

ANNEXURE-C SPECIAL CONDITIONS OF CONTRACT

PART A

1. DEFINITIONS

- 1.1 'Supplier' or 'Contractor' shall mean the Company or entity or person or individual to whom the Order is addressed, its successor, legal representatives, assigns and liquidator or trustee.
- 1.2 'Purchaser' shall mean Foskor Limited.
- 1.3 'Goods' or 'Services' shall mean the machinery, plant, equipment, apparatus or materials to be supplied and / or the work or services to be performed in terms of the Order.
- 1.4 'Delivery' shall mean the delivery of Goods including the completion of any included work or services at the point of delivery specified in the Order.
- 1.5 'Delivery Date' shall mean the date(s) stipulated in the Order, as may be amended in writing by the Purchaser or its authorised representatives, for the Delivery of the Goods at the point of delivery specified in the Order, and / or the completion of any work or services to be performed or rendered by the Supplier in terms of the Order. Where specified in the Order that the Goods shall be delivered in portions, the Delivery Date shall relate to each specific portion of the Goods.
- 1.6 'Price' shall mean the price quoted by the Supplier and accepted by the Purchaser or its authorised representatives and shall be the sum stated in the Order, subject only to such additions thereto or deductions therefrom as may be made pursuant to written amendment by purchaser.
- 1.7 'Order' shall mean the Order documents, these General Terms and Conditions of Purchase, any Special Terms and Conditions of Purchase contained in the Order and any Specifications, Data Sheets, Drawings, Exhibits, Annexure or Appendices attached to the Order or referred to therein as specifically forming part of the Order.
- 1.8 'Acceptance' shall mean the date on which the Purchaser or its authorised representatives have accepted the Goods, having satisfied all requirements of the Order.

2. ORDER ACKNOWLEDGEMENT

The Supplier shall acknowledge acceptance of the Order within (3) calendar days of receipt of the Order to the Purchaser, for the attention of the Buyer handling the Order. Any exceptions to the Order document shall be set forth in a written transmittal letter. Non-receipt by the Purchaser of the acceptance of the Order within fourteen (7) calendar days of the Order date, or prior to despatch of the Goods, shall be deemed to be complete acceptance by the Supplier of the Order and all of its terms and conditions.

3. PRICE BASIS

- 4.1 Unless otherwise specifically stated in the Order, all prices shall be fixed and firm through Delivery and shall not be subject to any variations except in terms of Clause 14.0 'Variations' hereof and in particular shall not be subject to escalation or variations resulting from changes in taxes, duties, surcharges, rate of exchange or the like.
- 4.2 Unless otherwise stated in the Order, all Prices include Delivery to the specified destination, including all freight charges, customs duties, surcharges tariffs, clearance, warfare and other similar charges.
- 4.3 Unless otherwise stated in the Order, the total Order Prices shall reflect Prices exclusives of VAT.



4.4 Unless otherwise stated in the Order, all Prices shall be inclusive of the costs of a performance security (bank guarantee) for 10% (ten per centum) of the price (excluding VAT), to be provided by the Supplier to the Purchaser in the prescribed format acceptable to the Purchaser.

4. EXPEDITING

5.1 The Goods furnished under the Order shall be subject to expediting by the Purchaser and / or its authorised representatives. The Purchaser and / or its authorised representatives shall be allowed reasonable access to the Supplier's premises, and those of its sub-suppliers for the purposes of expediting and status reporting. Supplier shall ensure that any sub-orders allow for such access.

5. INSPECTION

6.1 The Purchaser and / or its authorised representatives shall, at all reasonable times, be allowed access to the premises and the production data (other than cost records) of the Supplier or any sub-supplier, to inspect, examine and test materials, workmanship, condition of Goods and facilities for manufacture of the Goods being manufactured and / or assembled.

6.2 Where the Order specifies that the Goods shall be inspected prior to Delivery, such Goods shall not be despatched until after the issuance by purchaser or its authorised representatives of an inspection release certificate indicating a final works release of the Goods. The original of such certificate shall accompany the Goods to which it relates.

6.3 Failure to be ready for inspection when called for or excessive re-inspection will result in a backcharge being imposed by the Purchaser or its authorised representatives for the costs of re-attendance at the Supplier's, sub-supplier's or any other premises as applicable.

