

GENERAL CONDITIONS OF PURCHASE

1. INTERPRETATION

- 1.1 The head notes to the clauses of this Contract are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Contract nor any clause hereof.
- 1.2 Unless inconsistent with the context, the word and expressions set forth below shall bear the following meaning and cognate expressions shall bear corresponding meanings:
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| 'Business Day' | any day other than a Saturday, Sunday, official Public Holiday in South Africa; |
| 'Contract' | the contract shall be constituted of the Order, Order Form, such plans, specifications, drawings and annexures referred to in or attached to the Order, and such other terms and conditions as may be specified agreed to in writing between the Parties; |
| 'Delivery Date' | the due date for execution, completion and delivery of the Goods; |
| 'Goods' | the materials, products and / or services specified in the Order, to be supplied or performed by the Seller pursuant to the Order; |
| 'Order' | the order placed by the Purchaser on the Seller in terms of clause 2 hereof; |
| 'Order Form' | the Purchaser's official and standard order form |
| 'Parties' | the Purchaser and the Seller and the 'Party' shall, as context requires, be a reference to either one of them; |
| 'Purchaser' | Southey Holding (Pty) Ltd and/or any subsidiary or division |
| 'Purchaser Price' | the purchase price stipulated in the Order and determined in accordance with the provisions of clause 4 |
| 'Seller' | The Party upon who the Order (as hereinafter defined) is placed; |
| 'VAT' | value added tax imposed in terms of the Value Added Tax Act, No. 89 of 1991 (as amended), including any similar tax which may be imposed in place thereof from time to time. |
- 1.3 If any provisions in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Contract.
- 1.4 Unless inconsistent with the context, an expression which denotes:
- 1.4.1 Any one gender includes the other gender;
- 1.4.2 A natural person includes an artificial person and vice versa; and
- 1.4.3 The singular includes the plural and vice versa.
- 1.5 The schedules to the Contract form an integral part thereof and words and expressions defined in this Contract shall bear, unless the context otherwise requires, the same meaning in such schedules.
- 1.6 When any number of days is prescribed in this Contract, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day.
- 1.7 In the event that the date for payment of any amount in terms of this Contract should fall on a day which is not a Business Day, in which case the last day will be immediately the following Business Day.
- 1.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.9 Where any term is defined within the context of a particular clause in this Contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this contract, notwithstanding that the term has not been defined in this interpretation clause.

- 1.10 Any reference to an enactment in this Contract is to that enactment as at the Signature Date and as amended or re-enactment from time to time.
- 1.11 The rule of construction that the Contract shall be interpreted against the Party responsible for the drafting for preparation of the Contract, shall not apply.
- 1.12 The expiration or termination of this Contract shall not affect such of the provisions of this Contract as expressly provide that they will operate after such expiration or termination or which of necessity will continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. PLACEMENT OF ORDER

- 2.1 The Contract between the Parties shall only come into existence upon assurance by the Purchaser of the Order Form.
- 2.2 Unless otherwise specifically stipulated in writing in the Order, the Contract constitutes the sole memorial of the contract between the Parties, and any terms and conditions forming part of the Seller's tender or other documentation shall not form part of the Contract and shall be of no force and effect.
- 2.3 By tendering the Seller shall be deemed to have satisfied himself regarding all conditions affecting the Order, and shall at all times comply with the manifest intent of the Order, and shall not avail himself of errors in or omissions from the Order.
- 2.4 The submission of a tender by the Seller shall, unless the contrary is clearly indicated in the Seller's tender and confirmed in the Order, be deemed to constitute acceptance by the Seller of the Contract. The mere submission of a tender containing the Seller's standard terms and conditions shall not constitute a clear indication as required by the clause.
- 2.5 The Seller shall acknowledge acceptance of the Order by signing and returning the 'Acknowledgement of Order' card forming part of the Order Form. Failure to do so within 7 days, or commencement of performance in terms of the Order, shall be deemed to constitute acceptance of the Order.

