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## GENERAL TERMS AND CONDITIONS - RSA

### DEFINITIONS

- “Goods”** means all goods, plant, machinery, apparatus, vehicles, materials and the like to be supplied by the Vendor in terms of the Order, as described in the Order;
- “Order”** means the Purchase Order issued to the Vendor by MD from time to time;
- “Services”** means all the services to be performed by the Vendor in accordance with the Order, including the supply of the Goods;
- “Site”** means the place or places to which the Goods are to be delivered; services to be rendered and where the Works are to be executed, and it includes the volumes above and below it which are affected by the works or services included in the contract.;
- “Works”** means the works to be executed by the Vendor in accordance with the Order, including the supply of the Goods.
- “Completion”** means when the Vendor has done all the work which in the works / services information states he is to do by the completion date has corrected all notified defects.”
- “Defect”** means a part of the works which is not in accordance with the works information or applicable law or in accordance with the vendors’ design which the project Manager has accepted.
- “Equipment”** means the items provided by the Vendor and used by him to provide the works and or service and which is not required to be included in the works.
- “Day”** means a calendar day.
- “Plant and materials”** means those items intended to be included in the works.

## **1 EXECUTION OF ORDER**

The Vendor will supply the Goods/execute the Works/Services stipulated in the Order and shall remedy any defects therein.

## **2 HEALTH AND SAFETY**

If necessary, in the discretion of MD, the Vendor shall accept such appointments in terms of the Mine Health and Safety Act, 29 of 1996, in terms of all other health and safety legislation and in terms of any other determination by MD's "Health and Safety Agreement", as may be required for the execution of the Works or Services.

MD shall have the right to stop the Works/Services whenever safety violations or conditions are observed which could jeopardise the well-being of personnel and/or the safety of equipment. The expense of any such stoppage shall be for Vendor's account. The failure or refusal of the Vendor to correct the observed violation or condition may result in the termination of the Order, and/or the dismissal of those responsible for such failure or refusal from MD's premises.

## **3 LAWS, RULES, AND REGULATIONS**

The Vendor shall comply strictly with all National Acts, Provincial Ordinances and Acts, Municipal Bye-laws, and any other laws, regulations, directions, permissions and other requirements which are applicable to the Vendor's supply of the Goods and/or execution of the Works/ Services, as amended from time to time, including, but without being limited to, Mine Health and Safety Act (29/1996) and the Regulations thereto, Compensation for Occupational Injuries and Diseases Act (130/1993), Occupational Health and Safety Act and Regulations (85/1993) and the Basic Conditions of Employment Act (75/1997).

The Vendor shall also comply strictly with all environmental, safety and licensing laws and tax legislation and shall ensure that all his personnel and that of his Subcontractors and suppliers are conversant with these rules and comply with same.

## **4 INDEPENDENT VENDOR**

The Vendor is an independent Vendor and none of its servants, employees or agents shall be deemed to be under the direction or control of MD, save to the extent that MD shall be entitled to prevent any breach of any regulations or conditions which it may reasonably prescribe in regard to the presence and activities of such personnel on Site.

## **5 QUALITY ASSURANCE PROCEDURE**

Performance in terms of the Order shall be in strict accordance with MD's Quality Assurance Procedure, which is obtainable from MD.

The Goods must conform in all respects with MD's specifications and other requirements or descriptions stipulated, must comprise new and unused materials of the most suitable grade, and workmanship must of the best quality.

## **6 SPECIFICATIONS, INSPECTION, QUALITY TESTS AND REJECTION**

The Vendor shall inspect all materials and supplies to be incorporated in the Goods/Works/Services (where applicable) and shall conduct a continuous program of quality control for the Goods/Works/Services.

The Vendor will ensure that in all respects the Goods/Works/Services comply with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law, which may be in force at the time of execution of the Order.

The Vendor shall make or cause to be made all tests required by the Order, and furnish the results of all inspections and tests. The Goods/Works/Services (where applicable) must pass the said tests, whereupon MD shall issue an Acceptance or Taking-Over Certificate, as the case may be.

If the Vendor fails to supply goods/ services or works in accordance with the order MD may reject any part thereof by giving written notice to the Vendor, specifying the reason for rejection and whether replacement goods are required and within what time.