6.4 No inspection, release or acceptance by Purchaser or its authorised representatives shall relieve the Supplier of its obligations under the terms of the Order.

6.5 Following the issue of an inspection release certificate at the Supplier or sub-supplier's premises in terms of Clause 6.2 hereof, the Goods shall be released by the Purchaser for Delivery to the contractual delivery point as stipulated in the Order.

6. TESTING

7.1 All testing shall be conducted in accordance with Order requirements and the test result shall be submitted as required in terms of the Order.

7.2 If witnessed tests are required, Supplier shall provide the authorised representative of the purchaser at least forty-eight (48) hours advance notice of such tests and should such tests not be conducted as notified or should the Goods fail the tests. Purchaser reserves the right to impose a backcharge for costs of re-attendance at the supplier's, sub-supplier's or any other premises as applicable.

7. PACKING

8.1 The Supplier shall adequately and securely pack all Goods in such a manner as to prevent loss or damage in transit to the point of delivery specified in the Order. Special packing instructions may be contained in the Order. The Purchaser or its authorised representatives shall have the right to reject any Goods damaged in transit and to recover from the Supplier any damages which the Purchaser and / or its authorised representatives have suffered arising from the Supplier's failure to comply with the provisions of this clause.



- 8.2 Each and every item or individual package shall be securely bundled or packed and shall further be marked in clear weatherproof lettering with the Order number, Order item number and tag / equipment number or commodity code / size as applicable.
- 8.3 Unless otherwise stated in the Order, the cost of all packing materials, packing cases and other packing charges shall be deemed to be included in the Price, notwithstanding that the Price may be 'Ex-Works' or 'Free Carrier' (named place – in respect of offshore Orders, Incoterms 2010 shall apply). All packing cases and packing materials provided by the Supplier, shall become the property of Purchaser.

8. DELIVERY

- 9.1 The Supplier shall deliver the Goods in accordance with the directions set forth in the Order not later than the contractual Delivery Date, unless delayed or advanced by instruction from the Purchaser or its authorised representatives. The Purchaser or its authorised representatives shall be entitled to issue instructions to delay or advance manufacture or Delivery of the Goods, provide that if compliance with any such instruction shall affect the price, the Supplier shall give written notice to the authorised representative of the Purchaser within five (5) calendar days of the date of such instruction, stating the consequence or likely consequence thereof. If no such notice is given by Supplier, Supplier shall not thereafter be entitled to claim any compensation for increased costs incurred by him, If the Supplier gives notice of an increase in Price, the Purchaser shall be entitled to confirm or withdraw the instruction.
- 9.2 Should Supplier determine that any delays have occurred which may affect the delivery programme. Supplier shall immediately notify the authorised representative of the Purchaser in writing of such delays and such notification shall also include a plan to recover the original delivery programme.
- 9.3 Unless otherwise stated in the Order, Goods shall be delivered as soon as possible. If Supplier intends to make delivery prior to the contractual Delivery Date in the Order, the Supplier shall, however, notify the authorised representative of the Purchaser of such intended early delivery prior to shipment in sufficient time to allow Purchaser to arrange for receiving of the Goods and to confirm that early delivery is acceptable. Purchaser or its authorised representatives may reject such offer of early delivery for any reason, at its sole discretion.
- 9.4 The Supplier hereby acknowledges that time is of the essence of the Order and that should delivery of the Goods be delayed beyond the contractual Delivery Date, then the Purchaser may, without prejudice to any other rights under the Order or at law, either cancel the Order in whole or in part or grant an extension of time, at its sole discretion and / or recover from the Supplier such damages as the Purchaser may suffer as a result of such delay. Alternatively, and at the sole discretion of the Purchaser, the Purchaser may elect to recover a penalty in respect of any delay in Delivery beyond the contractual Delivery Date at the rate specified in the Order to the actual Delivery Date, or if no rate is so specified, at the rate of 1% (one per centum) of the Price per week or part thereof of delay beyond the contractual Delivery Date, to the actual Delivery Date, but subject to a maximum of 10% (ten per centum) of the Price, excluding VAT.

