

PROCUREMENT TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms and Conditions, unless the context clearly indicates a contrary intention, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
- 1.1.1 **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.2 **"Company"** means Fluid Control Projects (Pty) Ltd, Registration Number: 2014/198571/07;
- 1.1.3 **"Invoice"** means the invoice rendered and delivered by the Supplier to the Company, which invoice will be in line with the relevant Quotation, if applicable, and will among others stipulate the following: the date, the Supplier's details, banking details, amount due and payable, the Materials to be delivered and the agreed upon lead times and/or delivery dates;
- 1.1.4 **"Materials"** - means the materials to be provided by the Supplier to the Company from time to time;
- 1.1.5 **"Parties"** means the Supplier and the Company collectively, and **"Party"** shall mean either one of them as the context may require;
- 1.1.6 **"Premises"** means the immovable property where the Materials are to be delivered as communicated by the Company to the Supplier in writing;
- 1.1.7 **"Quotation"** means the quotation furnished by the Supplier to the Company, stipulating the estimated costs in respect of the Materials to be delivered;
- 1.1.8 **"Supplier"** means the entity supplying the Company with the Materials from time to time; and
- 1.1.9 **"Terms and Conditions"** means these procurement terms and conditions.
- 1.2 In these Terms and Conditions, the words "clause" or "clauses" refer to clauses of these Terms and Conditions.
- 1.3 If any period is referred to by way of reference to a number of days, the days 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, in which case the last day shall be the first Business Day thereafter.
- 1.4 Where the day on or by which anything is to be done, is not a Business Day, it shall be done on or by the first Business Day thereafter.
- 1.5 An expression which denotes:
- 1.5.1 any gender includes the other genders;
- 1.5.2 a natural person includes a juristic person and vice versa; and
- 1.5.3 the singular includes the plural and vice versa.
- 1.6 The use of the word "including" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.7 These Terms and Conditions shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.

2. APPLICATION

- 2.1 Unless specifically and explicitly otherwise agreed in writing by the Company, only these Terms and shall apply to an order for, and/or the sale and delivery of the Materials by the Supplier to the Company. This includes that these Terms and Conditions will override and supersede any and all terms and conditions of trade stipulated/advanced by the Supplier from time to time, unless specifically and explicitly agreed otherwise by the Company in writing.

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3. QUOTATIONS AND ORDERS

3.1 General

- 3.1.1 The Supplier agrees to supply the Materials to the Company, and the Company agrees to procure the Materials from the Supplier, subject to the terms and conditions of these Terms and Conditions.
- 3.1.2 The Supplier will use its reasonable commercial endeavours to supply the Materials to the Company in accordance with the Company's orders and therefore will endeavour to maintain sufficient stock levels of the Materials for supply to the Company.

3.2 Placing of orders and order confirmation

- 3.2.1 The Company shall, from time to time, request quotations from the Supplier in respect of the Materials. The Company will clearly indicate the specific Materials, as well as the quantity required in respect of each material/product.
- 3.2.2 Unless otherwise agreed by the Company, the Supplier will, within 24 (twenty four) hours, from the date upon which the request for quotation is received, provide the Company with a written quotation. The said quotation will indicate the specific Materials, the number of each Material, as well as the specific price per Material.
- 3.2.3 Upon acceptance of a quotation by the Company, the Company will forthwith place an order with the Supplier. It is specifically recorded that a mere request for a quotation will not be deemed to be an order, and that only a written order, duly delivered by the Company, shall be a valid order. For the avoidance of doubt, the Company will under no circumstances be obliged to make an order, after a request for quotation has been made.
- 3.2.4 After a written order has been placed by the Company, the Supplier will furnish the Company with the applicable invoice. The said invoice will correspond with the relevant quotation. In the event of any inconsistencies between the accepted quotation and invoice delivered, the Company will inform the Supplier thereof. The supplier will correct any such inconsistencies without delay, and in any event within 24 (twenty four) hours thereof.

4. PRICE

- 4.1 The price/s applicable to orders confirmed by the Company, will be based on the accepted Quotations and subsequent invoices, and reflected on the applicable Quotations and Invoices.

5. PAYMENTS

- 5.1 In the event of no payment terms agreed upon between the Company and the Supplier, the Company will pay to the Supplier, each and every invoice rendered, within 60 (sixty) days from the date of receipt of the applicable Invoice, into the nominated bank account, as nominated by the Supplier, from time to time.

