

AVENG GROUP TERMS AND CONDITIONS OF PURCHASE

1. In these terms and conditions

- 1.1 "the/this" Agreement means the agreement concluded between the Purchaser and Supplier in respect of the transaction, which agreement comprises the Order and the terms;
- 1.2 "delivery instructions" means the delivery instructions set out on the face of the order;
- 1.3 "goods" means the goods purchased by the Purchaser from the Supplier as specified on the face of the Order;
- 1.4 "the Order" means the purchase order to which these terms are attached;
- 1.5 "parties" means the Supplier and the Purchaser;
- 1.6 "the Purchaser" means the party denoted as such on the face of the Order;
- 1.7 "specification" means the quality specifications in respect of goods as contained in the Order;
- 1.8 "Supplier" means the party denoted as such on the face of the Order;
- 1.9 "the terms" means the standard terms and conditions contained in this document;
- 1.10 "the transaction" means the purchase of the goods by the Purchaser from the Supplier to which this Agreement applies;
- 1.11 A reference to "damages" shall be deemed to include all damages whether direct, indirect or consequential, including without being limited to loss or profit.

2. The transaction

The Purchaser hereby purchases the goods from the Supplier which agrees to deliver the goods to the Purchaser pursuant to the Order and to the terms.

3. Placement and acceptance of Order

This agreement shall be deemed to come into effect upon the date the date of delivery of the Order by the Purchaser to the Supplier (whether by hand, email, telefax or otherwise).

4. Purchase price

Subject to 6, the purchase price shall be the amount specified as such in the Order.

5. Payment

- 5.1 The Purchaser will pay the purchase price to the Supplier within 30 (thirty) days after receipt of a valid statement recording the original invoices together with all supporting documentation proving delivery of goods to the Purchaser.
- 5.2 If the tax invoices referenced in the Statement are incorrect or incomplete or not timeously received by the Purchaser then the Purchaser shall notify the Supplier accordingly and the Purchaser shall not be required to effect payment of the purchase price until it receives the correct or complete version of the relevant tax invoice and/or supporting documentation in which case it shall make payment in terms of 5.1.
- 5.3 The Purchaser shall be entitled to deduct, set-off or withhold from any payment to be made to the Supplier any amount owing by the Supplier to the Purchaser.

6. Price adjustments

- 6.1 Where:
 - 6.1.1 the price in the Order is stated to be subject to adjustment; or
 - 6.1.2 an adjustment to such prices is necessitated by amendments to the "official railway tariff book" of the South African Railways; or
 - 6.1.3 the goods are imported and an adjustment to the prices in the Order (not occasioned by fault or negligence on the part of the Supplier) is necessitated by variations in the rate of exchange between the currency of the country of manufacture and South African currency, ocean/airfreight and insurances, customs clearing charges and/or where applicable South African customs duties a claim for adjustments may be made by the Supplier provided that it is submitted to the Purchaser, in writing, prior to despatch of the goods and supported by such documentary evidence as may be required by the Purchaser,
- 6.2 Upon receipt of notice referred to in 6.1, the Purchaser shall be entitled to either accept or reject any proposed adjustments and to cancel the Order forthwith without any liability for compensation to the Supplier for any damages whatsoever.

7. Delivery

- 7.1 The Supplier shall:
 - 7.1.1 at its cost deliver the goods to the Purchaser in terms of the delivery instructions; and
 - 7.1.2 deliver to the Purchaser a waybill together with the goods which shall include the order number, gross and net weights and the number of units supplied.
- 7.2 The Supplier shall not be entitled to effect part delivery of the goods unless the Purchaser's prior written consent is obtained. Part deliveries will not entitle the Supplier to part payment of the purchase price.
- 7.3 The Supplier acknowledges that time is of the essence in relation to the transaction and the Supplier's failure to deliver the goods timeously in accordance with delivery instructions shall entitle the Purchaser to:
 - 7.3.1 source the goods from third parties other than the Supplier and to recover from the Supplier any adverse difference between the cost of doing so and the purchase price; or
 - 7.3.2 recover damages the onus being on the Supplier to prove that the Purchaser did not suffer damages as a result of its failure to deliver in terms of the delivery instructions.
- 7.4 Ownership of and risk in the goods shall pass to the Purchaser upon delivery.

8. Packing and containers

The Supplier shall pack all goods in such a manner so as to prevent damage in transit and all packages shall be clearly marked and addresses by means of oil paint or suitable label. All packing materials used upon delivery thereof become the property of the Purchaser.

9. Damaged goods

- 9.1 In the event of any patent defects manifesting within a period of 12 (twelve) months from date of completion of the project in respect of which the goods have been ordered, the Purchaser shall be entitled to call upon the Supplier to replace, at the Supplier's own cost, such defective goods promptly and without delay.
- 9.2 Should any goods supplied in terms of this agreement fail to comply with the specifications, or be unsuitable, defective or damaged, the Purchaser shall be entitled to:
 - 9.2.1 require that the Supplier, at its own cost, cause such defects/damages to be rectified or to be replaced promptly and without delay; or
 - 9.2.2 cancel the Agreement and claim such damages as it may have sustained in which case the Supplier shall at its own cost be required to remove the goods.
- 9.3 In the event of a dispute arising in respect of whether the goods comply with the specification, the Supplier shall, within 7 (seven) days of the rejection of the goods by the Purchaser send for tests and/or analyses to be undertaken by a recognised public authority nominated by the Purchaser, who shall act as an expert and not an arbitrator and whose decision shall be final and binding on the Supplier. The cost of the tests and/or analyses shall be borne by the Supplier provided that in the event that it is proved that such goods do comply with the specification, the Purchaser shall refund the Supplier all costs.