In the event of the damage which the Purchaser may sustain as a result of delayed completion as aforesaid being likely, in the opinion of the Purchaser to exceed the stipulated penalty, the purchaser may, as provided for in the Conventional Penalties Act. No. 15 of 1962, any amendments thereto or laws superseding same, claim the amount of damages actually sustained or enforce the penalty stipulation. In such event the Purchaser shall be entitled, pending the establishment of damages and penalties, to withhold payment to the Contractor of any moneys due to an amount equal to the Purchaser's estimate of such claims.

- 9.5 Unless otherwise stated in the order, if Supplier effects Delivery to the contractual delivery point on behalf of Purchaser, Supplier shall insure the Goods against all-normal transit risks and fire to the contractual delivery point.

9. ACCEPTANCE

- 10.1 Goods will be received at the delivery point stipulated in the Order only as regards number and condition of packages and notwithstanding any receipt given, the Goods shall remain liable to rejection if not in accordance with the Order. Unless otherwise specified in the Order, Acceptance of the Goods at project Site will occur only after being placed into continuous commercial operation.



10.2 Rejected Goods will be held at the risk and expense of Supplier. Notice of rejection by Purchaser or its authorised representatives will specify whether the Goods shall be resupplied or whether the Order in respect of the rejected Goods shall be cancelled without liability to Purchaser. If Purchaser has paid any part of the Price for rejected Goods, Supplier shall refund to the Purchaser so much of the Price as has been paid and any other expenses as may have been incurred by the Purchaser in respect of such rejection, prior to the return of such Goods to Supplier.

10. TITLE AND RISK OF LOSS

11.1 Title to and risk of loss in the Goods shall pass to the Purchaser upon Delivery as directed in the Order, unless partial payment is made to Supplier prior to delivery.

11.2 If any payments is made to Supplier prior to delivery, title, but not risk of loss, shall pass to Purchaser in Goods identifiable to the Order at time of payment. Risk of loss in such Goods shall only pass to Purchaser upon delivery as directed in the Order.

11.3 Throughout the performance of the Order and up to Delivery, the Supplier shall insure and keep insured the Goods to the full replacement value thereof from time to time, with an insurance and for a value acceptable to the Purchaser. The Supplier, shall, on written request provide the Purchaser with proof of such insurance. The interests of the Purchaser shall be noted on such insurance policies.

11. INVOICING AND PAYMENT

12.1 Supplier shall submit one (1) original invoice to the postal address of the Purchaser shown on the face of the order. Any invoice submitted in advance of the event to which it relates shall be liable to rejection by the Purchaser.

12.2 Invoices shall contain the following elements:

- The words "TAX INVOICE" in a prominent place,
- The Supplier's name, address and VAT registration number,
- The Purchaser's name and address,
- The issue date of the invoice and individual serialised invoice number,
- The order number
- The Order item number for each item invoiced,
- The quantity of each item invoiced,
- The description of each item Invoiced, including tag / equipment number or commodity code / size, if applicable,
- The price of each item invoiced, excluding VAT, showing VAT separately and showing a VAT inclusive Price,
- The total amount of VAT charged on the invoice. If no VAT is charged, or if VAT is charged at other than the standard rate, details shall be provided,
- Trade discount terms,
- Settlement discount terms.



- 12.3 Signed waybills, delivery notes or consignment notes detailing at least every package or item invoiced shall accompany each invoice. Where an inspection release certificate has been issued by the Purchaser in respect of any item, it shall also accompany the invoice.
- 12.4 Failure to comply with the above invoicing instructions and any other invoicing instructions provided with the Order may delay or prevent payment to the Supplier.
- 12.5 Payment will be made by purchaser upon receipt of properly submitted invoices in accordance with the payment terms set forth in the order. If payment terms are not otherwise set forth in the Order, payment shall be in full (i.e. 100%) nett 30 (thirty) days from the end of the month in which the later of the following occurs:
- 12.5.1 receipt of properly documented invoice by the 25th day of the month, or
- 12.5.2 delivery of the Goods or successful commissionery of applicable.