6. DELIVERY

6.1 Delivery lead times

- 6.1.1 Unless otherwise agreed upon between the Parties in writing the Supplier shall have a lead time between 7 (seven) and 14 (fourteen) days, from the Invoice date to deliver the Materials under and in terms of these Terms and Conditions, and specifically the trade term (refer clause 6.3).

6.2 Date of delivery

- 6.2.1 Time shall be of the essence for any order and any and all confirmed delivery dates (i.e. the last day of the delivery lead times) must be adhered to and as such, the Materials must be delivered by no later than the delivery date.
- 6.2.2 It is specifically recorded that, in the event of the Supplier failing to deliver the Materials on a specified delivery date, the Company reserves the right to cancel that applicable order. The Supplier will under these circumstance repay any deposit paid by the Company, if applicable, and indemnify and hold the Company harmless for any loss or damages the Supplier may suffer, due to the cancellation of the applicable order as provide for in this clause 6.2.2.

6.3 Trade Term

- 6.4 Unless the Company agrees otherwise in writing, delivery of ordered Materials will occur on the basis of DAP (i.e. Delivered At Place as per Incoterms 2020) at the Premises.
- 6.4.1 All risk, liability and responsibility in the Materials ordered shall pass to the Company under and in terms of the trade term.

7. PRODUCT RETURN

- 7.1 The Company acknowledges that it, or its agent/nominee/representative in taking delivery of the Materials, will at all times have a reasonable opportunity to inspect the Materials before the Supplier's delivery note is signed. The inspection will generally be aimed at satisfying the Company that the Materials delivered:
 - 7.1.1 are of the type and quality reasonably contemplated by the Parties, and
 - 7.1.2 correspond, in all material respects and characteristics, to that which an ordinary alert Supplier would have been

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entitled to expect, when considering the descriptions and/or a reasonable examination of any samples presented as basis for the order.

7.2 In the event that the Company is not satisfied with the Materials, as delivered, same may be returned to the Supplier. In such events the Supplier will:

7.2.1 either replace the Materials returned or refund the Company the amount/s paid for the Materials returned, as determined by the Company; and

7.2.2 the costs and risk regarding such a return shall be carried by the Supplier.

8. PRODUCT OWNERSHIP

8.1 Notwithstanding the trade term and notwithstanding the payment terms, ownership and benefit in respect of the Materials will pass from the Supplier to the Company upon delivery and acceptance of the Materials by the Company.

9. WARRANTIES

9.1 The Supplier warrants to the Company that:

9.1.1 all Materials supplied under these Terms and Conditions will be of satisfactory quality and will comply with applicable law (local and/or international), regulations, minimum standards and/or applicable specification and requirements, as required by any governmental/international authority or by applicable law (local and/or international); and

9.1.2 it has all the required import/export permits/documentation in order in order to supply the Materials;

9.1.3 it has, and will maintain, the required stock levels in order to adhere to the Company's orders/demand from time to time; and

9.1.4 it has the necessary manufacturing, supply and logistical infrastructure to supply and deliver the Materials under and in terms of these Terms and Conditions; and

9.1.5 the Materials are not counterfeit Materials and/or illegal Materials;

9.1.6 the Materials will be in good working order, in order to fulfil its purpose for which it has been manufactured/supplied;

9.1.7 the Materials, supplied, will be free from any form of defects; and

9.1.8 the Materials, duly supplied, will be identical in respect of the product specification as advertised;

9.1.9 it will be able to perform its obligations, under and in terms of these Terms and Conditions, without delay.

9.2 It is specifically recorded that the Company entered into these Terms and Conditions on the strength of the warranties recorded in this clause and on the basis that warranties will be correct.

10. INDEMNITIES

10.1 The Supplier hereby indemnifies and undertakes to hold the Company completely harmless against any and all losses, liabilities, claims, damages, penalties, judgments, disbursements, costs and expenses (including legal costs on an attorney and own client scale) to which the Company may become subject, which directly or indirectly arises from or relates to:

10.1.1 the enforcement of these Terms and Conditions; and/or

10.1.2 any breach by the Supplier of these Terms and Conditions and/or any representation, warranty, covenants or other terms and conditions or agreement contained in or contemplated by these Terms and Conditions.