10. Warranties

The Suppliers warrants that:

- 10.1 the goods are and shall be suitable for the purpose for which they are required;
- 10.2 the goods are and shall be free from any defects (whether latent or patent) whether in material, design, workmanship or otherwise and are and shall be of good and merchantable quality;
- 10.3 no person has or shall have any right (including any option, preferential rights or right of first refusal of any nature whatever) to acquire any of the goods;
- 10.4 the goods are not and shall not be subject to:
 - 10.4.1 any lien, pledge, hypothec, mortgage, notarial or other bond, cession or any other encumbrance of whatsoever nature in favour of any third person; or
 - 10.4.2 any credit agreement, lease or other agreement conferring any right to possession on anyone else nor will the Supplier be obliged to grant any such to any third person.

11. Loss and/or damage

All goods supplied in terms of the Order shall be and remain at the sole risk of the Supplier who shall bear all costs whatsoever arising from, or in respect of all losses, damages and/or destruction of the goods until such time as the goods have been delivered to the Purchaser.

12. Indemnity

The Supplier hereby indemnifies and holds the Purchaser harmless against all and any costs, liability, loss, damages or expense that it may sustain by virtue of:

- 12.1 the Supplier breaching the agreement; and
- 12.2 any claims which may be made against it for the unauthorised use or infringement of patent rights, trademarks and/or any other protected proprietary rights in respect of the goods.

13. Exclusion of Liability

The Supplier acknowledges and agrees that the Purchaser shall not be liable for any injury sustained and/or damages suffered by any employee, contractor and/or any other person employed by the Supplier in any manner whatsoever, at the premises of the Purchaser and hereby indemnifies the Purchaser accordingly.

14. Breach

If the Supplier breaches the Agreement the Purchaser will be entitled to, cancel the Agreement and/or claim immediate specific performance and, in both cases recover such damages it may have sustained from the Supplier.

15. Dispute resolution

- 15.1 Any dispute, difference, deadlock or impasse of whatever nature ("dispute") between the parties arising out of or pursuant to the Agreement, its interpretation, the parties respective rights and/or obligations thereunder, its termination or any matter arising out of its termination, that dispute shall be decided by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa, by an Arbitrator appointed by that Foundation.
- 15.2 The arbitration shall be held at Sandton in accordance with the formalities and procedure settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual rules of evidence.
- 15.3 The arbitration shall be held as quickly as possible after it is demanded, with a view to being completed within 30 (thirty) days after it has been so demanded.
- 15.4 The clause is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated.
- 15.5 The provisions of this clause shall not prohibit the parties from making application to court for urgent and/or interim relief.

16. Conflict of terms and conditions

- 16.1 The Order may contain special terms for each transaction, to the extent that any of the special terms conflict with any of the terms, the terms shall prevail.
- 16.2 If any one or more of the terms or the special terms of the Order are not enforceable for any reason whatsoever, the remainder of the terms and of the special terms shall continue to be of full force and effect.

17. Domicilia

The parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents of whatever nature, the addresses set out on the face of the Order.

18. Legal costs

If the Purchaser instructs attorneys to render legal services to enforce its rights arising from a failure by the Supplier to comply with its obligations in terms of this Agreement, the Supplier shall be liable for all costs and disbursements incurred by the Purchaser to such attorneys as are agreed between the Purchaser and its attorneys or if there is no agreement, calculated on the scale as between attorney and own client. The Supplier shall be liable for the foregoing once the Purchaser instructs its attorneys whether or not legal proceedings are commenced.

19. Cession and assignment

The Supplier shall not be entitled to cede, assign and/or otherwise transfer any of its rights or obligations in terms of the Order without the prior written consent of the Purchaser.

20. Force majeure

- 20.1 Each of the Purchaser and the Supplier ("the affected party") shall be discharged from its obligations in terms of this Agreement, without any right on the part of the other party to claim damages or any other relief where the affected party is prevented or restricted directly or indirectly from carrying out its obligations under this Agreement by reason of strike, lockout, fire, explosion, floods, drought, riot, war, accident, acts of god, embargo, legislation, civil commotion, unrest or disturbance, cessation of labour, government interference or control.
- 20.2 The affected party shall notify the other party in writing of its inability to comply with the agreement by reason of force majeure. If, as a result of the force majeure the affected party is unable to comply with its obligations in terms of the Agreement, either of the parties shall be entitled to cancel the Agreement without liability for any damages whatsoever.

21. General

- 21.1 This Agreement constitutes the sole record of the entire agreement between the parties in regard to the transaction and supercedes any existing agreement, whether oral or in writing between them regarding any transaction which may be in force as at the date of the Order.
- 21.2 No relaxation or indulgence which either party may grant to the other shall constitute a waiver of any of the rights of the grantor.
- 21.3 No alterations or additions to this Agreement shall be of any force or effect unless made in writing and signed by or on behalf of the parties by persons duly authorised.
- 21.4 Neither party shall be bound by any undertakings, representations, warranties, promises, or the like not recorded herein.
- 21.5 Any rights which are stated to accrue to the Purchaser in terms of this Agreement shall be without prejudice to any other rights which the Purchaser may have in law and any entitlement of the Purchaser in its absolute discretion.
- 21.6 This agreement shall be governed and construed and interpreted in accordance with the laws of the Republic of South Africa and the parties consent to the exclusive jurisdiction of the South African courts.