

## General Conditions of Purchase

### 1. DEFINITIONS:

For the purpose of these General Conditions of Purchase the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them.

- 1.1. **"Conditions"** means these General Conditions of Purchase;
- 1.2. **"Contract"** means a valid and binding contract for the sale by the Supplier to Purchaser of the Goods which shall incorporate the Order and these Conditions;
- 1.3. **"Defect Warranty Period"** means the period for which the Goods are warranted to be free from defect as detailed in the Order or failing such detail for a period of 2(two) years from date of delivery in accordance with clause 7 of the Conditions;
- 1.4. **"Delivery Date"** shall mean the date stipulated in the Order for delivery of goods;
- 1.5. **"Goods"** means the Goods/Services to be supplied and any work or service to be performed by the Supplier in terms of the Order;
- 1.6. **"Order"** means a written request on the Purchaser's official purchase order issued by the Purchaser to the Supplier to supply the Goods, and shall be deemed to include at all times the Conditions and any drawings, Specifications, and schedules attached thereto;
- 1.7. **"Price"** means the price for the Goods as stated on the Order;
- 1.8. **"Purchaser"** shall mean GMSA or any affiliate of GMSA which shall include its subsidiaries and associates which operate and/or manage businesses under the "GMSA" name, including, without limitation, any successor-in-title or variation or addition to GMSA, and any entity which is managed by or on behalf of GMSA or for which any affiliate of GMSA may render support, management or consulting services; (or as an agent for and on behalf of a principal)
- 1.9. **"Specification"** means the specifications for the Goods and packaging of the Goods as set out or referenced in the Order or any other specification agreed in writing between the parties from time to time;
- 1.10. **"Supplier"** means the entity or person to whom the Order is addressed and who has undertaken to supply the Goods;
- 1.11. **"Vendor Add Form"** means official application form to be added to the Supplier vendor list;
- 1.12. **"Writing/Written"** means any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents, fax transmissions, information or data in electronic form.

### 2. FORMATION OF CONTRACT

- 2.1. The Supplier shall sell and the Purchaser shall purchase the Goods in accordance with these Conditions which shall override anything contained in any quotations, price lists, specifications, invoice, acceptance or acknowledgement of order, receipts, delivery note or any other document delivered by the Supplier to the Purchaser. To the extent that the Order is deemed in any way to be an acceptance of a quotation or other offer by Supplier, any such acceptance by the Purchaser is subject to these Conditions, this being the only basis upon which the Purchaser is prepared to do business with the Supplier.
- 2.2. No Contract shall come into the existence until the earliest of:
  - 2.2.1. Supplier signing and returning a copy of the Order;
  - 2.2.2. any other written acceptance by the Supplier; or
  - 2.2.3. the Order being accepted by the Supplier by the earliest of:
    - 2.2.3.1. commencement with the execution of the Order;
    - 2.2.3.2. delivery of the Goods to the Purchaser;
    - 2.2.3.3. informing the Purchaser in any manner of delivery of the Goods or commencement of performance of the Order.

### 3. ASSIGNMENT AND VENDOR FORMS

- 3.1. The Order is personal to the Supplier and the Supplier shall not sub-contract, assign/cede or make over the Order or any part thereof, or any share thereof or interest therein, to any other person except with the written consent of the Purchaser and on such conditions as the Purchaser may require.
- 3.2. The Supplier shall complete all details on the Purchaser's Vendor Add Form and hereby agrees to notify the Purchaser in writing, within 7 days of any change of ownership of the Supplier's business or, should the Supplier be a company, any share transaction where the majority shareholding of the Supplier is affected, or where the Supplier effects any other change to its legal identity, structure, management or nature.

### 4. DISCREPANCIES AND DELAY

- 4.1. The Supplier warrants that prior to acceptance of the Order in terms of clause 2.2 it carefully perused the Order and Supplier is capable of supplying Goods in accordance with the descriptions, dimensions, Specifications or quantities specified in the Order. To the extent there is any conflict between or discrepancies in Orders, Supplier shall refer the Order to Purchaser for further instructions prior to executing the Order or any part thereof. The Purchaser's decision shall be final and binding.
- 4.2. Any anticipated or actual delay or any circumstances which may result in a delay in the execution of the Order shall immediately be communicated to the Purchaser. Purchaser shall be entitled to cancel an Order for any delay, at the Purchaser's sole discretion.