3. SCOPE OF ORDER

- 3.1 The Seller executes the Goods strictly in accordance with the Order, and shall not deviate there from without the written instructions of the Purchaser.
- 3.2 In event that the Goods forming the subject matter of the Order are required by the Purchaser for incorporation into work for or delivery to a third Part in terms of a separate contract, the terms and conditions of the Contract shall take precedence in the event of a conflict.
- 3.3 The Purchaser shall be entitled, by notice in writing, to add to, omit from or otherwise vary the scope of the Order, and the Seller shall be bound to give effect to such additions, omissions or alterations as if they had been specified in the Order, and the scope of the Order shall thereupon be deemed to have been amended accordingly.
- 3.4 If any such notice in terms of clause 3.3 shall affect the Purchase Price, Delivery Date or any other obligations of the Seller, the Seller shall notify the purchaser thereof in writing within 7 days of receipt of such notice and before compliance therewith whereupon the Purchaser shall be entitled either to withdraw such notice or to record in writing such amendments to the Purchase Price, Delivery Date or other obligations as may be reasonable in the circumstances. Failure by the Seller to comply with the provisions of the clause will constitute an acceptance by the Seller of the originally agreed Purchase Price, Delivery Date and other obligations.

4. PRICE AND CONDITIONS OF PAYMENT

- 4.1 Unless otherwise specifically stipulated in the order, the price to be paid by the Purchaser to the Seller in terms of the Order shall cover all the Seller's obligations in terms of the Order and those that can be reasonably inferred there from shall be fixed and not subject to escalation, and shall be inclusive of all taxes, including VAT, customs duties, exchange rate fluctuations, clearance and other charges, and the costs of packaging, delivery, offloading and insurance.
- 4.2 **Unless otherwise stated in the Order, the Purchaser shall pay to the Seller the Purchase Price within 30 days minus 2.5% settlement discount or alternatively 45 days from date of statement after the last day of the calendar month in which the Goods are delivered and accepted by the Purchaser, provided always that the Seller's invoice in respect of the Goods reaches the Purchaser before the 25th day of the said month.**
- 4.3 Delivery prior to the due date shall, for the purposes of the Contract, including the conditions of payment, be deemed to have been delivered on the due date.
- 4.4 Any claims for extra work or adjustment of the Purchase Price pursuant to such escalation formula as may have been agreed to in the Order, shall be forfeited by the Seller unless submitted, together with such supporting documentary evidence as the Purchaser may require, to the Purchaser as soon as possible, but in any event not later than 90 days after the Delivery Date.

5. EXECUTION, COMPLETION AND DELIVERY

- 5.1 The Delivery Date of the Goods, shall be the date(s) specified in the Order, provided that, if no date is stated, the Delivery Date shall be deemed to be a reasonable time after the date of the Order, and provided further that should the Order be in respect of Goods 'ex stock' and if no Delivery Date is specified in the Order, the Delivery Date shall be deemed to be no later than 7 days after the date of the Order.
- 5.2 Timeous execution, completion and delivery shall be considered the essence of the Order, and should execution, completion or delivery be delayed beyond the Delivery Date, or should the Purchaser have reasonable grounds for believing that the Seller will be unable to execute, complete or deliver the Goods on or before the Delivery Date, the Purchaser may, at its sole option and without prejudice to any of its rights, elect to cancel the order in whole or in part, or to enforce the Order and to recover damages, or, in lieu of recovery of such damages, the Purchaser may elect to recover penalties for the delay at the rate of 1% (one percent) of the Purchase Price, as varied in accordance with the Order, per week or part thereof of delay.
- 5.3 In the event that the Purchaser cancels the Order, the Purchaser shall be entitled, without prejudice to any other right which it has under this Agreement or at law, and subject to the obtaining of a court order where required under law, to enter upon the premises of the Seller and to take from the Seller such completed or uncompleted works, raw materials, tools or other items necessary to enable the Purchaser to complete the Goods. Payment for Goods completed shall be borne by the Seller.
- 5.4 The Seller shall be responsible for the adequate and secure packaging, preservation and other necessary protection of the goods, and unless otherwise stated in the Order, packing cases and other materials shall become the property of the Purchaser.
- 5.5 Unless otherwise stated in the Order, the Goods shall be delivered to the Purchaser at the cost of the Seller and at an address to be designated by the Purchaser in writing.
- 5.6 Unless agreed to in writing by the Purchaser, the delivery of the Goods shall not be affected 'free of rail', 'free on board' or on the basis of a 'cost insurance freight' contract.
- 5.7 The ownership of the Goods shall pass to the Purchaser upon delivery thereof to the Purchaser.