All rejected goods shall be held at the Vendor's risk and expense including all transportation and handling costs until returned to or collected by the Vendor.

## **7 ASSIGNMENT AND SUB-CONTRACTING**

The Vendor shall not assign the Order or any part of his obligations under the Order. The Vendor shall not sub-contract the whole of the Order and shall not sub-contract any part of the Order without the prior written consent of MD.

Any consent to such sub-contracting, if given shall not relieve the Vendor from any liability or obligation under the Order and the Vendor shall be responsible for the acts, defaults and neglects of any sub-contractor as fully as if they were the acts, defaults or neglects of the Vendor.

MD shall be entitled to cede and assign its rights and obligations in terms of the Order to a third party.

## **8 PACKING AND PROTECTION OF GOODS**

All Goods shall be adequately and securely packed in such a manner as to prevent damage in transit, and the price payable for the Goods shall be deemed to include the cost of all packing materials and containers, which shall become the property of MD.

The Vendor shall identify each and every package, bundle, 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 Vendor, name of MD, Order number, and net mass of contents (where purchased by mass).

## **9 HAZARDOUS GOODS**

The Vendor shall mark all hazardous goods with international danger symbols where they exist, and display the name of the material in English. Transport and other documents must include a declaration of the hazard and the name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Vendor shall observe the requirements of all relevant legislation and any relevant international agreements relating to the packing, labelling and carriage of hazardous goods. All information held by or reasonably available to the Vendor regarding any potential hazards known or believed to exist in the transport, handling or use of the Goods supplied, shall be promptly communicated to MD prior to delivery.

## **10 SUFFICIENCY OF ORDER PRICE**

The Vendor is deemed to have satisfied himself with the conditions relevant to performance in terms of the Order, and as to the correctness and sufficiency of the Order Price, which shall cover all his obligations under the Order.

## **11 INVOICING AND PAYMENT**

The Vendor shall submit a tax invoice and monthly statement nearest to the 10th working day of each month in respect of the value of the Goods delivered during the previous month.

The Order Price, or a portion thereof, as the case may be, will be paid within 30 (thirty) days from the date of receipt of the statement from the Vendor.

Tax invoices shall be addressed to the MD address stated under the heading "Tax Invoice and Statement Details" in the Order.

The VAT number (both of MD and the Vendor), Vendor's Company Registration Number and Order Number shall appear on each tax invoice.

The Vendor shall furnish MD with his original documents of banking details to enable MD to effect payment electronically.

No payment will be made by MD to the Vendor in terms of the Order prior to:

- the furnishing of a delivery note in respect of the Goods, signed by MD's authorised representative;
- the tax invoice being approved by MD;
- the Vendor furnishing all and any warranties and certificates of legal ownership relative to the Goods supplied by the Vendor in respect of which an amount has been included in the said tax invoice.

## **12 DELAY DAMAGES**

If the Vendor fails to obtain an Acceptance Certificate or Taking-Over Certificate, as the case may be, in respect of the Goods/Works/Services by the date for completion of the supply or execution of the Works/Services (“the Completion Date”) stipulated in the Order, the Vendor shall pay to MD an amount equal to 1,5% (one and a half per centum) of the Order Price, as delay damages for such default for every week or part of a week which shall elapse between the Completion Date aforesaid and the date of issue of the Acceptance Certificate or Taking-Over Certificate, as the case may be, subject to a limit equal to 10% (ten per centum) of the Order Price. MD 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 Vendor.

## **13 RETENTION**

10% (ten per centum) of each payment to be made to the Vendor will be withheld by MD as retention monies, which monies shall be released to the Vendor upon the issue of a Performance Certificate.

## **14 OWNERSHIP AND RISK**

The Goods/Works shall be and remain at the sole risk of the Vendor and the Vendor shall be responsible for and bear all and any costs whatsoever arising from or in respect of all losses of and damages and/or destruction to the Goods/Works until the issue of an Acceptance Certificate or Taking-Over Certificate, as the case may be, whereupon risk shall pass to MD. Ownership of the Goods/Works shall pass to MD upon payment therefor, and the Vendor hereby expressly waives any lien or any claim to a lien of any nature, in respect of the Goods/Works upon the passing of ownership as aforesaid. Such passing of ownership shall be without prejudice to any right of subsequent rejection of the Goods/Works by MD.