## **5. QUALITY**

- 5.1. All Goods supplied shall comply with the specifications or to any standards, samples, patterns, drawings where such are provided.
- 5.2. The Purchaser reserves the right to call for certificates of raw materials and test certificates for materials and equipment used in the manufacture of the Goods.
- 5.3. The Supplier shall not make any changes to the Goods that will impact on the performance, safety, quality, appearance or brand image of the Goods without the prior written approval of the Purchaser.

## **6. PACKAGING**

- 6.1. All relevant Goods shall be crated, packed or battened securely in such manner as to prevent damage during loading, transport and off-loading. The Purchaser shall be entitled to recover from the Supplier all loss and damage which the Purchaser has suffered due to the Supplier's failure to comply with the provisions of this clause.
- 6.2. Unless otherwise specified, packing cases, crates and packing materials are included in the Order price, and shall remain the property of the Purchaser.
- 6.3. The Supplier shall identify each and every package, container, bundle or article, by means of either suitable labels securely attached thereto or indelible painting thereon, with the following information:-
  - 6.3.1. Description of goods – net mass and volume or quantity;
  - 6.3.2. Name of Supplier;
  - 6.3.3. Order Number.
- 6.4. The Supplier shall comply with all package specifications issued by the Purchaser from time to time.

## **7. DELIVERY**

- 7.1. Delivery of the Goods or, where applicable, performance of any work or service in connection with the Goods shall be made in terms of the Order. If no Delivery Date is stated the Supplier shall offer its best delivery dates.
- 7.2. Delivery Dates are warranted by the Supplier and the Purchaser shall not be liable for any additional costs, expenses, increase in the Price or the like where a delay arose due to no act or omission on the part of the Purchaser.
- 7.3. Delivery of the Goods shall be made to the premises detailed in the Order.
- 7.4. Delivery of the Goods shall not occur in installments unless the Purchaser's prior written consent is obtained.
- 7.5. Any carrier or transporter contracted by the Supplier to transport the Goods is deemed to be the Supplier's duly authorised sub-contractor.
- 7.6. It shall be incumbent upon the Supplier to ensure that where Goods are delivered by road, all legislation applicable to such road transportation is at all times complied with, and the Supplier indemnifies the Purchaser against any loss suffered, including confiscation of the Goods arising from delivery of the Goods by the Supplier or a carrier without such authority.
- 7.7. The Supplier shall be responsible for any loss or damage to property and/or injury to persons caused by the Supplier or any of its agents, servants or contractors when transporting, delivering or loading the Goods. The Supplier shall provide and be responsible for all labour for the unloading of Goods.
- 7.8. Delivery notes shall accompany every delivery to Purchaser and shall include the following information: Order number, item number, where specified in the Order, volume or quantity and, number of bags, cartons, or other containers.
- 7.9. The Purchaser shall be entitled to cancel any Order to the extent that delivery of the Goods has not yet been effected and in such event the Purchaser shall not be liable for the price of the undelivered Goods or for any direct or consequential loss or damages suffered by the Supplier in consequence of such cancellation.

## **8. OWNERSHIP AND RISK**

- 8.1. Title to all or any part of the Goods shall pass to the Purchaser on the earlier of:
  - 8.1.1. payment for such Goods or part thereof; or
  - 8.1.2. delivery of such Goods in accordance with clause 7.
  - 8.1.3. Where title to all or any part of the Goods has passed to the Purchaser but the Goods remain in possession of the Supplier, the Supplier shall clearly label the Goods as the property of the Purchaser and store the Goods separately from all other goods.
- 8.2. Risk in the Goods shall remain with the Supplier until such time as the Goods have been physically delivered and received by the Purchaser evidenced by signature of a duly authorised representative of the Purchaser on a delivery note.

