

The following General Terms and Conditions of Supply shall apply to all business contracted with companies, legal persons under public law and in connection with special funds under public law.

1. Definitions

1.1

"Contract Price" means the price as payable by the Purchaser to the Supplier for the supply of goods or Services as stated in the Purchase Order or otherwise agreed upon in writing by both Parties.

1.2

"Delivery Date" means the date or dates as stipulated in the Purchase order or as agreed in writing by both Parties.

1.3

"Delivery Point" means the place of Delivery as stated in the Purchase order or as agreed in writing by both Parties.

1.4

"Delivery" means the Delivery of the goods as stipulated in the Purchase order and "Deliver" and "Delivered" shall have a corresponding meaning as the context may so require.

1.5

"Effective Date" means the date when the Supplier accepts and sign the Purchaser order issued by the Purchaser

1.6

"Incoterms" has the meaning ascribed to it in (Incoterms 2020).

1.7

"Liquidated Damages" means predetermined amount in the Contract to be paid by Supplier as compensation for estimated damage that the Purchaser may incur in the event of breach of Contract such as failure to meet Delivery Date.

1.8

"Order Confirmation" an official document issued by the Supplier, representative and/or any duly authorized personnel stating the type of products and/or Services, quantity and the agreed price.

1.9

"Party" or Parties" means the Supplier or Purchaser or Purchaser and Supplier.

Such predetermined amount is agreed by the Parties to be a pre-estimate of damages and is not considered a penalty.

1.10.

"Purchaser" means the Party defined as the Purchaser in the Purchase Order.

1.11.

"Scope of Supply" means the Goods and/or Services to be delivered or performed under the Contract/ Purchase Order.

1.12.

"Services" means site Services such as but not limited to installation and commissioning, repair and maintenance work.

1.13.

"Supplier" means KSB Pumps and Valves (Pty) Ltd.

1.14.

"Terms and Conditions" means these Terms and Conditions as stated herein.

2. General

2.1

The following Terms and Conditions shall apply to agreements entered into between the Parties and shall supersede any previous agreements and/or discussions made by the Parties unless otherwise stated in writing.

2.2

The Supplier's quotations shall not be binding offers unless otherwise stated.

2.3

The scope of goods to be supplied or Services to be rendered shall be determined exclusively on the basis of a written acceptance of the Purchase Order by a duly authorized representative of the Supplier, or failing that, on the basis of the Supplier's written quotation. Any additional or subsidiary agreements shall be made in writing.

2.4

When specified and agreed, acceptance tests shall be performed at the place of manufacture and in accordance with the recognised acceptance test codes.

2.5

The cost of witnessing the acceptance tests shall be for the Purchaser's account.

3. Price and Payment

3.1

The contract price shall be the price agreed upon also reflecting in the Supplier's order confirmation.

3.2

All prices shall be inclusive of VAT.

3.3

If the Supplier incurred additional cost after date of quotation and while performing its obligations under the Contract, such cost shall be added to the contract price by agreement of both parties.

3.4

Payment terms shall be strictly thirty (30) days from invoice, unless otherwise agreed between both parties. All payments shall be made net, without any deductions.

3.5

If the Purchaser fails to comply with the agreed dates of payment as set out in the Purchase Order, the Purchaser shall be liable, without notification, to pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.

3.6

In the event of the Purchaser not for fulfilling its obligations in respect of payments, the Supplier may after notifying the Purchaser in writing suspend all work until all outstanding invoices are paid in full.

4. Delivery

4.1 All Delivery Dates quoted and accepted by the Purchaser shall not commence earlier than the latest of the following dates:

- a) Date of receipt of approved quality plan submitted by the Supplier for any engineered/ nonstandard products.
- b) Date of receipt of approval of engineering submittals by the Supplier for any engineered / nonstandard products.
- c) Date of receipt of order confirmation for standard products.

In the event of a delay caused by the Purchaser the Delivery time shall be amended in accordance with the number of day's loss

5. Passing of Title and Risk

5.1 Unless otherwise agreed by both parties, title of goods supplied will pass to the Purchaser once the Supplier has received payment in full for goods supplied as per Purchase Order.

5.2 Risk of loss or damage to the Scope of Supply shall pass to Purchaser from the Supplier upon Delivery according to applicable Incoterms.

5.3 In the event that shipment and/or acceptance of the Scope of Supply are delayed for reasons beyond the Supplier's sphere of responsibility, the risk shall be deemed to have passed to the Purchaser on the date of the Supplier's notification to the Purchaser of readiness for Shipment.