## **15 DEFECTS LIABILITY PERIOD**

The Vendor shall execute all work of amendment and reconstruction, and shall remedy all defects or damage, as may be instructed by MD during the period of supply of the Goods and/or execution of the Works as well as for a period of 12 months from the date of issue of the Acceptance Certificate or Taking-Over Certificate, as the case may be (“the Defects Liability Period”).

The Vendor shall execute all work of amendment or reconstruction, and shall remedy all defects or damage in the performance of the Services, as may be instructed by MD.

If any such defect appears or damage occurs, MD shall promptly notify the Vendor in writing.

All work referred to in this Clause shall be executed by the Vendor at his own cost, unless the necessity for such amendment, reconstruction or remedying of defects or damage is due to an act or omission on the part of MD.

If the Vendor fails to remedy any defect or damage within a reasonable time, MD may, at its sole discretion carry out the work itself or by others in a reasonable manner, or replace the Goods/Works, or any item thereof, at the Vendor’s risk and cost.

The Defects Liability Period shall be extended by a period equal to the period during which the Goods/Works, or any portion thereof, cannot be used by reason of a defect or damage.

The Order shall not be considered as completed until a Performance Certificate has been signed by MD and delivered to the Vendor. The Performance Certificate shall be given by MD upon the date of expiry of the Defects Liability Period, or so soon after such date as the Vendor has completed and tested the Goods/Works/Services and fulfilled all his obligations in terms of the Order including the remedying of any defects in the Goods/Works/Services to MD's satisfaction, and provided all documentation and drawings relating to the Goods/Works/Services, save for documentation and drawings which are proprietary to the Vendor.

## 16 INDEMNITIES AND LIMITATION OF LIABILITY

The Vendor hereby indemnifies, holds harmless and defends MD and its officers, employees, agents, and representatives, from and against any liability claim, penalty, loss, damage or expense which MD may incur:

**on account of injury to or death of any persons or damage to or loss of any third party property arising directly or indirectly out of the errors, acts or omissions to act, of the Vendor or his subcontractors, employees, or agents, in the supply of the Goods and/or execution of the Works/Services;**

**arising from actual or alleged infringement or improper appropriation or use by MD or the Vendor, of any intellectual property, or for actual or alleged unauthorised imitation of the work of others, arising out of the use of methods, processes, designs, information, or other things furnished or communicated to MD by the Vendor in connection with the supply of the Goods and/or execution of the Works/Services;**

and against all legal expenses on an attorney-and-own-client basis, incurred by MD in enforcing the Vendor's indemnification obligations in terms of this clause.

Neither party shall be liable to the other for any consequential loss or damage which may be suffered in connection with the Order, save that this Sub-Clause shall not limit the liability of either party where there are delay damages, where indemnities are furnished, or in cases of fraud, deliberate default, illegal or unlawful acts or omissions, or reckless misconduct.

## 17 INSURANCE

MD shall effect the following insurance in the joint names of MD and the Vendor:

- a. **CONTRACT WORKS Insurance** – which covers the Goods supplied from the Vendor's premises in RSA to the time the Works are completed; and
- b. **PUBLIC LIABILITY Insurance** – which covers in the event of accidental death of or injury to third party persons and/or accidental loss of or damage to third party property with a limit of indemnity of not less than R10 million.

Where the **Order is for the supply of Goods only**, and the Vendor does not install the Goods, or commission or assist with commissioning of the Goods, **no insurance cover is effected by MD to cover the Goods in transit** from the Vendor's premises to Site, and the **Vendor is obliged to effect such insurance** and furnish proof thereof to MD.

The Vendor shall not include any premium charges for these insurances in the Order Price

and the Vendor will be liable for the deductibles in respect of any claim made by or against the Vendor under these insurances.

The Vendor shall provide all insurances required by law or regulation, shall insure its equipment and plant, and where the Order involves manufacturing of goods to be supplied as part of the Works, the Vendor shall ensure that all materials and equipment for incorporation in the Goods/Works are adequately insured during manufacture and provide proof thereof to MD.

