

# **SUPPLIER GENERAL TERMS AND CONDITIONS**

between

**SAFRIPOL(PTY) LTD**

**Reg Number: 2006/023706/07**

and

**Reg Number:**

## 1 DEFINITIONS

In this Agreement, except where the context clearly indicates a contrary intention, the following words shall bear the following meanings:

- 1.1 “Agreement” means collectively, this supplier agreement and the Order;
- 1.2 “Applicable Legislation” means any statute, law, regulation, code of practice or standard issued by a relevant regulatory or industry body, whether or not having the force of law, which affect the manufacture, sale, supply, import, export, packaging, labelling or marketing of the Goods and/or Services;
- 1.3 “Confidential Information” means all information of whatsoever nature (whether verbal, written or any other form) belonging to a disclosing party, which is not publicly available, including but not limited to all the disclosing party’s information pertaining to its intellectual property, trade secrets, know-how, business processes, formulae, price lists and all information not specifically mentioned herein disclosed by a Party to the other Party which is of a confidential nature;
- 1.4 “Customer” means the entity within the KAP group of companies placing the Order on the Supplier for Goods and/or Services;
- 1.5 “Delivery” means when the Supplier offloads the Goods at the Customer’s designated delivery address;
- 1.6 “Force Majeure” means any circumstances beyond the reasonable control of the affected Party, which prevents or impedes the execution of an Order including, without limiting the generality of the foregoing, acts of God, strikes, lockouts, riots, floods, fire;
- 1.7 “Goods” or “Services” means the machinery, plant, equipment, apparatus or materials to be supplied and/or work or services to be performed in terms of the Order;
- 1.8 “Intellectual Property” means all intellectual property and rights thereto owned and/or used by a Party including, but not limited to, a Party’s right, title and interest in and to that Party’s technology, specifications, formulations, trademarks, patents and copyright, whether registered or not or in the process of registration or otherwise used by the relevant Party in connection with its business;
- 1.9 “Order” means, collectively, the written purchase order (in electronic or printed format) placed by the Customer for the supply of Goods and/or Services at the Purchase Price and any specifications, data sheets, drawings or other documents attached to such Order;
- 1.10 “Parties” means the Customer and the Supplier and “Party” means the Customer or the Supplier as the context indicates;
- 1.11 “Purchase Price” means the purchase price of Goods and/or Services as reflected in an Order;
- 1.12 “Supplier” means the person or entity supplying the Goods and/or providing the Services to the Customer.

## **2 PRELIMINARY**

The Supplier agrees that:

- 2.1 in the event of any conflict or inconsistency between the provisions of this Agreement and any other agreement and/or terms and conditions pertaining to an Order, the provisions of this Agreement will prevail;
- 2.2 headings are for convenience only and shall not be taken into account for interpretation purposes;
- 2.3 reference to the singular includes the plural and vice versa; any gender includes the other genders; and natural persons include artificial persons and vice versa;
- 2.4 the provisions of this Agreement may only be amended if in writing and signed by or on behalf of the Parties;
- 2.5 this Agreement and all disputes arising from this Agreement will be governed and decided upon in accordance with the laws of South Africa;
- 2.6 in the event that any of the provisions of this Agreement are found to be unlawful or unenforceable for any reason, such provision shall be severable from the remaining provisions and the remaining provisions shall continue to be of full force and effect;
- 2.7 no indulgence, extension of time, relaxation or latitude which the Customer may show, grant or allow to the Supplier shall constitute a waiver by the Customer of any of its rights nor act as an estoppel against the Customer in respect of any of its rights and/or remedies;
- 2.8 any person signing any documentation, including these terms and conditions, on behalf of the Supplier warrants that he/she is authorised thereto by the Supplier.

## **3 ACCEPTANCE OF QUOTATIONS AND ORDERS**

- 3.1 Any quotation provided to the Customer by the Supplier shall remain valid for the period stated therein, alternatively for a period of 30 (thirty) days calculated from the date of the quotation in the event where no period is stated.
- 3.2 The Customer reserves the right to accept or refuse any quotation from the Supplier, in whole or in part.
- 3.3 No contract between the Parties shall exist until an Order is placed by the Customer.
- 3.4 The Customer may, in its sole discretion, cancel any and/or all outstanding Orders in the event of any of the following occurring:
  - 3.4.1 the Supplier being placed under sequestration, liquidation or into business rescue, whether provisionally or otherwise;

- 3.4.2 the Supplier committing any act of insolvency;
- 3.4.3 the Supplier, attempting, recommending or making any general offer of compromise with any or all of its creditors;
- 3.4.4 in the event of any default judgment or any other judgment being granted against the Supplier and failure by the Supplier to satisfy such judgment within 7 (seven) days of granting thereof;
- 3.4.5 the Supplier failing to deliver and/or render the Goods and/or Services in accordance with the terms of the Order;

and the Supplier herewith indemnifies the Customer from any and all loss or damage incurred by the Supplier or any other person or entity as a result of such cancellation.