6. Acceptance and Inspection

6.1 The contract shall provide for the Scope of Supply to be inspected and accepted by the Purchaser.

6.2 On agreement of such acceptance and inspection date, inspection shall be carried out without delay. The Purchaser shall within (14) fourteen days from date of receipt on site or place of Delivery by written notice inform the Supplier of any claims for damage, shortage or errors in shipping. Should the Purchaser fail to inform the Supplier within the specified time as indicated above, the Scope of Supply is to be irrevocably accepted by the Purchaser. All cost shall be borne by the Purchaser for additional Services required and accepted by the Purchaser.

7. Retention of Title

7.1 Until such time as the Purchaser has paid the full purchase price as stipulated in the Purchase Order in respect of any goods purchased, the ownership in and all such goods shall remain vested in the Supplier.

8. Warranty in Respect of Defects

8.1 The Supplier warrants that the Scope of Supply as described in the Purchase Order will be of the kind and quality specified, and will be free of defects in workmanship and material, and to the extent required for the functioning of the Scope of Supply.

8.2 Correction of any defects in the manner shall constitute fulfillment of all liabilities of Supplier to the direct costs of the substitute article within the scope of repair or replacement, including shipment, labour and material costs shall be borne by the Supplier with the provision that the Purchaser's complaint proves to be justified.

8.3 Costs incurred solely because of the fact that the place of use of the Scope of Supply is not the same as the contractually agreed destination and such deviation is not in accordance with the designated (typical) use of the goods supplied, are in each case for the Purchaser's account.

8.4 The Supplier shall not be liable under this clause 8 if the Purchaser fails to grant the Supplier a reasonable period of time and opportunity to carry out the necessary repair or arrange for replacement parts.

8.5 The Supplier shall not be liable in any way for any defects caused by poor operating conditions.

9. Limitation of Liability

9.1 Notwithstanding anything contained in these Terms & Conditions to the contrary, including all documents that forms part of these Terms and Conditions, and to the maximum extent permitted by law, in no event shall the Supplier in any way be liable to the Purchaser, by way of Indemnity, negligence or breach of statutory duty, for special, direct or indirect damages, consequential loss of opportunity, profit or anticipated profit, revenue, business, goodwill, contracts or anticipated savings or any loss of a similar nature related to or in connection with this Agreement.

9.2 The Purchaser agrees to hold harmless the Supplier from any claim that may arise from any third parties. The Supplier's maximum aggregate liability in connection with or arising from these Terms shall be limited to 100% of contract price only.

10. Termination for Cause

10.1 The Purchaser shall be entitled to terminate the Contract (or any portion thereof) for cause in the event that the Supplier:

10.1.1. Becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or

10.1.2. Breaches and fails to comply with or perform its material obligations (only with respect to a material obligation for which the Contract does not provide exclusive remedies), provided that the Purchaser first gives the Supplier written notice of the nature of such breach and of the Purchaser's intention to terminate the Contract as a result of such breach, and the Supplier shall have failed, within extended period as is considered reasonable and agreed by the Parties after receipt of such notice (or such), to

(a) Provide reasonable evidence that no such breach has occurred.

10.2 If the Purchaser terminates the Contract under Clause 10.1 hereof, or any portion specified thereof, the Purchaser shall pay to the Supplier that portion of the Contract price allocated to the Scope of Supply completed and accepted by Purchaser already. If the Parties cannot come to agreement on the value for such portion of Scope of Supply terminated, then a neutral expert shall be appointed agreed by both Parties which shall fix the price, and this price shall be accepted by both Parties.

10.3 The Supplier shall be entitled to terminate the Contract in the event that Purchaser:

10.3.1. Becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or

10.3.2. Has been notified in writing that the goods are ready for collection, and fails to collect the good within a time period of thirty (30) days after been notified.

10.4 If the Supplier terminates the Contract under Clause 10.3 hereof, the Purchaser shall forfeit all moneys paid already to the Supplier for the Scope of Supply completed.

11. Termination for Convenience

The Purchaser shall have the right to terminate the Contract and if for convenience the Purchaser shall pay all cost incurred by the supplier at the time of termination.

12. Warranty

Except in cases where the scope of supply is limited to services only, the warranty period shall end on the earliest of the below dates.

12.1

Twelve (12) months from date of installation, or

12.2

Eighteen (18) months from Delivery, or notification of readiness for dispatch.

12.3

In the event that taking over and/or acceptance is delayed for reasons beyond the Supplier's control, the warranty period shall end after 18 (eighteen) months from date of notification for readiness of dispatch.

12.4

In case of where the Scope of Supply is limited to the supply of Services only, the Warranty Period shall commence on completion of such Services provided and shall expire at the end of the sixth (6th) month thereafter.