6. INSPECTION

- 6.1 The Purchaser shall at all reasonable times, both prior to and upon the Delivery Date, have the right to inspect the Goods, and shall be entitled to reject any Goods that do not conform to the Order.
- 6.2 The inspection by the Purchaser of any Goods shall be for the benefit of the Purchaser, and shall not relieve the Seller of any of his obligations in terms of the Order and the Seller shall have no right to rely on the failure if the Purchaser to identify defects during such inspection.
- 6.3 Notwithstanding acceptance by the Purchaser of the Goods upon delivery thereof, the Goods shall remain liable to rejection in terms of clause 7 hereof, if subsequently found not to conform to the Order.
- 6.4 Rejected Goods will be held at the risk and expense of the Seller and, unless otherwise directed by the Purchaser, shall be replaced at the sole expense of the Seller, by Goods in conformity with the Order.

7. SELLER'S LIABILITY

7.1 Liability for defects

- 7.1.1 The Seller warrants that the Goods will conform in all respects to the Order and such other requirements as can reasonably be inferred there from and shall be the best quality and description suitable for the purposes intended.
- 7.1.2 Should the Goods manifest any defects (being any nonconformity with the undertaking given in Clause (7.1.1 hereof) either prior to, or within a period of 12 months from Delivery Date or 12 months from the date that the Goods are first used for the purpose intended (whichever is the later), or such other period as may be stipulated in writing in the Order. The Seller shall, within the time period specified by the Purchaser, and at the sole cost expense of the Seller, repair, or at the option of the Purchaser, replace or re-execute the defective Goods, and shall be liable for all other costs, damages or expenses suffered by the Purchaser as a result of such defect.
- 7.1.3 Should the Seller fail to fulfil its obligations in terms of clause 7.1.2 above, the Purchaser shall be entitled, at the risk and expense of the Seller, and without prejudice to its other rights in terms of the Order or at law, to undertake the repair, replacement or re-execution of the Goods or to have such repairs, replacement or re-execution effected by a third Party, and to recover the costs thereof and any other damages occasioned thereby from the Seller.
- 7.1.4 The obligations of the Seller in terms of this clause 7.1 shall, respect of all repaired, replaced or re-executed Goods, be extended for a further period of 12 months (or such other period as may have been agreed in writing in terms of clause 7.1.2 above) from the date of completion of such repair, replacement or re-execution.

7.2 Liability for loss, accidents or damage

- 7.1.5 All Goods shall be and shall remain at the sole risk of the Seller until delivered to and accepted by the Purchaser.
- 7.1.6 The Seller undertakes that, until delivery to and acceptance by the Purchaser, the Goods shall be fully insured and that the interest of the Purchaser will be noted on the relevant insurance policies.

7.1.7 The Seller shall indemnify and hold harmless the Purchaser against any loss, accidents, damage injury or death as may occur to or be sustained by any persons or property (including the Goods) during or arising out of the execution of the works and undertakes that the Seller's risks in this regard will be adequately insured in terms of (without limitation) appropriate workmen's compensation insurance, public liability insurance cover, common law liability cover and contractors all risks insurance cover.

8. INFRINGEMENTS OF INTELLECTUAL PROPERTY

8.1 The Seller hereby indemnifies and holds the Purchaser harmless against all claims and expenses of whatsoever nature and description arising from the alleged or actual infringement of any patents, trademarks, designs or copyright occasioned by the Purchaser's performance of the Contract.

8.2 The Purchaser warrants however that any designs specified by it shall not infringe any such patents, trademarks, designs or copyright.

9. ASSIGNMENT AND SUB-CONTRACTORS

9.1 The Seller shall not, without the prior consent in writing of the Purchaser, assign or otherwise transfer the Order or any part thereof to any third Party whatsoever.

9.2 The Seller shall not sub-contract any part of the Order to any third Party without the consent, in writing, of the Purchaser.

9.3 The Seller shall at all times remain fully responsible for the performance of any sub-contractor, and shall ensure that the sub-contractor is bound to the Seller in the same way, *mutatis mutandis*, as the Seller is bound to the Purchaser, and warrants that all guarantees or other undertaking given by the sub-contractor are transferable to the Purchaser.

9.4 In the event that this Contract is terminated for any reason, the Purchaser shall, without prejudice to any of its rights, be entitled to take over and enforce any such sub-contracts.