#### **4 PAYMENT**

- 4.1 Payment is to be effected by not later than the last day of the month following the date of invoice unless otherwise agreed in writing.
- 4.2 The Supplier shall not be entitled to levy any interest or any other charges to the invoiced amount unless the Customer agrees to such addition in writing.
- 4.3 The Customer will furthermore be entitled to withhold or defer payment of any amount due to the Supplier for any Services rendered or Goods delivered of which the quantity and/or specification is not as specified in the Order.
- 4.4 In the event that any amount reflected on any invoice is disputed by the Customer, then and in such case the Supplier shall be obliged to investigate and resolve the dispute in terms of clause 11 hereof.
- 4.5 Any and all amounts due are payable into a bank account nominated by the Supplier in writing and in South African currency, unless otherwise agreed in writing between the Parties.

#### **5 DELIVERY AND OWNERSHIP**

- 5.1 Unless stated otherwise in the quotation, the ownership of and risk in and to the Goods shall pass to the Customer on Delivery.
- 5.2 The Supplier agrees to indemnify the Customer and/or its subcontractors against liability for loss and/or damage caused, including consequential loss or damages, to any person and/or property of the Customer in effecting Delivery.
- 5.3 A signed delivery note with an official stores stamp shall be the only acceptable proof of Delivery.
- 5.4 Acceptance of Services shall be signed off for acceptance by an authorised individual of the Customer.
- 5.5 Delivery dates provided for in an Order shall be adhered to by the Supplier.
- 5.6 The Customer reserves the right to adjust payment terms where Deliveries are incorrectly effected.

## **6 GUARANTEES AND WARRANTIES**

The Supplier hereby warrants and undertakes that:

- 6.1 it has provided the Customer with a copy of its product warranty and returns policy (the "Policy").
- 6.2 all Goods supplied to the Customer, shall have a warranty of at least 1 (one) year in addition to any other implied or express warranty afforded in terms of Applicable Legislation.
- 6.3 This warranty does not extend to improper installation, operation or maintenance of Goods by the Customer; the effects of normal wear and tear; or, repairs or alterations made by third parties without prior written consent of the Supplier which consent shall not be unreasonably withheld or delayed.

## **7 FORCE MAJEURE**

- 7.1 Neither Party hereto shall be liable for failure to perform any obligation hereunder (except any obligation to pay monies) in the event nor to the extent that such failure is caused by Force Majeure.
- 7.2 The Party claiming Force Majeure shall immediately give notice in writing to the other Party of the occurrence of any Force Majeure event which causes or is likely to cause any failure to perform any obligation hereunder. Such notice shall include the nature of the event and its expected duration.
- 7.3 The Party declaring Force Majeure shall use all reasonable endeavours and employ all reasonable means to address the Force Majeure as quickly as possible.
- 7.4 Within ten (10) days after the cessation of the Force Majeure event, the affected Party shall give a further notice specifying the final impact on the performance of the affected Order and a plan for recovery, including any cost impacts for such recovery plan.
- 7.5 Failure to give either of the above notices may cause denial of any relief for the Force Majeure event, at the affected Party's discretion.
- 7.6 In the event of a Force Majeure event or events causing a delay or foreseeable delay in excess of 180 cumulative days in the fulfilment of any Order, the Customer reserves the right to terminate any affected Order on written notice.

## **8 INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 8.1 All Customer Intellectual Property and rights thereto shall remain the sole and exclusive property of the Customer and nothing in this Agreement shall be interpreted as conferring upon the Supplier or any other person a direct or indirect right or interest in or to such Intellectual Property and rights thereto.
- 8.2 The Parties shall retain title to all of their intellectual property previously owned or developed in connection with this Order. The Supplier grants to the Customer a non-exclusive, royalty-free, perpetual, irrevocable and non-transferable worldwide license to use the Supplier's Intellectual Property Rights to the extent incorporated into the Goods for the limited purpose of use, operation, and maintenance of the Goods.

