

## **STANDARD CONDITIONS OF PURCHASE**

These are the general conditions of purchase of McMillan and Pereira Construction (Pty) Ltd (hereinafter referred to the "*General Conditions*").

### **1. DEFINITIONS AND INTERPRETATION**

In the Order, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and
- (d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The headings shall not be taken into consideration in the interpretation of the Order. The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement shall not apply.

- 1.1 "**Client**" means the Purchaser's client.
- 1.2 "**Goods**" means the goods, materials or equipment supplied or to be supplied in accordance with the Order together with any subsequent modifications specified by the Purchaser.
- 1.3 "**Order**" means the document issued by the Purchaser to the Supplier confirming the supply of the Goods and / or Works and specifically incorporating by reference these General Conditions of purchase, and appending the Special Conditions, the Specifications and any other documents which are listed / contained in the Order.
- 1.4 "**Order Price**" means the price referred to under clause 21.
- 1.5 "**Purchaser**" means McMillan and Pereira Construction (Pty) Ltd.
- 1.6 "**Seller**" means the person, juristic or natural, to whom the Purchaser's Order is addressed.
- 1.7 "**Specifications**" means the document (if any) titled specifications, as included in the Order, which detail the Purchaser's requirements and any addition and modifications to such document in accordance with the Order. Such document specifies the purpose, scope, and / or design (if any) and / or other technical criteria, for the Goods and / or the Works.
- 1.8 "**Special Conditions**" means amendments and / or modifications to these General Conditions as detailed on the Order or in a separate document titled "Special Conditions" as the case may be.

1.9 **"Time for Completion"** means the period for delivery of the Goods and / or execution of the Works as specified in the Order.

1.10 **"Work"** means the work to be performed by the Seller under the Order and includes, where the context so refers, work in relation to the Goods as detailed in the Order.

2. **FITNESS FOR PURPOSE**

The Goods and / or Works shall once complete be fit for the intended purpose as specified in the Specification or otherwise in the Order.

3. **MATERIALS AND WORKMANSHIP**

The Goods shall be of best materials and workmanship and be manufactured from new materials in accordance with the Specifications and be free from defects.

4. **TIME FOR COMPLETION AND TIME OF THE ESSENCE**

4.1 The time stipulated for delivery of the Goods and / or the Works shall be delivered and / or completed within the Time for Completion, time being of the essence.

4.2 In the event of a delay in delivery occurring or being likely to occur the Seller shall on becoming aware of the circumstances causing and / or likely to cause a delay, inform the Purchaser of such delay or likelihood of the delay occurring giving full particulars in writing of the delay and the reason therefore. As soon as practicable after receipt of the Seller's notice, the Purchaser shall evaluate the situation and may at its sole discretion extend the Time for Completion, with or without penalties.

4.3 Unless the delay is as a result of an event arising under the Force Majeure clause, a delay by the Seller, including a delay by its sub-contractor(s), in Time for Completion shall render the Seller liable to the imposition of penalties unless an extension of time is agreed without the application of penalties under clause 4.2.

5. **PENALTIES**

Should the Seller fail to deliver any or all of the Goods or to complete the Work within the time for completion, the Purchaser shall, without prejudice, to any other remedy under these General Conditions of purchase have the right to deduct a penalty equal to one percent of the Order Price for each week or part thereof of delay until actual delivery and / or completion, up to a maximum deduction of 10% of the Order Price.

6. **VARIATIONS**

The Purchaser shall be entitled, by notice in writing to the Seller from time to time during the execution of the Order, to instruct the Seller to make any variation to the Works and / or Goods. The Seller will comply with such instructions on the same conditions as set out in the order. The value of any variation shall be calculated on the basis as used in determining the Order Price to be paid by the Purchaser for the Goods and / or Work.