11. LIMITATION OF LIABILITY

11.1 Notwithstanding anything to the contrary contained in these Terms and Conditions;

11.1.1 the Company will not be liable for any indirect, special and/or consequential damages, losses, costs, expenses, claims, and/or demands, of any nature whatsoever, suffered by the Supplier for and/or due to any reason whatsoever; and

11.1.2 the Company will not be liable for any damages, losses, costs, expenses, claims, and/or demands, of any nature whatsoever, suffered by the Supplier for and/or due to any reason whatsoever, unless same arises out of the grossly negligent and/or malicious acts and/or neglects of the Company; and

11.1.3 the Company's liability towards the Supplier under and in terms of these Terms and Conditions shall never exceed the total amount in respect of a specific invoice rendered, pertaining to any such claim.

11.2 Nothing in these Terms and Conditions shall relieve the Supplier of its common law duty to mitigate any loss or damage suffered or incurred by him.

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12. **SUSPENSION OF THE COMPANY'S OBLIGATIONS**

- 12.1 If the Supplier is in breach of its obligations under and in terms of these Terms and Conditions, then at the Company's may withhold payment in respect of any outstanding payments due to the Supplier, or the performance of any of its other obligation as recorded herein, until such time as the breach has been rectified.

13. **ARBITRATION AND COSTS**

- 13.1 If any dispute or difference of any kind whatsoever shall arise between the Supplier and the Company in connection with or arising out of an order or these Terms and Conditions, then the matter in dispute or difference shall be referred to arbitration in accordance with the provisions of AFSA (Arbitration Foundation of Southern Africa). The Arbitration shall be held in Pretoria, Republic of South Africa, in English before a single arbitrator and with a view of obtaining an expeditious result.
- 13.2 The Supplier agrees that if any claim against the Supplier is handed over to the Company's attorneys, the Supplier shall be responsible for all attorney's costs incurred by the Company, which costs shall include all applicable costs, disbursements and costs on the scale between attorney and own client.

14. **MISCELLANEOUS**

14.1 **Severability**

- 14.1.1 It is agreed that each clause and each sub-clause in these Terms and Conditions is severable, the one from the other.
- 14.1.2 If any clause or sub-clause is found to be defective or unenforceable for any reason by any competent court, the remaining clauses shall continue to be of full and competent force and effect.

14.2 **Entire Terms and Conditions and non-variation**

- 14.2.1 These Terms and Conditions represent all the terms and conditions pertaining to the sale and delivery of Materials and the rendering of the Services between the Company and the Supplier. The Supplier warrants that it understands all the terms and conditions and accepts them.
- 14.2.2 No alteration or variation of these Terms and Conditions shall apply unless the alteration or variation in question is expressly agreed to or issued in writing by the Company.

14.3 **Confidentiality**

- 14.3.1 The Supplier and the Company agree to take all reasonable measures to preserve the confidential nature of an order and the Terms and Conditions.

14.4 **Assignment of rights and obligations**

- 14.4.1 The Supplier may not cede or assign its rights or obligations in terms of any order or these Terms and Conditions to any third party without the prior written consent of the Company, which consent shall not be unreasonably withheld.
- 14.4.2 The Company may cede and assign its rights and obligations in terms of any order or these Terms and Conditions applicable between the Parties (if any)) to any third party without the prior written consent of the Supplier.

14.5 **Relaxation**

No relaxation which the Company may give at any time and on any occasion in regard to carrying out of the Supplier's obligations in terms of any order or these Terms and Conditions, shall prejudice or be a waiver of any of the Company's rights to enforce those obligations on any subsequent occasion.

15. **SIGNATORY**

- 15.1 The person signing these Terms and Conditions on behalf of the Supplier and as the Supplier's representative:

i) guarantees, by affixing his/her signature to these Terms and Conditions, that he/she is duly authorised to conclude these Terms and Conditions on behalf of the Supplier, that these Terms and Conditions will be enforceable against the Supplier;

ii) guarantees that the Supplier will comply with all of its obligations in terms of these Terms and Conditions; and

iii) indemnifies the Company, and undertakes to hold the Company harmless against all damages, claims, costs, expenses and/or demands that the Company may suffer should the Supplier fail to comply with all its obligations in terms of these Terms and Conditions or breaches any of its obligations in terms of or arising from these Terms and Conditions.

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Signature

Date

Name:

Identity Number:

(Duly authorized representative of the Supplier)

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