## 9. INSPECTION AND REJECTION

- 9.1. The Supplier grants the Purchaser the right to inspect any Goods at any time prior to delivery at Supplier's premises or elsewhere. Inspection by the Purchaser of any Goods shall not relieve the Supplier of responsibility or liability for those Goods and shall not imply acceptance thereof. The Purchaser shall be entitled to waive such right of inspection prior to delivery, without prejudice to its right to reject Goods after delivery.
- 9.2. Goods will be accepted at the place of delivery, only with regard to number and condition of packages, and notwithstanding any receipt that may have been given, the Goods shall remain liable to rejection if not in accordance with the Order.
- 9.3. Without prejudice to any other rights that the Purchaser may have, if the Supplier fails to deliver the Goods in accordance with the terms of the Order and by the specified date or the Purchaser rejects the Goods pursuant to Clause 9.1, then the Purchaser shall be entitled, at its option, to:
  - 9.3.1. require the Supplier to remove such Goods at the cost and expense of the Supplier, which Goods shall be held at the risk of the Supplier;
  - 9.3.2. require the Supplier to repair or replace the undelivered or rejected Goods, in either case free of charge and as expeditiously as reasonably practicable;
  - 9.3.3. obtain goods from a third party and be reimbursed by the Supplier for all additional reasonable costs and expenses thereby incurred; and/or
  - 9.3.4. terminate the Order forthwith and refuse to accept any further consignment of Goods under the Order.
- 9.4. The Supplier shall on demand refund the Purchaser the Price, if paid, and all other costs and disbursements incurred by the Purchaser in respect of or as a result of the Goods being refused or rejected.
- 9.5. The Supplier shall be liable for all damages suffered by the Purchaser as a result of defective or delayed delivery or resulting from the Goods not complying with the Specifications.

## 10. PRICE AND PAYMENT

- 10.1. The Price(s) for the Goods shall be specified in the Order. Prices shall remain fixed against upwards movements and shall not be subject to any increase or escalation whatsoever until delivery in accordance with clause 7.
- 10.2. Unless otherwise stated in the Contract the Price payable for the Goods shall be:
  - 10.2.1. exclusive of value added or other sales tax; and
  - 10.2.2. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods and all duties, licenses, permits and taxes (other than VAT) as may be payable in respect of the Goods from time to time.
- 10.3. Unless otherwise agreed by the parties and specified in the Order, and provided:
  - 10.3.1. Supplier carries out all its obligations in terms of the Order; and
  - 10.3.2. Purchaser receives an original valid tax invoice and statement before the 28<sup>th</sup> of the month;
  - 10.3.3. Purchaser shall make payment to the Supplier 60 days from date of statement unless early settlement discounts have been agreed in writing.
- 10.4. The Purchaser may withhold payments of any disputed or insufficiently documented amounts included in any invoice. The Purchaser is entitled to deduct from or set-off against any money due or which becomes due by the Supplier against any sum(s) due to the Purchaser.
- 10.5. Any application for price adjustments must be made in writing to the Purchaser and shall be supported by such documentary evidence as may be required by the Purchaser. No price adjustments shall be effective until accepted in writing by the Purchaser and it shall be in the sole and absolute discretion of the Purchaser to accept or reject any proposed price adjustment.
- 10.6. The official Order number and the Purchaser VAT number must accompany all invoices, credit notes and statements. Invoices not reflecting an official order number or an incorrect number shall result in payment delays.

## 11. WARRANTIES

- 11.1. The Supplier warrants that the Goods and any parts or materials used in the performance of any work or services related to the Goods shall:
  - 11.1.1. be fit for the purpose, for which they have been manufactured and shall remain so under normal working conditions;
  - 11.1.2. conform to the Specifications;
  - 11.1.3. be new and unused, of sound materials and workmanship;
  - 11.1.4. be free from any defects for the Defect Warranty Period;
  - 11.1.5. conform to all laws and regulations affecting the manufacture, sale, use packaging and labeling of the Goods, which are in force and effect on the date of delivery, and that all Goods have attached or are accompanied by appropriate instructions, warnings and/or labeling in relation to transporting, storing, operating, using, consuming or disposing of the Goods.

11.2. Supplier warrants that;

- 11.2.1. it has the necessary skills, expertise, resources, facilities and personnel to diligently provide the Goods and comply with its obligations under these Conditions;
- 11.2.2. it shall at all times comply with all laws applicable to Supplier, its business and the Goods. In particular the Supplier shall at all times comply with the Income Tax Act, the Compensation for Occupational Injuries and Diseases Act and the Unemployment Insurance Act as amended.
- 11.2.3. it and its agents, contractors and employees shall, at all times, comply with all rules, regulations health and safety, security, information technology, privacy and any other relevant policies and procedures of the Purchaser applicable at the Purchaser's premises where the Goods are delivered or the work performed;
- 11.2.4. It shall actively endeavour to prevent accidents, improve safety performance and adhere to sound and safe work standards and practices;
- 11.2.5. it has full corporate authority to execute, deliver and perform its obligations under these Conditions;
- 11.2.6. and to its knowledge there are no actions, claims, proceedings or investigations pending or threatened against Supplier which may prevent or limit Supplier from performing its obligations under these Conditions.