7. **INSPECTION, TESTING AND EXPEDITING**

7.1 The Purchaser and / or the Client and / or either of their agents shall at all material times be entitled to inspect the Goods, Work and Seller's documentation and procedures for the purposes of quality audit inspections or expediting whether at the Sellers' premises or any subcontractor's premises or

elsewhere and the Seller shall at its own expense provide adequate facilities therefore.

7.2 Where delivery of the Goods and completion of the Work is subject to inspection or testing, the Goods shall not be despatched by the Seller until a final inspection and test has taken place and approval has been given in writing by the Purchaser. The Seller shall give the Purchaser at least 7 days written notice of the Goods and / or Work being ready for inspection or testing. In the event of the Goods and / or Work failing to pass any inspection or test, the Seller shall pay all of the Purchaser's costs in connection therewith.

7.3 No inspection or test shall release the Seller from any of its obligations under this Order. The Purchaser may waive any of its rights to an inspection or test, but such waiver is without prejudice to its rights to reject any of the Goods and / or Work found to be defective at a later date.

8. **REJECTION AND RECTIFICATION**

The Purchaser may at any time reject any Goods and / or Work which are not in accordance with the Order or not of good and merchantable quality or not fit for the purpose for which they are intended. Where the Purchaser notifies the Seller of such rejection and the reason therefore, the Seller shall at its own expense forthwith supply such Goods and / or execute such Work as necessary to rectify the defect and / or failure.

9. **DRAWINGS**

The Seller shall (if required) at its own expense prepare and submit for the Purchaser's approval, drawings or any other document requested by the Purchaser in relation to the Goods and / or Works. Once drawings or documents have been approved, they shall not be altered without the prior written consent of the Purchaser and the Seller shall manufacture the Goods and perform the Work strictly in accordance therewith. No approval given by the Purchaser shall relieve the Seller from any of its obligations under the Order. The drawings and all other documents supplied by the Purchaser to the Seller remain the Purchaser's sole property and shall be returned on demand and shall not be loaned, copied or disclosed to any third party without the prior written consent of the Purchaser, nor shall the Seller use any drawing or document supplied by the Purchaser to manufacture any Goods either for himself or any third party without the prior written consent of the Purchaser.

11. **FREE ISSUE MATERIAL**

The Seller shall be responsible for and be held to account for all material issued free of charge by the Purchaser and / or the Client.

12. **DELIVERY AND PACKAGING**

Delivery of the Goods will be deemed to occur only when all of the Goods have been delivered in good condition and at a time and place nominated by the Purchaser and at the expense of the Seller and a written receipt therefore has been provided by a representative of the Purchaser. The Seller shall package and protect the Goods having regard to their destination in such a manner that no damage whatsoever will occur to them. All loss or damage suffered by the Goods whilst at the Seller's premises or whilst in transit shall be the sole responsibility of the Seller. In the event of the Purchaser giving specific instruction with regard to delivery and packaging, the Seller shall comply strictly therewith. The packaging shall be regarded as non-returnable unless otherwise agreed by the Purchaser. Unless the Seller has obtained the

Purchaser's prior written consent thereto, the Purchaser reserves the right to reject delivery of the Goods forming only part of those to be delivered under the Order.

13. **SUBCONTRACTS**

The Seller shall not, without the prior written consent of the Purchaser, assign, subcontract or sublet the Order or any part thereof, or any part in respect of which the manufacturers are named in the Order, except for raw materials or minor details. Any consent given in this regard shall not relieve the Seller from any of its responsibilities or obligations as detailed in the Order. The Seller shall supply the Purchaser with any detail required in relation to any part of the Order which has been assigned, sublet or subcontracted.

14. **CERTIFICATE OF ORIGIN**

The Purchaser reserves the right to call for a Certificate of Origin of raw materials and test certificate for Goods at any stage of manufacture. Such certificates must state the Purchaser's order number and item number for reference purposes.

