

**GENERAL TERMS AND CONDITIONS OF PRODUCT SUPPLY**

(hereinafter referred to as "Terms and Conditions")

concluded between

**BENTELER SOUTH AFRICA (PTY) LIMITED** (registration number 1997/017959/07), being a company with limited liability company, registered in accordance with the company laws of the Republic of South Africa and with its principal place of business at Nelson Mandela Bay Logistics Park, Erf 2.051, Jagtevlakte, Port Elizabeth, Gqeberha, South Africa (hereinafter referred to as the "Contracting Party")

and

the entity being the supplier of products (hereinafter referred to as "the Products") to the Contracting Party and as identified in any Purchase Order or other relevant document issued by the Contracting Party (hereinafter referred to as the "Contracted Party")

with the contracting party and the contracted party to hereinafter collectively to be referred as the "Parties".

**1. SCOPE OF THE CONTRACT**

- 1.1. These Terms and Conditions will apply to any technical proposal and / or commercial proposal, scheduling agreement and/or order for the supply of products by the Contracted Party to the Contracting Party, duly signed or accepting in writing by the Contracting Party which document will hereinafter be referred to as "the Purchase Order" and will for purposes of these Terms and Conditions including scheduling agreement or other proposal as aforesaid unless specifically varied by the Contracting Party in writing, whether in such Purchase Order or otherwise.
- 1.2 These Terms and Conditions shall at all times take precedence over any terms, conditions or stipulations contained in any of the Contracted Party's documentation, whether consisting of terms and conditions, proposals, quotations, invoices, job cards or the like, whether in conflict therewith or not. Should the Contracted Party in anyway purport to attach any conditions which vary, amend or are in conflict with the Terms and Conditions set forth herein, then, notwithstanding anything to the contrary stipulated by the Contracted Party, these Terms and Conditions set forth herein shall prevail and be of full force and effect and the Contracting Party accepts these terms and Conditions as binding upon it and regulating its contractual relationship with the Contracting Party pursuant to any Purchase Order.
- 1.3 The Purchase Order constitutes the binding agreement between the Parties, which refers to these Terms and Conditions, containing all the information necessary for the supply of products by the Contracted Party to the Contracting Party with the Purchase Order and the Terms and Conditions to hereinafter collectively to be referred to as "the Contract".

- 1.4 The Purchase Order does not guarantee, under any circumstances, exclusivity to the Contracted Party.
- 1.5 In the event of a contradiction between these Terms and Conditions and the Purchase Order, the provisions of the Purchase Order shall prevail.
- 1.6 If a specific contracting instrument is signed between the parties, in which specific rules for the business signed between the parties are established, the conditions of that instrument will be considered valid and not the conditions of these Terms and Conditions of product supply.

2. **OBJECT**

- 2.1 The purpose of this Contract is to establish the premises and general conditions for the supply of products to which the Contracted Party must submit, in order to ensure the highest quality and maximum possible reliability in the materials and / or products eventually acquired by the Contracting Party.
- 2.2 The services to be provided individually by the Contracted Party to the Contracting Party will be expressly included in the Purchase Order and will be provided at the location indicated herein.
- 2.3 These Terms and Conditions is valid for an indefinite period and may be terminated at any time by the Contracting Party due to any default on the part of the Contracted Party or the contracted party's failure to meet the requirements of the Contract, in addition to the other provisions stipulated in the Contract, including the termination by the Contracting Party without any motivation or justification.
- 2.4 The Contracted Party undertakes to comply with all specifications and requirements established in the Contract, as well as, all requests from representatives of the Contracting Party, contained in the Purchase Order.
- 2.5 The quality of each Product must be estab
- 2.6 The Contracted Party shall ensure that all products are always in accordance with the standards required by the Contracting Party, being that all materials used are of proven origin and meeting the specifications of the Contracting Party.

3. **GENERAL SUPPLY CONDITIONS**

- 3.1 The Contracted Party warrants that it has full technical, financial and operational capacity to fully comply with the specifications and qualification criteria established by the Contracting Party for the supply of the Products that may be specified in the Purchase Order.
- 3.2. The contracting party reserves the right to apply any necessary inspection or test, in any batch supplied to prove compliance with the relevant specifications. if the products are refused, they shall be made available to the supplier at the expense of return expenses at their expense.

- 3.3 At the request of the contracting party and upon a written addition signed by both parties, new products may be added, or even deleted, which will be subject to the same conditions covered by this Contract.
- 3.4 These Terms and Conditions will apply to each Purchase Order placed by the Contracting Party on the Contracted Party and in respect of any new service procured by the Contracting Party from the Contracted Party, whether by way of a Purchase Order, scheduling agreement or any other method.
- 3.5 The Contract may undergo changes due to special negotiations, which will only be accepted when they are the subject of an amendment reduced to writing duly signed for and on behalf of both parties.
- 3.6 The Contracted Party undertakes to observe and comply with the current environmental legislation and requirements subscribed by it, being responsible for obtaining and maintaining any permits or licenses required by any applicable law as a result of the direct or indirect execution of this Contract.
- 3.7 The Contracted Party must keep and make available to the Contracting Party upon written request therefore its documentation always updated and its employees and / or representatives duly informed of all obligations assumed in this Contract, with special observance to the relevant rules, exempting the Contracting Party from any claims and / or indemnities arising from non-compliance by the Contracted party.
- 3.8 These Terms and Conditions will survive and subsist the termination of the Contract, for an indefinite period.
- 3.9 The Contracted Party undertakes not to use any materials, components or products that contain substances whose use has been prohibited by any competent authorities and/or applicable laws.
- 3.10 In the event of non-compliance with the quality indices and deadlines respectively agreed or other provable degradation of the quality of products supplied, the Contracting Party reserves the right, after having given the Contracted Party 7 (seven) calendar days written notice to remedy such breach (unless time is of the essence and the Contracted Party is aware of such essence) and the Contracted Party failed to do so, through appropriate measures employed by the Contracted Party, to suspend, in whole or in part; the provision, until the necessary quality level is re-established and ensured. The Contracted Party cannot enforce any rights against the Contracting Party for suspensions of this kind.
- 3.11 Products must be prepared, packaged and marked appropriately for transportation and dispatch, in order to ensure safe delivery, meeting the requirements of prevailing law.
- 3.12 The delivery or shipping documentation must be correctly filled in with the necessary information for product identification.