10. DURATION

After an initial period of 6 (six) months after the assurance by the Purchaser of the Order Form either Party shall be entitled to terminate this Contract by giving not less than 4(four) weeks written notice thereof to the other Party.

11. FORCE MAJEURE

11.1 Save to the extent that such liability is covered in terms of appropriate insurance cover, neither Party shall be liable to the other for inability to perform or delayed performance in terms of the Contract, should such inability or delay arise from any cause beyond the reasonable control of such Party, provided that the existence or happening of such cause has been drawn to the attention of the other Party within a reasonable time of occurrence of such cause (hereinafter referred to as a 'Force Majeure event').

11.2 For the purposes of this clause a Force Majeure event shall, without limitation of the generality of the foregoing, be deemed to include strikes, lockouts, accidents, fire, explosions, theft, war (whether declared or not), invasion, acts of local or national government, martial law or any other cause beyond the reasonable control of the Party affected excluding non-performance or non-delivery by any sub-contractor.

12. BREACH

12.1 Should either Party ('the Defaulting Party') commit a breach of any of the provisions hereof, then the other Party ('the Aggrieved Party') shall be entitled to require the Defaulting Party to remedy the breach upon 14 (fourteen) days written notice to do. If the defaulting Party fails to remedy the breach within the period specified in such notice the Aggrieved Party shall be entitled to claim immediate payment and/or performance by the Defaulting Party and all of the Defaulting Party's obligations whether or not the due date of payment and/or

performance shall have risen, in either event, without prejudice to the Aggrieved Party's right to claim damages. The foregoing is without prejudice to such other rights as the Aggrieved Party may have at law; provided that notwithstanding anything to the contrary contained in this Contract, the Aggrieved Party shall not be entitled to cancel this Contract for any breach by the Defaulting Party unless such breach is a material breach going to the root of this Contract and is incapable of being remedied by a payment of money or, if it is capable of being remedied by a payment of money, the Defaulting Party fails to pay the amount concerned within 20 (twenty) Business Days after such amount has been determined.

12.2 The Purchaser may terminate this Contract at any time by giving to the Seller notice of such termination if/or compulsory liquidation (whether provisional or final) or under judicial management or under receivership or under equivalent of any of the foregoing;

OR

12.2.1 a final and unappeasable judgement against the Seller remains unsatisfied for a period of 14 (fourteen) days or more after it comes to the notice of the board of directors of the Seller;

OR

12.2.2 the Seller makes any arrangement or composition with its creditors generally or ceases to carry on business;

OR

12.2.3 the Seller is amalgamated with, purchase by or through any corporate reconstruction becomes a part or member of or associated with, a competitor of the Purchaser.

12.3 If the Seller, or any of its sub-contractors, agents, employees or servants gives or offers to give any person any bribe, gift, gratuity or commission as an inducement or reward (i) for doing or forbearing to do any action in relation to this Contract or any Order or any other Contract with the Purchaser, or (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Order or this Contract or to any other Contract with the Purchaser, or (iii) commits any act of dishonesty, fraud or theft in relation to the Order and/or this Contract and/or this Contract and/or Goods delivered pursuant to this Contract (hereinafter (i), (ii) and (iii) shall be collectively referred to as 'dishonesty'), then the Purchaser shall be entitled to cancel this Contract and/or any Order without prejudice to any other rights which the Purchaser may have terms of this Contract or at law, outstanding under this Contract upon written notice to the Seller. Should the Purchaser choose not to cancel this Contract and/or any Order outstanding under this Contract, then the Purchaser shall be entitled to claim all losses, costs and damages which the Purchaser may suffer as a result of the dishonesty to the Seller. The Purchaser shall not be obliged to pay or compensate the Seller or any of its sub-contractors, agents, employees or servants for any work in progress or Goods to be supplied under any Orders cancelled in accordance with the provisions of this clause 12.3.

12.4 Any termination pursuant to the preceding provisions of this clause 12 shall be without prejudice to any claim, which any Party may have in respect of any prior breach of the terms and conditions of this Contract by any other Party.

13. CONFIDENTIALITY

Any plan, patterns, drawings, designs or other information supplied by the Purchaser to the Seller in connection with this Contract ('Information') shall remain the property of the Purchaser and the Seller shall keep confidential and shall not use for any purpose other than the execution of this Contract any information derived there from.