15. **SUSPENSION**

The Purchaser may at any time instruct the Seller in writing to suspend performance of the Order. During such suspension, the Seller shall store, preserve, protect and otherwise secure the Goods and / or Work so as to ensure that no damage occurs. In addition, the Purchaser may require the Seller to obtain adequate insurance cover for the Goods and / or Work. Any reasonable additional cost incurred by the Seller in complying with an instruction to suspend shall be added to the order price. Providing a period of 30 days has elapsed from the date on which the Purchaser instructed the Seller to suspend performance the Seller shall be entitled to payment in respect of the Work completed at the date of suspension, but payment shall not be made until the Seller has adequately marked and set aside the Work as belonging to the Purchaser. If the period of suspension continues for a period in excess of 120 days from the date on which the Purchaser instructed the Seller to suspend performance then either party may by giving notice in writing to the other terminate the Order forthwith and upon termination the Seller shall be entitled to be paid in respect of Goods and / or Work completed at the date of suspension. The Seller shall have no further claim to payment and / or indirect or direct damages from the Purchaser.

16. **TERMINATION**

The Purchaser, without prejudice to any other remedy at law, may terminate the Order in whole or in part on 7 days written notice to the Seller:

16.1 If the Seller assigns the Order or sublets the whole of the Order without the consent of the Purchaser;

16.2 If the Purchaser rejects the Work as unsatisfactory;

16.3 If the Seller fails to perform any of its obligation(s) under the Order;

16.4 If the Seller is sequestrated, placed into liquidation or under judicial management, the Seller effects or attempt to affect a compromise with any of its creditors generally;

16.5 If the Seller commits an act of insolvency as defined in the Insolvency Act No. 24 of 1936 or being a juristic person, commits an act which would be an act of insolvency if committed by a natural person.

Should this Order be terminated in accordance with clause 16, the Purchaser shall not be required to make any further payments of the Order Price to the Seller and shall have the right to claim damages arising from such termination from the Seller.

17. **REGULATIONS AND STANDARDS**

The design, manufacture, installation (where installation is undertaken by the Seller) and quality of the Goods and / or Works shall comply with all relevant statutes, by-laws, Purchaser and / or Client health and safety regulations, the Order and Client specifications and / or requirements.

18. **SECURITY**

Where the Purchaser agrees to make an advance payment to the Seller, the Purchaser may in its discretion require the Seller to provide an advance payment guarantee, or another suitable form of security for payment acceptable to it, from a guarantor and in a form acceptable to the Purchaser in order to secure the amounts of the advance payment.

19. **PATENTS AND INTELLECTUAL PROPERTY**

The Seller shall indemnify the Purchaser and its agents against any claim for infringement of any patents, trade mark, registered design, intellectual property or copyright arising out of the use or sale of the Goods and against all costs, charges and expenses occasioned therein except in so far as such infringement shall arise from the Seller having manufactured from design supplied by the Purchaser.

20. **WARRANTY**

Unless otherwise stated in the Order and / or specification, the Seller shall make good by immediate rectification or replacement of all defects which appear in the Goods and / or Work within the period of 12 months from the date the plant for which they are intended is put into commercial operation or, 18 months from the date of delivery (whichever is the sooner period) and which are due to faulty material, workmanship or design, but without prejudice to any other right or remedy which will have accrued or will thereafter accrue to the Purchaser. This condition and the periods aforesaid, shall also apply to all repaired or replaced Goods and / or Work supplied and / or executed by the Seller. The Seller shall be responsible for all costs arising out of the rectification of all defects. The Purchaser may assign the benefit of this warranty to the Client.

21. **ORDER PRICE**

The prices specified on the Order shall be the Order Price. The Order price will be fixed and firm and shall not be increased or decreased without the prior written consent of the Purchaser.

22. **INVOICES AND PAYMENT**

22.1 When delivery of all the Goods has been effected and all required Work has been completed or during the execution of the Works at the period specified in the Order, invoice(s) shall be rendered to the Purchaser at the address specified in the Order.