- 3.13 The contracting party reserves the right to make changes to the drawings, technical specifications, descriptions and / or any other changes to the products at any time.
- 3.14 If the contracted party wishes to make any changes to the products, he must make its proposal to the contracting party in writing, and only proceed with the changes with the express and prior written consent of the contracting party; the costs must be previously agreed between the parties and, in case of non-acceptance by the contracting party, the contracted party must assume them.
- 3.15 The Contracted Party must comply, in relation to the goods and services, as well as in the processes used in its manufacture and provision, with all applicable laws and regulations, including those applicable to electrical and electronic equipment and dangerous substances. In addition, the contracted party further certifies that it complies with governmental safety standards on restricted, toxic and hazardous materials and complies with all applicable laws relevant to the environment.
- 3.16 The contracted party is responsible for sending its waste disposal vouchers to the contracting party whenever applicable, in accordance with the law in force and also sending all licenses referring to its activity whenever there are changes / updates thereof.
- 3.17 The contracted party shall provide the contracting party, without undue delay, with details of any changes, arising from legal regulations, in the goods, in the ability to supply, in application possibilities, or in quality, and in particular those applicable to chemical products. the contracted party must consult the contracting party regarding the applicable measures in each case. the same shall be applied as soon as and to the extent that the contracted party becomes aware, or should have taken notice, that such changes would happen.
- 3.18 The contracted party is also obliged to observe all the requirements and rules established by the contracting party for the good and faithful execution of this contract, as well as providing at any time, all clarifications and explanations that may be requested by the contracting party.

4. **PURCHASE ORDER**

- 4.1. The Purchase Order is a binding document between the parties, in which it will mention these Terms and Conditions, containing all the information necessary for the supply of products by the Contracted Party to the Contracting Party.
- 4.2. The obligation to supply products by the Contracted Party to the Contracting Party will be formalized with the issuance of the Purchase Order by the Contracting Party, which will contain the following minimum information:
- (a) Identification of the product(s);
  - (b) quantity;
  - (c) price;

- (d) frequency of delivery;
  - (e) payment terms and conditions;
  - (f) place of delivery;
  - (g) conditions and term/period of the provision.
- 4.3 The purchase order will become binding upon whichever of the below happens first:
- (a) 5 (five) calendar days following the issuance of the Purchase Order by the Contracting Party to the Contracted party; or
  - (b) the sending by the contracted party of any permitted unit or partial unit of the product.
- 4.4 The Contracting Party reserves the right to cancel, by written notification to the Contracted Party, the Purchase Order in whole or in part, and will incur no liability of whatsoever nature for this cancellation in the following cases:
- (a) if the Contracted Party fails in respect of any scheduled deliveries as specified in the purchase Order or in any other manner as agreed to between the parties in writing;
  - (b) if the Contracting Party notifies the Contracted Party in writing of any defect, inferiority or deficiency in any of the services rendered by it and the Contracted Party does not take the appropriate measures to correct these, within 10 (ten) calendar days after receiving written notice from the Contracting Party specifying such defect, inferiority or deficiency;
  - (c) if the Contracted Party breaches any of the terms of the Contract and the Contracted Party does not take the appropriate measures to correct such breach, within 10 (ten) calendar days after receiving written notice from the Contracting Party calling on it to remedy same;
  - (d) if it is proven or evident to the Contracting Party that the Contracted Party is not in a position to comply with its obligations in terms of the Contract, objectively and within the timeframes provided for in the Contract.
- 4.5 As an alternative to the remedy available to the Contracting Party in terms of clause 4.4 above, the contracting party may at its election:
- (a) take up the services forming the subject matter of the Contract from any other sources and either reduce the quantities of the Purchase Orders with the Contracted Party, or seek together with the Contracted Party other sources to meet the quantities requested by the Contracting Party, at the price stipulated in the Purchase Order or if at the higher price the Contracted Party such be liable to reimburse the Contracting Party for such difference;
  - (b) If the contracted party for any reason is unable to meet all the Purchase Orders issued by the Contracting Party, the Contracting Party can

inform the Contracted Party in writing that the difference in the undelivered volume of the service must be met in full in the following months.

- 4.6 The parties agree that they will carry out monthly checks on the scope of services provided, considering the conditions of the purchase orders.
- 4.7 The cancellation of one or more Purchase Orders in circumstances contemplated in the Contract does not imply the termination of the Contract. However, the termination of the Contract for any reason whatsoever will have the effect of immediately cancelling all outstanding Purchase Orders not yet delivered or executed on.
- 4.8 The Contracted Party undertakes to provide the services in the exact terms set out in the Purchase Order, with due regard for the quantities, qualities and prices agreed and in accordance with the norms and quality standards inherent to the service provided.