13.2 The Seller shall not, without the consent in writing of the Purchaser published or disclosed any information derived from this Contract to any third Party.

13.3 The Seller shall return all information, whether in document format, electronic or otherwise, to the Purchaser within seven (7) days of the termination of this Contract or within seven (7) days of written request by the Purchaser to the Seller requesting the return of the information or any part thereof before the termination of this Contract.

14. GOVERNING LAW

The entire provisions of this Contract and any Order shall be governed by and construed in accordance with the laws of the Republic of South Africa. The Parties hereby irrevocably and unconditionally consent to the non—exclusive jurisdiction of the Cape Metropolitan Council Local Division of High Court of South Africa in regard to all matters arising from this Contract provided that notwithstanding the foregoing, any action by the Purchaser against the Seller may be instituted at the Purchaser's option in a Magistrate's Court of competent jurisdiction notwithstanding that the amount of its claim exceeds the jurisdiction of such Court.

15. WAIVER

No act of relaxation, indulgence or grace on the part of the Purchaser shall in any way operate as or be deemed to constitute a waiver by the Purchaser of any of its rights in terms of the Order, or a novation thereof.

16. OCCUPATIONAL HEALTH AND SAFETY

The Seller accepts that it is an 'employer' in its own right in terms of the Occupational Health and Safety, No. 85 of 1993, as amended, and shall ensure compliance with the provisions of the said legislation, including but not limited to those dealing with the conditions of work of its labour, the safety of the services and the health and safety of all persons on the site.

17. CASTINGS

All castings supplied by the Seller to the Purchaser shall be sound, clean, unpainted, out to twist and free from blowholes (whether plugged or otherwise) as well as distortion and surface and other defects. They shall be well dressed or fettled and shall be machine-able by normal methods.

18. PATTERNS

Patterns jigs, tooling and moulds will be supplied on loan to the Seller where necessary, but shall be returned to the Purchaser in the same condition as originally received by the Seller from the Purchaser fair, wear and tear excluded. The Seller shall remain solely responsible to ensure that the patterns, jigs, tooling and moulds provided by the Purchaser conform to the requirements of the order and indemnifies the Purchaser against any cost, expense or damages, arising from the use of a faulty pattern by the Seller. Should patterns, jigs, tooling or moulds be returned in a damaged or incomplete condition, any repair or replacement charges will be for the Seller's account.

19. COSTS

19.1 Each Party shall bear their own costs (including VAT) of and incidental to the negotiation, preparation, execution, implementation and delivery of this Contract.

19.2 All legal costs, including costs as between an attorney and his own client, charges and disbursements incurred by any Party in enforcing or defending any of the provisions of this Contract and costs and disbursements incurred in tracing the defaulting Party and in collecting or endeavouring to collect all or any amounts payable by the defaulting Party hereunder or otherwise, and all collection commissions including any VAT on any such costs, charges, disbursements, commissions or fees, shall be for the account of the defaulting Party and shall be payable on demand.

20. GENERAL

- 20.1 This document (as read with the Order) contains the entire agreement between the Parties in regard to the subject matter hereof.
- 20.2 No Party shall be bound by or have any claim or right of action arising from any express or implied term, undertaking representation warranty, promise or the like not included or recorded in this document whether it induced the Contract and/or whether it was negligent or not.
- 20.3 No variation, amendment or consensual cancellation of this Contract or any provision or term hereof or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Contract and no settlement of any disputes arising under this Contract and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Contract or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Contract shall be binding or have any force and effect unless reduced to writing and signed by or on behalf of the Parties. Any such extension, waiver or relaxation or suspension that is so given or made shall be strictly construed as relating to the matter in respect whereof it was made or given.
- 20.4 No failure by a Party to enforce any provisions of this Contract shall constitute a waiver of such provision or affect in anyway a Party's right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.
- 20.5 If any clause or term of this Contract should be invalid, unenforceable, defective or illegal for any reason whatsoever, then the remaining terms and provisions of this Contract shall be deemed to be severable there from and shall continue in full force and effect unless such invalidity, enforceability, defect or illegality goes to the root of this Contract.
- 20.6 The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Contract.
- 20.7 In the event of a conflict between the provisions of this Contract and any Order, the provisions of this Contract shall prevail. The Seller's general conditions of contract or sale shall not in any circumstances apply to any Order made or Goods delivered in terms of this Contract.