## **18 CONFIDENTIALITY, PUBLICATION AND PHOTOGRAPHS**

The Vendor will hold in confidence, and treat as secret, all information of a confidential nature which is proprietary to MD (“the Confidential Information”) and which is disclosed to the Vendor pursuant to the Order.

The Vendor shall not use, publish or reproduce the Confidential Information in whole or in part for any purpose other than in connection with the supply of the Goods / execution of the Works/Services.

The obligations of confidentiality undertaken by the Vendor in terms of the Order shall be continuing and, in particular, will survive the supply of the Goods / execution of the Works/Services.

The provisions of this Clause shall be severable and in the event that any of the provisions are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

## **19 SUSPENSION OF GOODS/WORKS/SERVICES**

### **Order to Suspend**

MD may at any time, and from time to time, by written notice to the Vendor suspend the further execution of the Order or part thereof by the Vendor. The Vendor shall immediately make arrangements to stop the performance of the works / goods or service to minimise further expense.

The Vendor shall, during suspension, store, protect and secure the Goods/Works affected at the Vendor’s premises or elsewhere, as the case may be, against any deterioration, loss or damage.

### **Cost of Suspension**

The additional cost reasonably incurred by the Vendor in storing, protecting, securing and insuring the Goods/Works and in following MD’s instructions upon suspension, shall be added to the Order Price: Provided that the Vendor shall not be entitled to be paid any additional costs if such suspension is necessary by reason of default on the part of the Vendor.



The Vendor shall not be entitled to additional costs unless he notifies MD of his intention to make such claim within 14 days after receipt of the order to suspend the Order.

If suspension under this Clause has continued for more than 90 (ninety) days, and the suspension is not due to the Vendor's default, the Vendor may, by notice to MD, require permission to proceed with the Works within 14 (fourteen) days.

If permission is not granted within that time, the Vendor may terminate the Order and the Order shall be deemed to be terminated at MD's option and the provisions of Clause 21 shall apply, mutatis mutandis.

If the Vendor chooses not to terminate as provided in the preceding Sub-Clause, MD shall, upon the request of the Vendor, take over the responsibility for protection, storage, security and insurance of the suspended Goods/Works and the risk of loss or damage thereto shall thereupon pass to MD.

After receipt of permission or an order to proceed, the Vendor shall, after due notice to MD, examine the Goods/Works affected by the suspension. The Vendor shall make good any deterioration or defect in or loss of the Goods/Works that may have occurred during the suspension. Cost properly incurred by the Vendor, which would not have been incurred but for the suspension, shall be added to the Order Price.

If MD has taken over risk and responsibility for the suspended Goods/Works under this Sub-Clause, risk and responsibility shall revert to the Vendor 14 days after receipt of the permission or order to proceed.

## **20 TERMINATION AT MD'S OPTION**

MD shall be entitled to terminate the Order, in whole or in part, at any time, for MD's convenience, by written notice to the Vendor specifying the date of termination. MD shall not terminate the Order under this Clause in order to supply the Goods/execute the Works/Services himself or to arrange for the Goods to be supplied or the Works/Services to be executed by another vendor.

On such date of termination, the Vendor shall discontinue performance in terms of the Order, preserve any portion of the Goods/Works/Services ready for delivery, and hand over all such portions of the Goods/Works/Services to MD, in accordance with MD's instructions. All portions of the Goods/Works/Services completed prior to the date of termination, or handed over to MD as contemplated in this Clause, shall become the property of MD when paid for by MD.

If the Vendor has properly and completely performed all obligations under the Order up to the date of termination, the Vendor shall recover from MD as complete and full settlement for such termination:

- **the amount due for that portion of the Goods/Works/Services which has been completed up until the date of termination and handed over to MD; and**
- **the cost of any plant and materials ordered for incorporation into the Goods/Works/Services which have been delivered to the Vendor, or of which the Vendor is liable to accept delivery. Such plant and materials shall become the property of MD when paid for by MD, and the Vendor shall place the same at MD's disposal.**

All claims under the foregoing provisions shall be supported by documentation submitted to MD, satisfactory in form and content to MD and verified by MD. The Vendor shall not be entitled to any loss of profits, indirect or consequential loss, or any damages of whatsoever nature, on account of such termination.