## 5. **RESPONSIBILITY AND WARRANTIES**

- 5.1 The Contracted Party undertakes to deliver the products in accordance with the purpose for which they are intended and with good technique, using good quality workmanship, materials and parts if forming part of any service to be rendered.
- 5.2 The Contracted Party warrants that all products related to all Purchase Orders shall:
  - (a) be new and free from latent defects;
  - (b) comply with all specifications (if applicable) provided by the Contracting Party, responses to "requests for proposals", brochures and marketing letters, oral and written statements made by the Contracted Party, samples and statements regarding content, labels and advertisements;
  - (c) be delivered with good quality and professionally in accordance with any applicable Purchase Order;
  - (d) be marketable, safe, suitable and appropriate for the contracting party's particular purposes and for its use;
  - (e) be delivered free from any claims, liens and encumbrances.
- 5.3 The contracted party must carry out quality controls during production and must check at the time of dispatch and, in the same sense, must inspect the parts thoroughly for their quality. the contracting party will inspect the goods upon receipt, only referring to their identification and completeness in accordance with the order, as well as for any apparent damage, specifically any damage arising from transportation. the contracting party reserves the right to carry out additional inspections upon receipt. additionally, the contracting party must notify any defects as soon as possible, as soon as they are detected, considering the normal work circumstances. the supplier, to the

extent permitted by law, waives any objection in this regard in relation to late notification of defect.

- 5.4 The Contracted Party guarantees the products against vices and/or defects for a period of 60 (sixty) months after delivery.
- 5.5 The Contracted Party shall reimburse the Contracting Party for any expenses actually incurred, necessary to correct the defects and/or vices, and shall indemnify the Contracting Party against any expenses actually incurred by the Contracting Party related to third party claims arising from costs of correction of vices and/or defects, as well as any claims for compensation of third parties related to a defective delivery made by the Contracted Party.
- 5.6 The costs of correcting a vice and/or defect should include but are not limited to the costs of disassembly and assembly the defective products, as well as any transport to a location other than the original place of performance. The Contracted Party shall indemnify, exonerate and defend the Contracting Party against any expenses actually incurred, in connection with claims by third parties, resulting from the products supplied by the Contracted Party.
- 5.7 The warranties provided for in this clause 5 are additional to those provided for by law.
- 5.8 In order to contain any imminent risk of serious damage, the Contracting Party may, at the Contracted Party's expense and without prior notice or establishing a deadline for the Contracted Party, correct the defect, have the defect corrected or replace the product, provided that, given the emergency situation, it is not possible to inform the Contracted Party about the defect and possible damage and that it is not possible to give the Contracted Party the opportunity to correct the defect. In this case, the Contracting Party shall inform the Contracted Party in writing of the measures that the Contracting Party will take, as soon as it initiates them.
- 5.9 The Contracted Party shall indemnify the Contracting Party for any and all amounts that the Contracting Party may expend due to an eventual failure or defect in the manufacture of its products, caused or motivated by the products supplied by the Contracted Party.
- 5.10 In the event of the need for a "recall" action due to defects related to the contracting party's products on the market, which contain parts and/or components under the liability of the contracted party, and the contracting party and/or its distributors have to notify consumers of such products, at the initiative of the contracting party or as determined by the competent bodies, the supplier will be immediately notified and shall assume the joint liability to cooperate with the contracting party, to the extent of its culpability and through technical expertise, assuming all the resulting costs and supporting the contracting party in the necessary measures to meet the market and legislation.
- 5.11 If the product contains a vice or defect, the contracting party reserves the right to return them within the warranty period of 60 (sixty) months from the date of delivery, with the contracted party being responsible for the expenses

with the return, giving rise to the immediate reimbursement of the price paid or the reduction of losses in the price. If there are future / pending payments, they will be suspended until the supplier makes the refund.

- 5.12 Defects and / or vices in the product are considered, but are not limited to those identified at the time of receipt and / or the conference, the contracting party may, at its sole discretion, proceed with the non-acceptance and immediate return or under the terms of this agreement, partially or totally, in the following cases:
- (a) products delivered with defects;
  - (b) products with vices and / or apparent defects;
  - (c) incomplete products;
  - (d) products deviating from the purchase order;
  - (e) products delivered in disagreement with the respective technical specifications;
  - (f) products with quality in disconformity to the samples presented by the supplier;
  - (g) products and / or packaging that do not meet all legal requirements, including the consumer protection code;
  - (h) products that violate a patent, trademark or any other intellectual property or third party right and;
  - (i) products that have manufacturing problems;
- 5.13 At the option of the Contracting Party, the Contracted party may be asked to re-execute, improve and/or repair, within a maximum period of 48 (forty-eight) hours of the written communication made by the Contracting Party and free of charge, any and all services that present a defect in material or workmanship or as specified in clause 5.7 above, and the Contracted Party is also solely responsible for any expenses incurred under the warranty.
- 5.14 Failure to comply with the above will entitle the Contracting Party to have the necessary repairs and / or replacements carried out by a third party, at the expense of the Contracted Party.
- 5.15 The Contracting Party reserves the right to carry out, in order to maintain the continuity of its production, the repair of minor defects, at the contracted party's expense, without this implying the interruption and/or suspension of any warranty.
- 5.16 In the event that the repair is not viable, the contracting party shall choose to replace the defective product, or to discount the price agreed in the purchase order.
- 5.17 Those components that are replaced with a new one will also have a guarantee of at least 60 (sixty) months, calculated from the date of replacement.