- 8.3 Each Party (“Receiving Party”) agrees that it shall keep any Confidential Information received by it from the other Party (“Disclosing Party”) strictly confidential and that it shall not use any such Confidential Information for its own benefit (save as is necessary in order to perform its obligations and/or exercise its rights under this Agreement) or make public, announce, divulge, reveal or disclose any such Confidential Information to any third party and that it shall ensure that no third party shall have access to it.
- 8.4 Each Party shall use the same means as it uses to protect its own Confidential Information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. Each Party shall procure that no Confidential Information received by the Disclosing Party will be disclosed or used by it, its agents, representatives, or employees for any purpose other than to perform its obligations in terms of this Agreement.
- 8.5 Nothing contained in this Agreement shall be construed as granting or conferring any rights, including by license or otherwise, in any Confidential Information disclosed by the Disclosing Party to the Receiving Party. All Confidential Information is and shall remain the property of the Disclosing Party and shall be returned by the Receiving Party to the Disclosing Party at any time upon request.

## 9 **PRIVACY**

- 9.1 The parties are each responsible for complying with their respective obligations under applicable laws governing privacy and data protection. The parties both acknowledge that they are not investigating the steps the other is taking to comply with any applicable privacy and data protection laws.
- 9.2 To the extent that the Customer discloses personal information, the Supplier will only process the personal information for the purpose of performing the service or supplying the Goods.
- 9.3 Where the Supplier processes personal information for the Customer (as an operator) the Supplier will do so in accordance with any specific terms that the Customer may impose on the Supplier. The Supplier will take steps to secure the integrity of personal information in its possession or under its control by taking appropriate, reasonable, technical and organisational measures to prevent loss of or damage to; unlawful accessing to; or unauthorised processing of personal information.
- 9.4 The Supplier may not transfer any of the Customer’s personal information across a country border without the Customer’s prior written consent.
- 9.5 The Supplier agrees to indemnify, defend, and hold the Customer (and its customers, those related to it, and its personnel) harmless from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to the Supplier’s failure to comply with the Supplier’s obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis. In this clause “related” means natural and juristic persons who are connected to one another in the manner contemplated in applicable law.
- 9.6 On a party’s reasonable written request, the other party will provide the requesting party with the information that it has in relation to this Agreement and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.

- 9.7 Both parties will take reasonable precautions (having regard to the nature of each of their obligations under the Agreement) to preserve the integrity of the Customer's data (including any materials or media in electronic or physical form), and prevent any unauthorised access, corruption, or loss of the Customer's data. Customer's data will include any third party data provided to the Supplier on the Customer's behalf.
- 9.8 On termination of the Agreement, each party will return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of the performance of this Agreement.
- 9.9 The Supplier agrees to promptly inform the Customer of any changes to their personal information, including addresses and contact information.

## **10 WARRANTIES, INDEMNITY AND LIMITATION OF LIABILITY**

- 10.1 The Supplier hereby warrants that:
- 10.1.1 it shall comply with the obligations set out in this Agreement and Applicable Legislation in all aspect of supplying the Goods and/or rendering the Services to the Customer;
  - 10.1.2 it has the necessary rights, licences, certificates and accreditations to supply the Goods and/or render the Services to the Customer;
  - 10.1.3 it possesses the necessary skills, ability, labour, technical and other equipment in order to supply the Goods and /or render the Services in terms of this Agreement;
  - 10.1.4 the Goods shall be in accordance with any specifications stipulated in the Order, in good working order and free of defects.
- 10.2 The Supplier hereby indemnifies and holds the Customer harmless against all losses, damages (whether actual or consequential), penalties, fines, costs (including reasonable attorneys' fees) and claims of whatsoever nature, the cause of which arose from the Supplier's failure to manufacture, package, label, supply, import, export, market or Deliver the Goods and/or render the Services in accordance with Applicable Legislation or in accordance with the terms of any Order.
- 10.3 The Customer's liability to the Supplier under this Agreement and howsoever arising shall be limited to direct damages only and in no event shall the Customer be liable for any consequential, incidental, indirect, special or other damages whatsoever (including, without limitation, penalties, business interruption, loss of profit or other pecuniary loss) arising out of this Agreement.
- 10.4 The Customer's liability to the Supplier will in any event and under no circumstances exceed the value of the relevant Order.