12. WARRANTY

- 13.1 Supplier warrants that the Goods shall be new, of the best quality, complying in all respects with the description set forth in the Order, fit for the purposes intended and free from defects in materials, workmanship and design for a period of twelve (12) months from the date of Acceptance by Purchaser, in terms of Clause 10.0 'Acceptance' hereof, or such longer period as may be stated in the Order, but not exceeding twelve (12) months after being placed into continuous commercial operation or eighteen (18) months from the Delivery of the Goods to the contractual delivery point, whichever is the earlier.
- 13.2 Without derogation of any other rights of Purchaser in respect of defective Goods, the Purchaser shall notify the Supplier formally in writing of any defect in the Goods within the warranty period and the Supplier shall immediately repair or replace the defective Goods at the sole cost of the Supplier to the complete satisfaction of the Purchaser and shall be liable for all damages suffered by the Purchaser, including all removal costs and transport costs as a result of such defect. If immediate repair or replacement is not possible due to the nature of the defect, Supplier shall immediately commence and diligently pursue such repair or replacement without delays.
- 13.3 Should Supplier either refuse or fail to commence repair or replacement as required, or, having commenced such repair or replacement, fail to diligently pursue or complete same, Purchaser shall have the right, after written notice to Supplier, to remedy the defect as Supplier's risk, cost and expense, but no such action of purchaser shall prejudice any other rights which the Purchaser may have against the Supplier in respect of any breach of this warranty. Upon completion of any such rectification by Purchaser, Supplier shall immediately on demand pay over to purchaser all related costs and expenses incurred.
- 13.4 In the event of any repair or replacement under this clause, such repair or replacement shall be warranted in accordance with the warranty set forth above for a further period of twelve (12) months from Purchaser's Acceptance of such repair or replacement. In addition, the warranty shall be extended by a period during which the affected Goods or any part thereof cannot be used by reason of the repair or replacement of any defective Goods.

13. VARIATIONS

- 14.1 No deviation from the item description, specifications, or any other requirements contained in the Order shall be permitted unless the buyer of the Purchaser has issued a formal Order Amendment or concession to such effect.
- 14.2 The Purchaser shall have the right at any time, during the currency of the Order, to vary the Order in anyway, including additions to or deletions from the quantities originally ordered by issuing a formal Order Amendment to such effect. If such variation will, in the opinion of the Supplier cause any variations in the Price or time for performance or any other obligation of the Supplier written notice thereof shall be



submitted by the Supplier within ten (10) calendar days after receiving such notice of variation from Purchaser, failing which it shall be deemed that no such variations will be claimed by the Supplier.

- 14.3 If any such variation in the Price or Delivery Date or other obligations and Supplier has notified Purchaser of such impact as required, Supplier shall not proceed with any such variation until written acceptance is received from the Purchaser confirming the adjustment in the price and / or time for performance and / or obligations of the Supplier.
- 14.4 If the Supplier gives notice of a variation in Price or Delivery Date or other obligations, the Purchaser shall be entitled to confirm or withdraw the variation to the Order.

14. ASSIGNMENT

- 15.1 Supplier shall not cede its rights, nor transfer or assign its obligations under the Order, in whole or in part, without first obtaining the written consent of the authorised representative of the Purchaser. Any cession, transfer or assignment in violation of the foregoing shall, at the option of Purchaser, be void.
- 15.2 Purchaser, however, shall have the unrestricted right to cede, transfer or assign its rights under the Order to such affiliates, subsidiaries, holding companies, successors or assigns as it may direct.
- 15.3 Any cession, transfer or assignment allowed under the Order shall not, however, relieve the party making such cession, transfer or assignment from any of its obligations under the Order.

16 SUB-CONTRACTS

- 16.1 Supplier shall not, without the prior written approval of the authorised representative of the purchaser, enter into any sub-contract for the performance of the whole or any part of the Order.
- 16.2 The consent of the Purchaser to the appointment of any sub-contractor shall not relieve the Supplier of any of its obligations under the Order.
- 16.2 The Supplier shall ensure that each sub-contractor is fully informed of the requirements of the Order and that any sub-contract is placed upon terms and conditions compatible with the rights of Purchaser under the Order, including, without limitation, the right of the Purchaser and / or its authorised representatives to access to the premises of the sub-contractor under Clause 5.0 'Expediting' and 6.0 'Inspection' hereof, and the rights of the Purchaser in terms of Clause 11.0 "Title and Risk of Loss' hereof.
- 16.3 The Purchaser shall have the right to nominate certain sub-suppliers or sub-contractors to the Supplier for the supply of any portion of the Goods, or the performance of any included work or services in terms of the Order. In such event, and if the Supplier does not object on reasonable grounds to such nomination, the nominated sub-contractor shall be treated in all respects as if such nominated sub-contractor is a sub-contractor nominated by the Supplier and approved by the Purchaser.