- 5.18 The contracted party declares and guarantees to the contracting party that:
- (a) the products delivered are free from defects in their design, finish and materials;
  - (b) is aware of the purpose intended by the contracting party with the acquisition of the material that is the object of that supply and that the products delivered are adequate for the purposes intended by the contracting party;
  - (c) all materials to be delivered must have their code / reference quoted on the product packaging and its correct description. in case of restricted use, toxic and dangerous materials must also be identified on the packaging and on the invoice. it must also meet other requirements by government regulations or requirements contained in the specifications.
  - (d) the products delivered are new and not previously used (unless specifically designated on the front of the order as refurbished, rebuilt or used);
  - (e) products are in accordance with the specifications, drawings, plans and other documents of the contracting party provided to the contracted party;
  - (f) that all deliveries of the product are evaluated to ensure good quality, finish, consistency and repeatability of the technical characteristics approved by the contracting party.
- 5.19 The contracted party assumes full liability for the products supplied, as well as responding to the contracting party and third parties for losses and damages within the limits of this agreement and the law.
- 5.20 The Contracted Party is responsible for any and all claims of whatsoever nature, as well as for losses and damages, resulting from disputes regarding the improper use of manufacturing patents, drawings, brands and other rights related to the products supplied.
- 5.21 The contracting party will attract no liability of whatsoever nature under this Contract, in relation to the personnel that the Contracted Party employs, directly or indirectly. If the Contracting Party suffers any loss of whatsoever nature due to the personnel employed by the Contracted Party, it may obtain set off the total amount of such loss against any amounts to be paid by the Contracting Party to the Contracted Party.
- 5.22 The contracted party shall indemnify, defend and exempt the contracting party, its partners, subsidiary companies, affiliates, directors, managers, attorneys, employees, representatives , successors and assignees from any and all losses, obligation, liability, charges, legal action, judgment, damages (whether incidental, consequential or otherwise), penalties, fines, costs and expenses (including, but not limited to, attorney and own client costs (including the cost of counsel)) derived from, or related to, the breach or alleged breach of (a) any law, ordinance, regulation, or third party rights by reason of provision or the non-provision by the contracted party of any

purchase order; (b) breach of any provision of these Terms and Conditions, the Contract and/or any Purchase Order; (c) any infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property related to the use or design of any equipment, material; goods or services made available by the contracted party in any order or by the processes or actions performed by the contracted party, or on its behalf, in connection with any Purchase Order and or the Contract; (d) the provision of defective products (evident or not) or not complying with the Purchase Order; (e) injuries or death of personnel or of real or personal property, resulting from the supply of the products provided by the contracted party under any Purchase Order and/or the Contract or acts and/or omissions by the contracted party or by its directors, managers, employees, representatives; or (f) claims resulting from, or related to, injuries or deaths of employees of the contracted party, including, but not limited to, allegations of negligence by the contracting party.

5.23 The contracted party's obligation to indemnify the contracting party as may be provided for in clause 5.22 above or elsewhere in the Contract or any Purchase Order shall include, but is not limited to, the immediate reimbursement of the amounts that the Contracting Party duly demonstrates to have incurred, in relation to:

- (a) price advances paid by the Contracting Party;
- (b) differences in price and quantity;
- (c) expenses incurred with the destruction, storage, recovery, transportation, substitution, recalls or field campaigns, returns and / or cost of inventory of goods and services in breach, as the case may be;
- (d) indemnities paid to third parties, related to defects and defects in goods (including material); and
- (e) any other direct cost associated with the above events.

5.24 The contracted party agrees and expressly authorizes the Contracting Party to perform periodic audits on the documentation relevant to the execution of the object of this Contract and any Purchase Order and shall make available to those of the Contracting Party's representatives and/or employees and/or third parties as the Contracting Party indicates, all and any documents and information that may be necessary.

5.25 The Contracted Party undertakes not to use child or slave labor and comply with all applicable and current legislation.

## 6. **PRICE AND PAYMENT**

6.1 The Contracted Party must record the purchase order number on any of its invoices to the Contracting Party for identification.

6.2 For the supply of the products, the contracting party shall pay the Contracted Party the amounts described in the Purchase Order, with all taxes already

included, if know), which will be borne by the Contracted Party and with all packaging, transport, delivery and insurance charges and taxes of whatsoever nature levied also being for the account of the Contracted Party unless other agreed to in writing and signed by the Contracting Party.

- 6.3 It is recorded that the prices and conditions contained in the Purchase Order, are the result of negotiations and agreement between the parties. In the event of a considerable increase in the quantities purchased, the Contracting party reserves the right to negotiate a price adjustment with the Contracted Party.
- 6.4 The prices indicated in the Purchase Order constitute the contracted party's sole, exclusive and complete remuneration and, unless expressly agreed to otherwise in writing by the Contracting Party, include all direct, indirect and incidental expenses for the fulfillment of the Contract and the Contracted Party is precluded from automatically applying any price readjustments or increases, without prior negotiation and written agreement between the parties.
- 6.5 The contracted party shall be obliged to issue tax invoices that shall be complied to all relevant tax legislation and directives and if the tax invoices of the contracted party fails to comply with such prescripts, the contracting party reserves the right to suspend payment until the correct issuance of invoices by the Contracted Party.
- 6.6 The contracted party has no exclusivity or guarantee of supply, and the contracting party may use any other suppliers that may present better supply conditions.
- 6.7 If any error is found in the issuance of any tax invoice, the contracting party shall return the respective document to the contracted party for the necessary corrections and the period for payment will be calculated to re-commence running from the date of receipt by the Contracting Party of the corrected documentation completely regularized and no penalty or interest will be raised by the Contracted Party in these circumstances.
- 6.8 Any change in price, terms, specifications, quality, delivery location and other conditions, will only be valid upon written authorization from the contracting party. Any envisaged changes to Purchase Orders must be submitted by the Contracted Party to the Contracting Party within 10 (ten) days of receipt of the Purchase Order by the Contracted Party and before any activation thereof and will only be valid with the express and formal written authorization thereof by the Contracting Party, otherwise it will constitute a breach of the Contract.
- 6.9 In the event of a price adjustment, the contracted party must inform the contracting party's purchasing department at least 30 (thirty) days in advance of its intention. The parties must negotiate and as long as it is not accepted in writing by the contracting party, the contracted party must comply with the obligations for the period. Any change in price without the written consent of the contracting party will constitute a breach of the Contract