12.5

Should the Scope of Supply fail within the specified warranty period, then the responsibility lies with the Purchaser to inform the Supplier within seven (7) days by means of written notification the reasons therefor, thereafter the Supplier shall initiate the repair, or replace the defective part. It is required for the Purchaser to make the original Scope of Supply, or the defective part thereof, available for correction. Supplier shall be liable for Supplier's own costs incurred only. Under no circumstances shall the Supplier be responsible for the cost of providing access to the Scope of Supply, costs of disassembly, or removal and re-installation of any items.

12.6

Whenever such defective goods have been repaired or replaced, the warranty period for the repaired or replaced Goods shall commence on date of completion thereof and shall expire at the end of six (6) months thereafter.

13. Performance Guarantee

13.1

Unless otherwise agreed between both Parties in writing where specific requirements are required for the contract, the Supplier will not issue a performance guarantee.

13.2

In the case where a performance guarantee has been agreed upon, it shall be fulfilled if the agreed specific requirements have been reached in a performance test executed at the Supplier's or its sub-supplier's Facility. Performance site tests shall be excluded.

14. Confidentiality

14.1

The Purchaser agrees, only to use the Confidential Information provided by the Supplier, in connection with the performance of the Contract or installation, operation, maintenance and for use of the Scope of Supply sold hereunder, and to take all reasonable measures to prevent disclosure of the Suppliers Confidential Information.

15. Force Majeure

15.1

Neither Party hereto shall be liable for any breach of its obligations under this contract resulting from causes beyond its reasonable control, including but not limited to fires, strikes (of its own or other employees), insurrection or riots, embargoes, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (an "event of force Majeure").

15.2

Each of the Parties hereto agrees to give written notice forthwith seven (7) days to the other, upon becoming aware of an event of force Majeure. Such notice shall contain details of the circumstances giving rise to the event of force Majeure.

15.3

In the event of delay in performance due to any such cause as set out in clause 15.1, then the Delivery Date or time for completion of the Services will be extended to reflect the length of time lost by reason of such delay.

15.4

Payment obligations shall not be affected by force Majeure events.

15.5

If the grounds for force Majeure continues for more than ninety (90) days, then either Party shall be entitled to terminated this Agreement upon seven (7) Days written notice to the other Party. The supplier shall be compensated for the additional cost caused by the Force Majeure event, or for work done prior to termination by the Purchaser and also for the expenses for non-cancellable procurements. The Purchaser will receive the work for which it has paid for.

16. Suspension

16.1

For whatever reason if the Purchaser decides to suspend the Contract, the Supplier shall be entitled to be compensated in full for any proven costs incurred caused by the suspension.

16.2

If the suspension lasts for more than sixty (60) days, the Supplier shall have the right to request permission to resume work upon written request to the Purchaser within fourteen (14) days. The Supplier shall be entitled to compensation in full for any proven costs incurred prior to the notice of suspension and as a result of such suspension.

17. Dispute Resolution

17.1

A dispute only exist once one Party to the Contract gives written notice ("Dispute Notice") of the nature of the dispute to the other Party to the contract. Within ten (10) working days of receiving the notice designate an authorized representative and such authorized representatives will attempt in good faith to resolve the dispute.

17.2

Should a dispute arise between the Parties, related to the Contract, whether directly or indirectly, then firstly the Parties must refer the dispute for resolution by way of negotiation.

17.3

If not successful then secondly by way of mediation.

17.4

If both preconditions fail then the dispute can be referred to Arbitration.

17.5

If the Parties are unable to resolve the dispute through negotiation within twenty (20) working days thereafter then either Party shall be entitled to refer the dispute by way of mediation in accordance with the current rules of the Arbitration Foundation of Southern Africa ("AFSA").

17.6

In the event of the mediation envisaged failing in terms of the rules of AFSA, the matter may, within twenty (20) working days thereafter, be referred to Arbitration.

18. Arbitration

18.1

If any dispute is referred to arbitration in terms of 17.6, such dispute shall be referred to and be determined by arbitration in terms of the rules of the Arbitration Foundation of Southern Africa (AFSA).

This clause 18 (Arbitration) shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the rules of (AFSA) should any Party by written notice given to the other require the arbitration to be held on an urgent basis. In such event the Parties agree to apply jointly to the (AFSA) Secretariat as required in terms of the said rules to facilitate such urgent arbitration.

19. Governing Law

These Terms and any dispute or claim arising out of, or in connection with, the subject matter or formation (including non-contractual disputes shall be governed by and construed in accordance with the law of the Republic of South Africa.

20. Privacy

For the purposes of providing the Scope of Supply, the Purchaser acknowledges that the Supplier may process the personal details of the Purchaser and/ or its personnel and that the Supplier shall process such personal information in accordance with POPIA and the KSB Pumps and Valves (Pty) Ltd POPIA external privacy policy.

For more information please visit www.ksb.com/en-za/data-protection