22.2 Each invoice shall state the Purchaser's order number and any other details specified by the Purchaser. Failure to state the Purchaser's order number shall

result in payment of the invoice being delayed. Invoices shall be payable within the period stipulated on the Order.

23. **FOREIGN EXCHANGE**

The order price shall be payable in the currency specified in the Order. The risk in fluctuation in rates of exchange shall be borne by the Seller

24. **SET-OFF**

The Purchaser shall be entitled to set-off any amounts owing to the Seller in terms of the Order against amounts owing by the Seller to the Purchaser.

25. **OWNERSHIP, RISK AND INSURANCE**

Upon delivery of or payment for the Goods and / or Work, whichever is the sooner; the ownership therein shall vest absolutely in the Purchaser.

26. **FORCE MAJEURE**

If the Purchaser's contract with the Client is terminated for any reason whatsoever, or it becomes impossible of performance, or performance of this Order becomes impossible by reason of force majeure, war, invasion, act of foreign enemy, hostilities declared or undeclared civil war, rebellion, revolution or any other matter beyond the reasonable control of either party, then either party shall be entitled to suspend the Order upon furnishing the other party with written notice of the circumstances giving rise to the force majeure. During such a period of suspension, the Seller shall store and protect the Goods and / or Work so as to ensure that no damage occurs thereto. If suspension of the Order persists for a period in excess of 120 days, then either party may by notice in writing to the other terminate the Order and thereafter neither party shall be liable to the other for any matter or obligation arising from the Order.

27. **OVERRIDING CONDITIONS**

These General Conditions including any special conditions apply in preference to and supersede any terms and conditions referred to, or offered, or relied on by the Seller whether in negotiation or at any stage in the dealings between the Purchaser and Seller with reference to the Goods and/or Work. Without prejudice to the generality of the foregoing the Purchaser will not be bound by any standard or printed terms furnished by the Seller in any of its documents, unless the Seller specifically states in writing separately that such terms to apply, and the Purchaser acknowledges and agrees to such terms in writing.

28. **SPECIAL CONDITIONS**

Where Special Conditions are detailed in the Order or in a separate document, these Special Conditions shall take precedence over these General Conditions of purchase in the event of any conflict arising between the Special Conditions and the General Conditions

29. **APPLICABLE LAW**

The Order shall be governed by and interpreted in accordance with the Laws of the Republic of South Africa.

30. **DISPUTE RESOLUTION**

30.1 If any dispute or difference of any kind whatsoever shall arise between the Purchaser and the Seller in connection with or arising out of the Order or in connection therewith, the parties shall make every effort to resolve such dispute amicably by mutual consultation.



- 30.2 Should, after 30 days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either party may give notice to the other party of its intention to commence arbitration as hereinafter provided, and no arbitration in respect of this matter may be commenced unless such notice is given.
- 30.3 Any dispute, difference or claim arising out of or relating to this Order or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Foundation of South Africa.
- 30.4 The arbitration shall be held in Johannesburg and shall be conducted in the English language.
- 30.5 Notwithstanding any reference to arbitration herein, the party shall continue to perform the respective obligations under the Order.
31. **ENTIRE AGREEMENT, NON-WAIVER AND DOMICILIUM**
- 31.1 The Order contains the entire agreement between the Parties and supersedes all prior negotiations and communications in relation to the subject matter hereof. No variation or amendment to this Order shall be of any force or effect unless reduced to writing in the form of a formal amendment and signed by both parties.
- 31.2 No act, relaxation, indulgence, or grace on the part of the Purchaser and / or the Seller or will in any way operate as or be deemed to be a waiver by the Purchaser and / or the Seller of any of their rights in terms of the Order or a novation thereof.
- 31.3 The Parties choose as their respective *domicilium citandi executandi* for the purpose of service of legal pleadings the physical address specified in the Order.