11.3. In addition the Supplier shall:

- 11.3.1. specify full details regarding the extent of immediate and long term potential hazards or dangers, including but not limited to, toxicity, flammability, harmful effect due to inhalation or direct contact or due to direct or indirect use thereof;
- 11.3.2. furnish full details and specifications regarding the most appropriate safety precautions to be taken in respect of the Goods or the use and handling thereof;
- 11.3.3. label all packages/receptacles containing the Goods in order to protect those who handle them or who are exposed to them.

11.4. The Supplier agrees to the assignment to any subsequent user or purchaser of any warranty or guarantee to which the Purchaser is entitled hereunder and the Supplier agrees to enter into such documents as may be necessary to achieve this.

**12. INSURANCE AND INDEMNITY**

- 12.1. The Supplier shall hold harmless and indemnify the Purchaser from and against any liability, loss, costs (including legal fees on an attorney-client scale), expense, damage or injury in consequence of a defect in design, parts or materials or workmanship of Goods or any breach by the Supplier of the Order (including any late delivery of Goods) or any negligent, willful or wrongful act or omission of the Supplier, its employees, sub-contractors or agents, save to the extent that such liability, loss, cost, expense, damage or injury is due to the negligence of the Purchaser.
- 12.2. The Supplier agrees to indemnify the Purchaser from any and all losses sustained by the Purchaser by reason of any third party claim for injury, death or other damage caused by breach of the above mentioned warranties or by defects in the Goods (including recall costs validly incurred by the Purchaser as a consequence of finding defective Goods).
- 12.3. Without limiting its responsibilities under these Conditions, the Supplier shall arrange and maintain, at its own cost, all necessary insurance, in particular insurance must be effected for public liability, and product liability. The Supplier shall produce evidence of these insurances upon request. The procurement of any insurance policy shall not limit Supplier's obligations under this clause or these Conditions.
- 12.4. Neither party shall be liable for any consequential, indirect or special indirect loss or damage howsoever same arises.

**13. BREACH AND TERMINATION**

13.1. If in the sole opinion of the Purchaser the Supplier:

- 13.1.1. continually fails to execute the Order in accordance with the true meaning and intent thereof; or
- 13.1.2. is delaying unduly in executing it or is not carrying out the work at such a rate as will ensure delivery of the Goods by the Delivery Date; or

13.2. the Supplier:

- 13.2.1. has committed or is committing a breach of any other provision of the Order, and if (the default being one which is capable of being remedied) the Supplier fails to remedy his default within 7 (seven) days of receipt of a notice in writing from the Purchaser calling upon him to do so; or
- 13.2.2. has committed or is committing a breach of any provision of these Conditions; or
- 13.2.3. has contravened any of the Purchaser's rules, regulations, policies, Code of Conduct, or any other Regulations, laws or safety standards; or
- 13.2.4. has breached any warranty; or
- 13.2.5. is placed in liquidation, commenced business rescue proceedings, or if the Supplier's estate is sequestrated, if the Supplier commits any act of insolvency, or if there is a change of control of the Supplier;
- 13.2.6. has committed any act of which fraud is a component,

then the Purchaser shall be entitled, without prejudice to any other rights which may be available to it, to cancel the Order and to recover from the Supplier all damages, losses and expenses incurred by it in consequence of such default, breach or failure including losses and expenses incurred as a result of the Purchaser having to make other arrangements for the execution of the Order or the supply of the Goods in question.

#### **14. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 14.1. All intellectual property rights including patents, trademarks, service marks, design rights (whether registered or unregistered), copyright (including any future copyright) and any application for any of the foregoing, arising from work conducted or prepared by the Supplier for the Purchaser shall belong to the Purchaser.
- 14.2. All drawings, specification, goods and materials supplied to the Supplier by or on behalf of the Purchaser, or prepared, manufactured or procured by the Supplier specifically for or in connection with the performance of the Order for the Purchaser shall belong to the Purchaser.
- 14.3. Each party shall treat as confidential all information obtained from the other pursuant to the Contract which is either marked as being confidential or has the necessary quality of confidence about it, and shall not divulge such information to any persons (except to such party's own employees, and then only to those employees who need to know the same) without the other party's prior written consent, provided that this clause 14.3 shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract, which is already public knowledge or becomes so at a future date otherwise than as a result of a breach of this clause 14.3. Each party shall ensure that its employees are aware of and comply with the provisions of this clause. If the Supplier shall appoint any subcontractor, then the Supplier may disclose confidential information to such subcontractor subject to such subcontractor giving an undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall survive any termination of the Contract.
- 14.4. The provisions of clause 14.3 shall continue in force notwithstanding termination, however caused, or completion, of the Order. The provisions of clause 14.3 above shall not apply to any information or document in the public domain or coming into the public domain other than through the default of the Supplier.
- 14.5. The Supplier warrants that the sale, possession, resale or use of the Goods do not infringe any third party intellectual property rights and undertakes to indemnify and hold harmless the Purchaser ("the Indemnified Parties") against all royalties or license fees (to the extent not specifically provided for) and against all damages, expenses, losses or costs suffered by the Indemnified Parties or which the Indemnified Parties may be liable in respect of any breach of this warranty.
- 14.6. The Supplier shall make no reference to the Purchaser in its advertising, literature or correspondence without the Purchaser's prior written agreement. Nothing in this Order shall entitle the Supplier to use any name, trademark or logo of the Purchaser.