## **21 APPLICABLE TERMS AND CONDITIONS**

These terms and conditions will be the only terms and conditions applicable to an Order placed by MD on the Vendor and any other terms or conditions sought to be imposed upon MD by the Vendor shall be of no application to Orders placed by MD.

## **22 BREACH**

If at any time either party:

- is placed under judicial management, in liquidation or under winding up, whether voluntary, compulsory, final or provisional or compounds or enters into an arrangement of compromise with its creditors, or allows a judgment against it to remain unsatisfied for more than fourteen (14) days (save and except where a bona fide appeal or application for rescission has been lodged and duly proceeded with); or
- Commits a breach of any of the terms and conditions of the Order and fails to remedy such breach within 14 (fourteen) days after the delivery of written notice by the aggrieved party requiring it to remedy such default;

The aggrieved party shall have the right, at its option, and without prejudice to any claim which it may have for damages for breach of contract or otherwise, to cancel the Order, or to cancel a portion of the Order, or to claim specific performance.

Should MD elect to cancel a portion of the Order, the only recourse which the Vendor shall have as against MD will be a claim for damages.

## **23 FORCE MAJEURE**

Force Majeure means any circumstances beyond the control of the parties including, but not limited to, exceptional events or circumstances of the kind listed below:

- (i) War, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (ii) Rebellion, terrorism, revolution, insurrection, military or usurped power and civil war;
- (iii) Riot, strikes, commotion, disorder and or any labour unrest except where solely restricted to employees of the Vendor or his Sub-Vendors;
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Vendor's use of such munitions, explosives, radiation or radio-activity; and
- (v) Natural catastrophes such as earthquakes, hurricane, typhoon or volcanic activity.
- (VI) Any event which is beyond the reasonable control of a party and which makes a party's performance of it's obligations under the order impossible or so impractical as to be considered impossible under the circumstances.

Neither party shall be considered to be in default or breach of his obligations under the Order to the extent that performance of such obligations is prevented by any circumstances of Force Majeure which arise during the Order period, and the period of such prevention of performance shall be added to the time for performance of the obligation delayed.

The Vendor shall not, in any event, be entitled to additional or extra compensation by reason of the Vendor having been delayed in performance of his obligations due to Force Majeure.

If circumstances of Force Majeure have occurred and shall continue for a period of 60 (sixty) days then, notwithstanding that the Vendor may by reason thereof have been granted an extension of time for performance in terms of the Order, either party shall be entitled to serve upon the other, 14 (fourteen) days' notice of termination of the Order. If at the expiry of the period of 14 (fourteen) days the Force Majeure shall still continue, the Order shall terminate.

If the Order is terminated under this Clause, the Vendor shall be paid for the Works completed to date of termination.

## **24 GOVERNING LAW**

The law which is to apply to the Order and under which the Order is to be construed, is South African law, and any matter arising out of the Order, including but not limited to matters of interpretation or implementation, will be adjudicated by the South African Court having jurisdiction in respect thereof.

## **25 COUNTERPARTS**

This Order may be executed in any number of counterparts which, when taken together, shall constitute one and the same instrument.

## **26 GENERAL**

The Order constitutes the whole agreement between the parties and no warranties, representations, terms or conditions that are not expressly recorded in the Order shall be of any force or effect.

There shall be no Order of any force or effect between MD and the Vendor until the issue of an Order by MD to the Vendor.

No alteration, variation, amendment, modification or consensual cancellation of the Order or any of the terms of the Order shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties.

Notwithstanding any provision in the Order to the contrary, no indulgence, latitude or extension of time allowed by MD to the Vendor shall be deemed to be a waiver of MD's rights at any time (either past, present or future), nor shall MD be stopped from enforcing such right, and MD shall be entitled, without notice, to require strict and punctual compliance with each and every provision in terms of the Order.

## **27 LANGUAGE**

The language of the order and all communications between the Vendor and MD shall be in English. All reports, and recommendations prepared by the Vendor under this order shall be in English.

## **28 CONFLICTS OF INTEREST**

The remuneration of the Vendor under the order shall constitute the Vendor's sole remuneration with regard to the order and he shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to the order. He shall use his best efforts to ensure that his personnel, any sub-contractor and / or agents, similarly not receive any additional remuneration.