

## **TERMS AND CONDITIONS**

### **CONDITION**

Subject to the provisions of any written agreement entered into between the parties, which written agreement shall take precedence, the following terms and conditions shall apply to this order:

### **SUPPLY AND PURCHASE**

1. All goods specified in the purchase order shall be delivered to the point of delivery specified in the purchase order on the date specified in the purchase order.
2. The vendor shall in all instances confirm the delivery date and time with the responsible person nominated in the purchase order, or any other duly authorised person.
3. The vendor shall ensure that the goods are packaged as per the instructions contained in the purchase order. In the event of no instructions being contained in the purchase order, the vendor shall meet the packaging standards as is customary in the industry so as to ensure that the goods are adequately protected and free of any damage. Any damaged goods shall be returned to the vendor for immediate replacement, at no cost to the company.
4. The goods shall remain at the sole risk of the vendor until delivery is completed and accepted by the company, the goods having been checked and confirmed.
5. The company shall not be obliged to accept any goods in excess of or less than the quantity specified in the purchase order. The purchase price payable shall be fixed and firm and shall not be subject to variation for any reason whatsoever.

### **MAINTENANCE AND REPAIRS**

6. The vendor shall collect the equipment defined in the company's order to be repaired from the company's premises (if so required), supply a quotation for repairs and when instructed repair the equipment to optimal operating condition in accordance with the company's instructions and thereafter return the equipment to the company in good working order, as new. Any maintenance work required by the company shall be specified as such and be deemed to form part of such repairs.
7. The vendor shall at all times retain sufficient stock of spare parts necessary to enable it to repair the equipment promptly and correctly, and/or as provided for in the company's order.
8. The equipment repaired in terms of the company's order shall be at the sole risk of the vendor from the time of collection until the return and acceptance of such equipment by the company as envisaged in clause 6 above.
9. Ownership of the equipment shall at all times remain vested in the company, notwithstanding the fact that the Vendor shall have temporary control and possession of the equipment. The vendor hereby renounces any possessory or ownership rights in and to the equipment, along with any contractor's or other lien over the equipment. The vendor shall not in any manner encumber, transfer, deal with, restrict, curtail, cede, pledge or put up as security the equipment or any of the company's rights in or to the equipment.
10. The vendor indemnifies, holds the company harmless and undertakes to take out adequate and appropriate insurance to cover the company against any and all :-
  - 10.1 losses, damages, costs, claims and demands made upon or suffered by the company, the company's agents, employees and contractors as a result of or arising from any negligent act or omission on the part of the vendor, its employees, agents or any person acting on behalf of the vendor, and
  - 10.2 all damage to or loss of the equipment as a result of or arising from any cause whatsoever whilst the equipment is in the vendor's possession or at the risk of the vendor in terms of clause 8 above.

**GENERAL**

11. All goods, equipment, spares and/or services ("goods") specified in the relevant company or purchase order ("order") shall be delivered to the point of delivery as specified in the order on the date specified in the order. All goods shall be accompanied by a delivery note containing a clear description of the goods, the order and requisition number/s, the date and point of dispatch and such further particulars and supporting documentation as may be required by the company.
12. The seller, repairer or supplier ("supplier"), subject to what is set out in clause 9 above, warrants that ownership of all goods supplied in terms of this order shall pass to the company on delivery thereof and indemnifies the company against any claims which may be made against it for the unauthorised or unlawful use or infringement of any patent rights, trade marks or other protected rights in respect of the goods together with all costs on an attorney and client scale which may be incurred by the company in connection with any dispute in respect thereof.
13. The supplier shall submit a separate tax invoice in respect of each delivery of goods supplied in terms of this order, reflecting the goods' unit price, the price of the goods exclusive and inclusive of VAT, the total price exclusive and inclusive of VAT, the name, address and VAT registration number of the supplier and company and a full description specifying the precise quantity supplied. The company shall be entitled to request such additional supporting documentation as it may require.
14. Once delivery has been effected and completed, to the entire satisfaction of the company, payment due to the supplier shall be dispatched by the company on or about the 15th day of the month following delivery and Invoice, provided the relevant invoice and documentation has been received and approved for payment by the company prior to its monthly cut-off. Failing the foregoing payment will be withheld until the following month or such time as any defect in the documentation or goods has been rectified.
15. Prices specified on the order shall be deemed final and binding on the parties unless written notification to the contrary is received from the supplier within five (5) days of the date of the order.
16. The timeous and complete supply of the goods is material and of the essence of this order.
17. The company shall be entitled to cancel this order forthwith should the supplier breach any of the terms or conditions of this order and fail, within seven (7) days of receipt of a notice calling upon it to remedy such breach, to comply therewith, provided that such notice shall not be required if such breach is material, going to the root of this order or is not capable of being remedied by the payment of money or the supply of suitable, alternative goods approved by the company.
18. The supplier warrants that it shall comply with all legislation and in particular with the provisions of the:-
  - 18.1 Mine Health and Safety Act of 1996, with specific reference to section 21 of the said Act, which it acknowledges having read and understood, or any Act which amends or replaces it or any other Act which may be applicable to the supplier's obligations under this order relating to health and safety; and
  - 18.2 Consumer Protection Act of 2008, with specific reference to the suppliers' / manufacturers' responsibilities, conduct and representations and its strict liability under the said Act, which it acknowledges having read and understood.
19. This order and these terms and conditions, subject to the above condition, comprises the entire contract between the parties. No variation or amendment to these terms and conditions shall be valid and enforceable unless agreed to by the parties in writing. Any invoicing or order terms proposed or presented by the supplier shall not be of any force or effect.
20. The supplier shall not be entitled to cede, assign, delegate or make-over any of its rights, duties and/or obligations under this order unless having firstly obtained the company's prior written consent to do so.
21. The supplier shall comply with the company's policies, practices, procedures and standards, and shall adhere to the company's security, access and related requirements in regard to ingress and egress of its operations or any part thereof.
22. Any dispute between the parties that remains unresolved shall be resolved by way of arbitration under the auspices of the Arbitration Foundation of Southern Africa ("AFSA") as per AFSA's rules, in Sandton, Johannesburg. Either party shall however be entitled to proceed to the South Gauteng High Court (to which jurisdiction the parties hereby consent) for any urgent, interim or interdictory relief, as that party may deem necessary in the circumstances in order to protect its rights or interests under this order or these terms and conditions.