## **11 CHANGE IN CONTROL AND CESSION**

- 11.1 The Supplier is obliged to advise the Customer in writing of any change in ownership or control of the Supplier and/or its business, in whole or in part. Should the Supplier undergo a change of control, the Customer shall be entitled, but not obliged to terminate this Agreement on written notice to the Supplier, provided such notice is given within 2 (two) months' of the date on which the Customer becomes aware of the change in control.

- 11.2 The Supplier shall not be entitled to cede or assign any of its rights and/or obligations under this Agreement without the prior written consent of the Customer.
- 11.3 The Customer shall be entitled to cede and/or assign any of its rights and/or obligations under this Agreement to any third party without the consent of the Supplier which consent shall not be unreasonably withheld.

## 12 **DISPUTES AND LEGAL PROCEEDINGS**

- 12.1 Any Party to this Agreement may declare a dispute by notifying the other Party in writing of the nature of the dispute.
- 12.2 If any dispute arises between the Parties in respect of any aspect of this Agreement or the termination or purported termination of this Agreement, the Parties agree that the dispute will be referred to their respective Chief Executive Officers, or his/her designated executive, who shall negotiate with each other in good faith to resolve such dispute.
- 12.3 If the Parties fail to resolve the dispute by negotiation in terms of clause 12.2 within 14 (fourteen) days after the dispute arises, or such extended period of time as the Parties may agree in writing, the Parties agree to submit the matter in dispute for resolution through arbitration, in terms of clause 12.4.
- 12.4 Such dispute or issue shall be submitted for arbitration in accordance with the Commercial Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator appointed by AFSA in terms of AFSA's rules, provided that nothing herein contained shall prohibit any Party from applying to any competent court for an interdict or other interim urgent relief pending the outcome of such arbitration proceedings.
- 12.5 The provisions of this clause 12 shall survive the termination of this Agreement.
- 12.6 The Parties consent to the jurisdiction of the Magistrate's Court, having jurisdiction, in respect of any action or proceedings which may be brought against it arising out of or relating to this Agreement, notwithstanding that the amount in question may exceed the jurisdiction of such Court.
- 12.7 The Customer shall, however, be entitled to bring any action or proceedings in the High Court or any other Court having jurisdiction.

## 13 **BREACH**

- 13.1 If a Party ("Defaulting Party") breaches any of the provisions of this Agreement and fails to remedy such breach within 20 (twenty) days after receiving written notice from the other Party ("Aggrieved Party") to do so, then the Aggrieved Party shall be entitled to, without prejudice to its other rights in law, to cancel this Agreement or to claim specific performance of all of the defaulting party's obligations whether or not due for performance, in either event without prejudice to the aggrieved party's right to claim damages.
- 13.2 Notwithstanding the provisions of clause 13.1, either Party shall have the right to terminate this Agreement with immediate effect and without prejudice to any other rights and remedies which it may have under the Agreement, in the event that the other Party is liquidated or placed under business rescue, whether provisionally or finally.



13.3 Damages shall bear interest at the prime overdraft rate publicly quoted from time to time by the Customer's bankers from date of quantification to date of payment, both days inclusive.

**14 NOTICES AND LEGAL PROCESS**

14.1 For purposes of this Agreement, including the giving of notices in terms hereof and the service of legal process, the Parties choose as their respective addresses ("domicilium"):

14.2 Customer chooses the following:

The Contracts  
Manager Safripol  
PO Box 700  
Sasolburg 1947

14.3 The Customer chooses the address used on the quotation unless otherwise specified.  
Attention: The Company Secretary

14.4 A Party may at any time change its address by giving notice to the other Party in writing, provided that the new address consists of or includes a physical address at which process can be served.

14.5 Any notice given in terms of this Agreement may be delivered by hand, or be sent by courier, per telefax or by e-mail to the address chosen by the Party concerned.

14.6 Notwithstanding anything to the contrary herein, a written notice actually received by a Party shall be deemed adequate notice to such Party notwithstanding that it was not sent or delivered to its chosen address or given in terms of this clause 14.

THUS DONE AND SIGNED BY THE SUPPLIER ON THE DATE AND AT THE PLACE SET OUT HEREUNDER:

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For:

Representative who warrants that he is duly authorised hereto

Name:	
Designation:	
Date:	
Place:	