terms and conditions hereof, either by the Customer or the Supplier, advise the Supplier of same in writing.

5. Economic Hardship

- 5.1 Should an event of Economic Hardship occur, then the parties undertake to negotiate in good faith with a view to alleviating the Economic Hardship.
- 5.2 In the event the parties are unable to agree on a possible solution for the Economic Hardship, within 15 (Fifteen) days after being called for by the Supplier, the Supplier shall be entitled to cancel this Agreement by addressing written notice to such effect to the Customer.
- 5.3 In the event of cancellation of this Agreement by the Supplier, the parties will be released from any obligation to performance after the date of cancellation as contemplated in clause 5.2; provided that such cancellation will not prejudice the rights of the parties to claim for performance by the other up and until the date of such cancellation.

6. Intellectual property rights, confidentiality and drawings

- 6.1 All designs, drawings, specifications, documentation, opinions, methods, techniques, systems and advises prepared by or on behalf of the Supplier in relation to the Project or ancillary thereto, all Intellectual Property Rights in them and all Intellectual Property Rights vesting in the Supplier or the Services and Product remains the property of the Supplier.
- 6.2 All information received from the Supplier which is marked as confidential or as a result of its nature is deemed to be confidential, shall be kept confidential by the Customer and shall not be copied or disclosed to any third party nor be used other than for the purposes of the Supplier executing the Works and/or the Project.
- 6.3 Any documents required to be approved by the Customer under the Contract shall be deemed to be approved unless returned to the Supplier with full written comments within 7 days of their submission.

7. Inspection

- 7.1 The Supplier and the Customer shall agree on dates and times inspections are to be held.
- 7.2 Upon Completion a final inspection will be held by the parties and if the Customer fails to attend same.
- 7.3 If the Customer fails to attend the inspections, the Customer shall be deemed to have accepted the delivery and rendering of the Product and/or the Services in the order and conditions as at the date of the inspection applicable.

8. Dates for performance

- 8.1 If the Supplier is liable for a delay or default in the performance of any of its obligations under the Contract, the Supplier's liability for such delay or default shall be limited to the Contract Price and further be limited to the amount of damages (if any) stated to be payable on such delay or default.
- 8.2 All dates specified for the performance of the Supplier's obligations (including dates for delivery or Completion) are estimates only and any dates for performance may be varied by the Supplier to take account of any delay resulting from any delay, default, act or omission on the part of Customer and/or any variation in the Works and/or the Contract and/or resulting from any act or omission beyond the control of the Supplier.

9. Delivery and title

- 9.1 Unless expressly set out elsewhere in the Contract, the execution of the Works will be at the Site.
- 9.2 The Supplier retains ownership in and to the Product until the Contract Price is settled in full.
- 9.3 Once the Product or portions thereof including but not limited to materials establishing and/or comprising the Product and equipment used by the Supplier, is brought onto the Site, all risks relating thereto, will be for the account of the Customer and the Customer will be liable for all damages to the Product.

10. Terms of payment

- 10.1 The Contract Price and all other sums due under the Contract shall be paid in accordance with the terms set out elsewhere in the Contract or, if none, as prescribed by the Supplier, in writing.
- 10.2 All payments shall be made in cleared funds by the dates, in the currency on the Supplier's invoice.
- 10.3 Where any payment is not made on the due date, the Supplier may charge Customer interest calculated at the *tempore morae interest* rate applicable from time to time, from the due date for payment until full payment has been received.
- 10.4 Payments shall be made by the Customer to the Supplier at such place or places as the Supplier may from time to time direct in writing.
- 10.5 All payments are to be made by the Customer free of set off and banking charges.
- 10.6 If the Contract Price is payable in installments the full Contract Price will become due and owing in the event of the Customer failing to make payment of an installment on the due date thereof.

11. Supplier's liability for defects

- 11.1 The Supplier agrees that if any defect in the design, workmanship or materials used in that part of the Project arises during the Warranty Period, the Supplier shall, at its own cost and expense attend to the necessary repairs.
- 11.2 The Supplier will not be liable for any defects and/or to attend to repairs:
 - 11.2.1 unless the Customer promptly notifies the Supplier in writing upon such defect arising;
 - 11.2.2 if the defect arises as a result of misuse, neglect, willful damage, negligence (other than on the part of the Supplier), lack of maintenance, abnormal working conditions, failure to comply with instructions relating to the product concerned, change in the conditions or circumstances for which the Works are intended, dismantling, alteration or repairs.
 - 11.2.3 in relation to fair wear and tear.