#### **15. THE PURCHASER'S CODE OF ETHICAL PURCHASING POLICY**

- 15.1. The Supplier acknowledges that the Purchaser has a code of ethics (the "Code of Conduct") and operates an ethical purchasing policy (the "ethical purchasing policy"), covering areas such as labour, safety and the environment. Copies of the ethical purchasing policy and the Code of Conduct may be viewed on [INSERT WEBSITE DETAIL HERE](#) and are available from the Purchaser on [request](#). The Purchaser expects the Supplier to maintain a consistently high standard of integrity in all its business relationships with the Purchaser and to foster the highest possible standards of professional competence in all its activities. To this end, in supplying Goods to the Purchaser, the Supplier agrees that it shall not knowingly take any action which violates the Code of Conduct. Further, no employee of the Purchaser is authorised to propose to the Supplier or approve conduct inconsistent with the Code of Conduct.
- 15.2. The Purchaser shall have the right to terminate its business relationship and any associated agreements with the Supplier if the Supplier is in material breach of the Code of Conduct and, in the case of breaches which are capable of remedy, the Supplier fails to remedy such breach, after written notification by the Purchaser of such breach.

#### **16. NOTICES**

Unless otherwise expressly stated herein, all notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient as set out in the Order or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Failing any such address being so set out or designated, such notices shall be sent to the recipient's registered address. Any such notice may be delivered personally or by prepaid registered post, e-mail or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by prepaid registered post 48 (forty eight) hours after posting and if by facsimile transmission when despatched (provided no errors are reported). Any notice which affects the validity or existence of these terms and conditions shall be delivered personally or sent by prepaid registered post only.

#### **17. FORCE MAJEURE**

Neither party shall be liable for any failure to fulfil its obligations under these Conditions if and to the extent the failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action/strike, government restrictions or acts of God. Should any event of force majeure arise, the affected party shall notify the other party without delay and the parties shall meet within 7 (seven) calendar days of the notice to negotiate in good faith alternative methods of fulfilling its obligations under an Order, if any. In addition, Supplier shall continue to provide and Purchaser shall continue to pay for those Goods not affected by the

event of force majeure. Should either party be unable to fulfil a material part of its obligations under an Order for a period in excess of 30 (thirty) calendar days due to circumstances or force majeure, the other party may at its sole discretion cancel the relevant Order forthwith by written notice.

#### **18. GENERAL**

- 18.1. The Contract (including these Conditions) constitutes the whole agreement between the Purchaser and the Supplier relating to the subject matter thereof. No amendment or consensual cancellation of the Contract or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms thereof and no settlement of any disputes arising there under and no extension of time waiver or relaxation or suspension of any of the provisions or terms thereof or of any agreement, bill of exchange or other document issued pursuant to or in terms thereof shall be binding unless recorded in a written document signed by an authorised representative of both parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or give.
- 18.2. No extension of time or waiver or relaxation of any of the provisions or terms of the Contract or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of thereof, shall operate as an estoppel of a parties' rights under the Contract, nor shall it operate so as to preclude a party thereafter from exercising its rights strictly in accordance with the Contract.
- 18.3. Neither party shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Contact between the Supplier and the Purchaser or not.
- 18.4. The Supplier shall not cede or assign or otherwise transfer the Contract or any of its rights and obligations thereunder, whether in whole or in part, without the prior written consent of the Purchaser.
- 18.5. If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provisions in question shall not be affected thereby.
- 18.6. The Contract shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the South African Courts.
- 18.7. The Contract shall further be governed by GMSA's policies on, *inter alia*, access, safety, health, the environment and traffic.