- 6.10 If the parties do not agree on the price adjustment, the contracted party shall maintain the provision of the services under the same conditions as the Purchase Order, until the contracting party appoints a new provider.
- 6.11 The parties to make all necessary efforts to maintain the competitiveness of the services. The services must correspond, at least, in technology, quality, price and delivery, to similar services from competitors in the industry.
- 6.12 In cases where the services are directly contracted by the contracting party's final customer ("final customer"), who will receive different treatment in the price negotiation: the final customer must, jointly with the contracted party; determine such prices. The contracting party should only mediate the process, placing the Purchase Order with the contracted party, in accordance with the payment terms and prices determined by the final customer to the contracted party ("direct buy price mode - direct buy").
- 6.13 In the event that a similar third-party product is offered at a more advantageous price by another provider, the Contracting Party will inform the Contracted Party in writing and grant it an appropriate period, considering the scope of the measures to be adopted by the contracted party, to reestablish full competitiveness, being certain that the services considered "firm" will be honored.
- 6.14 The Contracted Party undertakes to make every effort to present potential cost savings for the services, as well as take advantage of the potentials presented by the Contracting Party and actively implement them with the agreement with the contracting party. If the Contracted Party is unable to meet the Contracting Party's expectations with such price negotiations the Contracting Party shall be entitled to cancel the Contract and any uncompleted Purchase Orders on 30 (thirty) calendar days' written notice
- 6.15 It is expressly recorded that the Contracted Party cannot suspend the supply of contracted products due to new price negotiations and/or payment conditions.
- 6.16 The Contract cannot be used as a form of guarantee for other business between the contracted party and third parties.
- 6.17 Invoices must be sent separately from the delivery, to the Contracting Party, without undue delay and by no later than the last business day of each month or otherwise as stipulated in any relevant Purchase Order and capturing the details of the Purchase Order.
- 6.18 Invoices which different from the Purchase Order will be refused and the costs related to the return of materials, when necessary, will be borne by the Contracted Party.
- 16.19 If the contracted party issues an electronic invoice, it must be sent by electronic mail to the Contracting Party, according to the electronic address agreed between the parties in the Purchase Order.
- 6.20 Payment of invoices by the Contracting Party will be made by bank transfer, through a deposit in a bank account indicated by the contracted party in

writing within 5 business days of the Contracting Party transmitting its first Purchase Order to the Contracted Party on such payment terms as specified in the Purchase Order.

- 6.21 In the case of direct buy, the payment terms must be agreed between the final customer and the Contracting Party. These payment terms also apply to the Contracted Party.
- 6.22 Products must be accompanied by all mandatory tax documents, and all requirements prescribed by laws or regulations must be met when they are issued. In the event of non-compliance with these formalities, the contracted Party will be liable to the contracting party for any fines, adjustment and other penalties imposed on it due to such non-compliance.
- 6.23 In case of objection to the products supplied, due to default, non-compliance with the specifications or for any other reason, the payment term related to such products objected to shall start from the date on which the contracted party satisfies the complaints made.

7. **DELIVERY OF PRODUCTS**

- 7.1 The delivery date specified in the Purchase Order is binding. compliance with the delivery date shall be determined based on the complete delivery of the products contained in the Purchase Order. Any delays in delivery that the contracted party becomes aware of must be notified immediately, in writing, to the contracting party with the details of the reasons and the expected time of such delay. In the case of early delivery, the contracting party reserves the right not to accept it or store the goods at the contracted party" costs and risk.
- 7.2 Delivery after the delivery date specified in the Purchase Order may, at the discretion of the contracting party, be deemed as the automatic cancellation of the purchase order and free of any burden for the contracting party:
  - (a) If the contracted party fails to comply with the date or time of delivery of the products including errors in documentation or other reason. The contracting party may, without limiting or affecting its rights or available resources contained in this Contract or in the law, effect or require that the product be sent by means of emergency freight that may cost more than the freight originally contracted. Such additional cost shall be paid or reimbursed by the contracted party, as well as all excess costs resulting from this delay, including material handling, extra fees, fines, and other additional expenses that would not occur if the product was delivered within the agreed time;
  - (b)The contracted party will also be responsible for reimbursing the contracting party for other direct or indirect costs caused by the delay in the delivery of the product, including the cost for the production stoppage, overtime, storage and additional cost for obtaining the product from an alternative source;