12. Termination and suspension

- 12.1 If the Customer fails to perform its obligations under the Contract when due or breaches any duty or obligation imposed on it, the Supplier may:
 - 12.1.1 suspend delivery of the Product and/or rendering of the Services, until such time as the breach is remedied and/or the obligation performed; and
 - 12.1.2 demand immediate payment by Customer of a sum equal to the value of the Product delivered and/or Services rendered until such date; and
 - 12.1.3 apply set off, of any monies received by the Supplier against any monies due and owing by the Customer as far as possible.

- 12.2 If either party shall propose a scheme or other arrangement or compromise with its, his or her creditors or shall become insolvent or have a receiver appointed in respect of all or any part of its assets, have a petition presented for its winding up or the appointment of an administrator or take any steps with a view to its liquidation or be subject to analogous events in any other jurisdiction, the other party may terminate the Contract by written notice effective immediately.
- 12.3 Should the Supplier fail to adhere to the terms and conditions of this Contract and fail to remedy such breach within 21 (Twenty One) days after being required to do so by written notice, addressed to the Supplier, the Customer shall either have the right to cancel this Contract after expiry of the said period of 21 (Twenty One) days or to claim specific performance by the Supplier.

13. General

- 13.1 Neither party shall be liable in respect of any failure to perform its obligations under the Contract where such failure results from circumstances beyond that party's control, including but not limited to fire, explosion, flood, storm, power cut, labour dispute, power, fuel or materials, failures of its subcontractors, suppliers or transport, act of government or God. While such circumstances continue the affected party shall be granted a reasonable extension of time for the performance of its obligations and the Supplier shall be entitled to be paid such part of the Contract Price as relates to the Product delivered and/or the Services rendered until such time / date.
- 13.2 The Customer may not exercise any right of set off, deduction, withholding, counterclaim or other reduction in respect of any sums due to the Supplier.
- 13.3 Neither party may assign its rights or obligations under the Contract without the prior written consent of the other. The Supplier shall be entitled to subcontract all or any part of its obligations under the Contract.
- 13.4 Where either party may provide its consent or approval under the Contract, the provision of such consent or approval shall not be unreasonably withheld or delayed.
- 13.5 The Contract shall be governed by South African law, shall be deemed to have been made in South Africa, and shall be subject to the exclusive jurisdiction of the South African courts.
- 13.6 Each party shall be responsible for the acts and omissions of their respective employees, subcontractors, agents and other representatives.
- 13.7 Each Party warrants to the other Party that it has the power, authority and legal right to sign and perform this Contract and that this Contract has been duly authorized by all necessary actions of its partners, directors, members or trustees as the case may be, and constitutes valid and binding obligations on it in accordance with the terms of this Contract.
- 13.8 This Contract constitutes the whole agreement between the parties as to the subject matter hereof and no agreement, representations or warranties between the parties other than those set out herein are binding on the parties.
- 13.9 No addition to or variation, consensual cancellation or novation of this Contract and no waiver of any right arising from this Contract or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorized representatives.
- 13.10 No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Contract and no single or partial exercise of any right by any party shall, under any circumstances, be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Contract or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

- 13.11 If any provision of this Contract is in violation of the law of the Republic of South Africa, such provision shall be deemed to be deleted from this Contract and the remaining provisions of this Contract shall continue in full force and effect and the parties hereto shall use their reasonable endeavours to procure that any such provision is replaced by a provision which is valid and enforceable and which gives effect to the spirit of this Contract.
- 13.12 All legal costs incurred by either party in successfully enforcing its rights against the other party in consequence of any breach of this contract shall be payable by the defaulting party, on demand, on the scale as between attorney and client.
- 13.13 The Supplier retains the right to at any time claim damages from the Customer resulting from the Customer's failure to comply with the terms and conditions hereof.