17. SET-OFF

- 17.1 Purchaser may deduct from any monies due or to become due to Supplier under the Order any costs, damages or expenses which the purchaser has paid or suffered and for which Supplier is liable under the Order or any other Order or contract with Supplier.

18 UNITS OF MEASURE AND LANGUAGE

All units of measure utilised in performing the Order shall be Systeme International (SI) units. All communications, specifications, drawings or other documents shall be in the English language. Drawings or other documents in other languages may be utilised, at Purchaser's discretion, if suitable English translations are added on the drawing or document itself.



IF THE ORDER INVOLVES THE PERFORMANCE OF WORK OR SERVICES ON FOSKOR SITE, THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS SHALL APPLY TO THAT PORTION OF THE ORDER PERFORMANCE ONLY

PART B

19. INSURANCE

19.1 Without limiting the obligations or liabilities of the Supplier in any way whatsoever, Supplier shall provide and maintain for the duration of Order performance at Project Site, the following insurance's in the joint names of the Purchaser and the Supplier:

- Public (Third Party) Liability Insurance providing cover against any legal liability for death of or injury to third parties and loss of or damage to property of third parties arising out of or in connection with the Order. The policy shall include a cross liabilities clause and shall have a limit of liability not less than R5 000 000.00 per occurrence.
- Workmen's Compensation coverage for all employees employed in the Republic of South Africa in connection with the Order, in compliance with the Workmen's Compensation Act No. 30 of 1941, as amended, or its replacement Act, the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993, as amended.
- Common Law Liability Insurance providing common law liability coverage for all employees with a limit of liability not less than R5 000 000.00 per occurrence.
- Motor Vehicle Liability Insurance including compulsory insurance in accordance with the Multilateral Motor Vehicle Accident Fund Act No. 93 of 1980, as amended, and 'Balance of Third Party' Motor Risks including passenger liability with a limit of liability not less than R5 000 000.00 per occurrence.
- All Contract Works Insurance which will provide full cover for the replacement value of the Goods, in respect of accidental physical loss of or damage to the Goods or part thereof, upon arrival at the project until acceptance by the Purchaser.

19.2 Prior to any Order performance at project Site, Supplier shall provide certificate(s) of insurance satisfactory to the authorised representative of the Purchaser evidencing that the above insurance's are in force. Supplier hereby waives subrogation against Purchase, its directors, officers, employees, agents and representatives in respect of any claims arising out of Supplier's performance of the Order.

20. CO-OPERATION

Supplier is aware that work on a Project Site is subjects to co-ordination with other Suppliers and contractors. Supplier agrees to co-operate fully with Purchaser's co-ordination of Supplier's work on the Project Site with that of other Suppliers and contractors and to co-operate fully with such other Suppliers and contractors in performance of any work on the Project Site. Supplier shall therefore have no claim for minor delays occasioned by such co-ordination of co-operation.

21. SITE REGULATIONS

While on the Project Site, Supplier and Supplier's employees, agents and representatives shall comply with all statutory and governmental safety and health regulations and with all Project Site safety, health administrative rules and regulations, industrial relations policy, safety management plan and general regulations for contractors. Upon the request by the Purchaser or its authorised representatives Supplier shall promptly remove from the Project Site any individual at no cost to Purchaser.

22. PERMITS AND LICENSES

Purchaser will provide building permits if required. Supplier shall procure, at Supplier's expense, all other necessary permits, certificates and licenses necessary for the work and / or services performed under the Order.

23. TITLE TO MATERIALS FOUND

Title to any materials found at the Project Site, including, but not limited to sand, gravel, antiquities or objects of historical interest, shall be passed to the Purchaser.

24. CLEANUP

Supplier shall keep the project Site free from debris and rubbish resulting from all of its operations and shall at its own cost clear the Project Site promptly upon completion of the work and / or services in terms of the Order.

*Approved Special Conditions
of contract
2017/03/01
Chesley Masi
Legal Adviser*