- (c) The contracting party is in these circumstances entitled to suspend the next payments, if any, until the contracted party reimburses this additional cost.
- 7.3 Deliveries must be made in the quantities, terms and locations specified in the delivery schedules provided by the contracting party. The contracting party shall have no responsibility to pay for products delivered that exceed the quantities specified in the delivery schedule. If requested by the contracting party, the excess will be returned, at the contracted party 's expense and risk.
- 7.4 It is the responsibility of the contracted party to transport the products, properly packed, to the establishment of the contracting party indicated in the purchase order.
- 7.5 The responsibility and cost for insurance / freight in the transportation of the products to their final destination is with the contracted party.
- 7.6 If there is no other instruction to the contrary, deliveries must be made on working days, from 8 am to 4 pm.
- 7.7 The contracted party must notify the contracting party within a maximum period of 2 (two) working days in writing, if it is not in a position to deliver the goods in the amounts and on the delivery dates and deadlines requested by the contracting party and agreed between the parties including all information regarding the potential delay, estimated duration and impact on the delivery, as well as the contingency plan to avoid or reduce this impact.
- 7.8 The contracting party is hereby authorized to return the invoiced products that do not meet the conditions provided for in this agreement, its annexes or in the purchase order, as well as technical specifications, quality standards and other requirements.
- 7.9 If the products are returned to the contracted party due to non-compliance with quantity/quality, or due to damaged packaging, the contracting party shall raise the losses incurred and deduct the corresponding amount on the next invoice.
- 7.10 The contracting party shall be authorized to withhold payment due to the contracted party if it does not fulfill its obligations related to the compliance with labor, social security or tax legislation, or due to non-compliance with the provisions of this Contract.
- 7.11 In the case of materials billed to the contracting party, but delivered to a third party, the contracted party will present the invoice to the contracting party, as well as any additional documents required by law in these cases.
- 7.12 The contracted party will inform the contracting party after delivering the parts to the third party, providing a copy of the delivery notice.
- 7.13 The contracted party must notify the contracting party of any licensing requirements for the re-exportation or exportation of requested products, in accordance with applicable exportation or customs laws and regulations.

- 7.14 In addition, the contracted party must notify the contracting party, on demand and in writing, of any additional data regarding the export of the requested products and their components. Any changes to the information described above must be notified to the contracting party in writing, immediately (before the delivery of the respective products).

8. **RIGHT OF RETENTION AND COMPENSATION**

- 8.1 The contracting party is hereby authorized by the contracted party to proceed with the full or partial retention and compensation of the amounts owed by the contracting party to the contracted party as a result of this Contract in the event of the following (which is in addition to any other instances referred to elsewhere in this Contract):

- (a) for the damage caused by the contracted party to the contracting party and/or third parties resulting from the supply of the products;
- (b) to pay a fine in the event of the contracted party's breach of contract;
- (c) to reimburse the contracting party if it is compelled to pay, on behalf of the contracted party, any amounts, in any capacity, such as, but not limited to labor obligations of the contracted party's personnel, judicial orders, taxes, etc.; and
- (d) to pay the contracted party's personnel if it does not comply with its labor and social security obligations.

10. **TERMINATION**

- 10.1 Notwithstanding anything to the contrary contained in the contract and/or any Purchase Order, the contracting party is entitled to terminate this Contract and any Purchase Order for convenience, provided that it expresses its intention in writing to the Contracted Party at least 30 (thirty) calendar days in advance.

- 10.2 It will be considered by the contracting party, just reason for immediate termination of the Contract without the need to give notice as contemplated in clause 10.1, if the following conditions occur:

- a) non-compliance with the obligations assumed under this agreement and the Contracted Party fails to remedy such non-compliance within the period established in correspondence to be sent by the Contracting Party to the Contracted Party;
- b) poor provision of services by the contracted party, verified through a report to be made by the contracting party especially for this purpose,
- c) in the event of liquidation, sequestration or business rescue proceedings being commenced of the Contracted Party,
- d) alteration, by the contracted party, of its corporate purpose or of its corporate control, capable of harming and/or preventing the performance of the services.

- e) occurrence of unforeseeable circumstances or force majeure, impeding the execution of the object of the Contract; and
  - f) other cases provided for in this Contract or in the law.
- 10.3 The contracted party undertakes not to interrupt, in any way and for whatever reason, the contracted service, except in cases of force majeure.
- 10.4 The following are not considered causes of force majeure:
- (a) the contracted party's financial difficulties;
  - (b) change in costs or unavailability of materials or components,
  - (c) strikes or work interruptions by the contracted party or any of its subcontractors or sub-suppliers that are involved in the manufacture or supply of goods or services to the contracted party.
- 10.5 At the end of the Contract, whether motivated or unmotivated, the contracted party will be obliged to provide the contracting party, or the company indicated by the latter, with all the documents and information necessary for the continuation of the services, in order to reduce any damages arising from the interruption.
- 10.6 The termination of the contractual relationship for whatsoever reason does not remove the liability of the contracting party to pay to the contracted party for all services performed until the moment of the termination of the relationship unless this Contract makes provision to the contrary, whether it be to apply set-off or otherwise.

11. **TAXES**

- 11.1 The taxes that are due as a direct or indirect consequence of this Contract or of its execution, constitute a burden of total liability of the party who is liable for such tax in terms of applicable tax legislation.
- 11.2 If the contracting party is assessed by any competent authority or legally condemned as a result of the non-retention of taxes, fees or contributions that were not correctly highlighted by the contracted party when the invoice was issued, the contracted party shall reimburse to the contracting party, within 48 (forty-eight) hours calculated from the written notification thereof, all expenses and charges borne by the contracting party as a result of the notice and / or condemnation.

12. **ANTI-CORRUPTION**

The contracted party declares that it will follow the contracting party's code of ethics until the end of the term of this Contract, whose rules it is obliged to comply with faithfully. Without prejudice to the obligation to comply with the provisions of the respective code of ethics and conduct, undertakings to exercise the rights and obligations provided for in this Contract and to comply with any of its provisions the Contracted Party undertakes: (i) not giving, offering or promising any goods of value or advantage of any nature to public



representatives or persons related to them or any other persons, companies and/or private entities, with the objective of obtaining an undue advantage, influencing an act or decision or conducting business unlawfully and (ii) adopting the best practices for monitoring and verifying compliance with anti-corruption laws, with the objective of preventing acts of corruption, fraud, illegal practices or money laundering by its partners, managers, employees and/or third parties hired by them. Any breach of any of the obligations provided for in this clause is a cause for the unilateral termination of this Contract, without prejudice to the collection of losses and damages caused to the Contracting Party.

13. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

- 13.1 The contracted party cannot reveal to third parties not directly involved in the design, production or inspection of products and / or services, any information or document that has been made available by the contracting party for the fulfillment of this Contract.
- 13.2 All drawings, specifications, models, samples, data and any other information provided by the contracting party to the contracted party and all property and copyright rights thereon are the exclusive property of the contracting party.
- 13.3 The contracted party shall indemnify, exempt from liability and defend the contracting party against any claims by third parties based on the violation of the property rights of any goods and services provided by the contracted party, as well as any costs actually incurred by the contracting party. the parties must promptly notify each other if any claim is made against a party based on an infringement of intellectual property rights.
- 13.4 The contracted party shall treat the information as a business secret, keeping it under strict confidentiality, ensuring that its partners, directors, managers, employees and representatives must also maintain the confidentiality of any details, regardless of their form, apparent commercial or technical nature, of which they come to know from the relationship with the contracting party. the contracted party shall refer to its commercial relationship with the contracting party in its advertising material only with the prior and express authorization of the contracting party in writing.
- 13.5 Including, but not limited to, any models, drawings, samples, tools, meters, software and hardware, or any other technical equipment or documents made available by the contracted party, or produced by the contracted party, as specified by the contracting party, shall not be discarded, promised or transferred to a third party or used in any way, without prior authorization from the contracting party. the same shall apply to any objects produced with the aid of such production equipment. all named products and objects will remain the contracting party's intellectual property and must be returned at the end of the contract, without the need to make such a request. therefore, as production occurs accordingly to the specifications of the contracting party, the contracting party will become the owner after payment in full, in accordance with clause 13.6. below.

13.6 If any of the named materials is an invention, utility model or industrial design registered with the national institute of intellectual property (inpi), such material shall be considered to have been developed during the contract between the contracting party and the contracted party and, as such, it must belong only to the contracting party, without any additional cost. If any of the named materials is protected by copyright, in accordance with any applicable law, including, but not limited to, drawings and instruction manuals, the contracted party agrees, hereby, to transfer to the contracting party all the patrimonial and economic rights of the future works created within the term of 5 (five) years counted from the date of this contract, free of any additional cost. The contracted party shall immediately supply, when requested by the contracting party, all the necessary documents in order to make the contracting party's property perfect of all the mentioned materials (either by registration or assignment).

14. **DATA PROTECTION**

14.1 The parties acknowledge and agree that they should each be held responsible for the processing of any and all personal information shared under this Contract.

14.2 The parties have and will use technical and organizational measures, including training and qualification of their employees, appropriate to the processing of personal information (including during any transfer of data necessary for the performance of this Contract): (i) to ensure that the treatment will be carried out in accordance with the requirements demanded by the applicable legislation, and ensure the protection of the rights of the data subjects; and (ii) in order to ensure a level of security appropriate to the risks arising from the treatment, in particular accidental or unlawful destruction, loss and alteration, as well as the unauthorized disclosure or access to personal information transmitted, kept or subject to any other type of treatment.

14.3 The contracted party will treat the personal information transferred by the contracting party for lawful purposes and exclusively related to this Contract and in accordance with the terms required by applicable law.

14.4 The processing of personal information carried out under the terms of this Contract must observe, in addition to the applicable legislation, all guidelines provided by the contracting party.

14.5 The contracted party shall inform the contracting party about any sharing of personal information received under this Contract with third parties and must obtain express written authorization from the contracting party in such case.

14.6 With respect to any request from a data subject or incidents of any nature involving the personal information processed under this Contract that may entail significant risk or damage to the data subjects, the contracted party shall, as soon as reasonably possible, notify the contracting party about the request or incident by email or at the address referred to in the header to this Contract. The contracted party will respond to the data subjects and the incident in accordance with the contracting party's guidelines and in accordance with the terms and determinations of the applicable legislation and

will keep the contracting party informed about the response and about the incident, as well as its developments. The parties shall cooperate with each other in relation to any request or incident involving personal information processed pursuant to this Contract, including any communication of an incident to the data subjects who have been affected, and shall cooperate with each other in relation to requests of the data subjects, the Information Regulator and any other competent authorities.

- 14.7 Upon termination of the Contract and in compliance with the applicable legislation, the contracted party will return or destroy, at the discretion of the contracting party and within 15 (fifteen) days, in a safe manner, all personal information received from the contracting party.
- 14.8 The contracted party indemnifies and will reimburse and at all times keep the Contracting Party free from, and against all and, any losses or claims, incurred or suffered, directly, by the Contracting Party as a result of or due to any violation by the Contracted Party of the privacy and data protection obligations provided for in this Contract and applicable law.
- 14.9 For the purposes of this Contract, a "loss" is considered any and all losses, costs, liabilities, obligations, damages, and direct penalties, as well as all taxes, fines and expenses related to them (including attorney and own client fees (including the cost of counsel)), court fees and deposits and any other reasonable disbursements and reasonable costs with claims, settlements, trials, interest and penalties, and any "claim" is considered any collection, charge and/or extrajudicial demand, as well as any action, litigation, investigation, inquiry, inspection, procedure or process (whether judicial, arbitration or administrative) proposed or instituted by or against the contracting party.

15. **FORCE MAJEURE**

- 15.1 Neither party is liable for any failure to meet any of its obligations in terms of this Contract, or any delay in meeting them, to the extent to which the failure, or delay, is caused by Force Majeure.
- 15.2 The following events or circumstances may be Force Majeure:
- (a) war, invasion, hostilities, civil war and acts of terrorism;
  - (b) any riot, civil commotion, disorder;
  - (c) a national and/or industry-wide strike;
  - (d) natural catastrophes such as earthquakes, hurricanes, floods or droughts;
  - (e) Any pandemic and the (after-) effects;
  - (f) any act or omission or declaration of government including any sphere or tier of government or any government functionary or department.

- 15.3 The Affected Party must:
- (a) give written notice to the other party describing the Force Majeure and the steps taken to mitigate its effect as soon as possible after the Affected Party becomes aware of the occurrence of the Force Majeure;
  - (b) provide the other party with regular written reports describing the status of the Force Majeure event, the Affected Party's ability to perform or resume performance of its obligations in terms of these Terms or an Agreement and the steps taken and planned by the Affected Party to mitigate the impact of the Force Majeure event;
  - (c) resume performing its obligations as soon as possible after the Force Majeure has ceased.
- 15.4 Each party must take all reasonable and necessary steps at its own expense to mitigate the consequences of any Force Majeure which affects the performance of its own obligations.
- 15.5 If the Supplier's performance is prevented, or delayed, by the Force Majeure event for a period of 3 Calendar Months or more from the date of given the above notice , Toyota may cancel these Terms and/or any Agreement, with immediate effect and by giving written notice of termination to the Supplier. In these circumstance the provisions of clauses 8.5 and 9.3 shall apply.

16. **GENERAL**

- 16.1 The contracting party and the contracted party are independent and none of them has the right to compromise or represent the other and this Contract does not create a bond of employment, representation, society, agency, association or consortium.
- 16.2 This Contract contains all the express provisions agreed on by the Parties with regard to the subject matter and each Party waives the right to rely on any alleged express, tacit and/or implied provision not contained in this Contract.
- 16.3 The Parties acknowledge that they have been free to secure independent legal, tax and other advice as to the nature and effect of all the terms of this Agreement and that they have either taken such independent legal and other advice or dispensed with the necessity of doing so.
- 16.4 A Party may not rely on any representation which allegedly induced that Party to enter into this Contract, unless the representation is recorded in this Contract.
- 16.5 The rights and remedies of a Party to this Contract:
- (a) are cumulative and not exclusive of its rights under the general law;

- (b) may be exercised as often as that Party requires;
  - (c) may be waived only in writing and specifically;
  - (d) Delay in the exercise or non-exercise of any right is not a waiver of that right.
- 16.6 If a Party allows any indulgence to the other, that indulgence will not constitute a waiver by that Party of any rights under this Contract or prevent or adversely affect the exercise by that Party of any existing or future right.
- 16.7 A Party will not be estopped (i.e. prevented) from exercising its rights arising out of a breach by the other Party of any of its obligations under this Agreement, as a result of the Party having elected or agreed on one or more previous occasions not to exercise its rights arising out of any similar preceding breach or breaches.
- 16.8 Each term of this Contract, whether forming an entire clause or only part of a clause, is divisible and severable from all the other terms (regardless of the manner in which they may be linked together or grouped grammatically). If a term of this contract is or becomes illegal, invalid or unenforceable in any respect in any jurisdiction, that will not affect or impair in any manner the legality, validity or enforceability in that jurisdiction of any other term of this contract, or the legality, validity or enforceability in other jurisdictions of that and all the other terms of this Agreement.
- 16.9 No contract varying, adding to, deleting from or cancelling this Contract will be effective unless reduced to writing and signed by or on behalf of the Parties. The Parties record that whilst they may correspond via e-mail, no cancellation, amendment of or variation to this Contract may be concluded via e-mail, sms or instant messaging.
- 16.10 The termination of this Contract will not prejudice the rights of a Party in respect of any antecedent breach by the other Party of, or non-performance under this Contract.
- 16.11 This Contract is governed by the laws of South Africa.
- 16.12
- (a) The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa (Eastern Cape Division, Port Elizabeth), to settle any dispute in connection with this Contract.

- (b) The Parties agree that the High Court of South Africa (Eastern Cape Division, Port Elizabeth) is the most appropriate and convenient court to settle any such dispute in connection with this Agreement.
- (c) The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Contract.

16.13 Each signatory to this Contract warrants their authority to have signed same on behalf of the party he or she herein represents.

16.14 The contracting party may transfer the Contract in full, including its rights and responsibilities to a company affiliated with the contracting party, and may also assign individual rights, resulting from the contract, to one of its affiliates. However, the Contracted Party shall not be entitled to assign or transfer the Contract and/or Purchase Order nor any of its rights and/or obligations thereunder to any third party without the prior and express written consent of the Contracting Party.

## 17. **DOMICILLIUM**

17.1 The Parties hereby select as their respective *domicilia citandi et executandi* the following addresses to which all notices may be posted or delivered and at which all legal process may be served arising from this Agreement or the cancellation thereof: -

Contracting Party: the address as indicated on the first page of these Terms and Conditions.

Contracted Party: the address as recorded in its quotation.

17.2 Party may at any time change its *domicilium* by notice in writing to the other Party, provided that the new *domicilium* is within in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.

17.3 Any notice given in connection with this Agreement shall:

- (a) be delivered by hand; or
- (b) be sent by registered mail; or
- (c) be sent by email.

17.4 A notice given as set out above shall be deemed to have been duly given:

- (a) if delivered, on the date of delivery;

(b) if sent by registered mail, on the date 3 (three) days after posting;

(c) if sent by email, on the date of transmission of the email.

17.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party or an authorised representative of a Party (as the case may be) shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.