



General Terms and Conditions of Purchase

1 General

1.1 Unless otherwise agreed in writing, all contracts for the supply of the Goods to the Purchaser and/or execution of Works for the Purchaser shall be governed by the Purchase Order and these Terms and Conditions. The Purchase Order and these General Terms and Conditions of Purchase constitute the entire agreement between the Parties relating to the subject matter of the Purchase Order. The Purchase Order and these Terms and Conditions supersede all prior negotiations, representations and understandings, whether written or oral.

1.2 Save as otherwise provided no variation to the Terms and Conditions shall be valid unless it is in writing and signed by and on behalf of the Purchaser and the Supplier.

1.3 In the event of a conflict, the following order of precedence shall apply:

1.3.1 Purchase Order

1.3.2 General Terms and Conditions of Purchase

1.3.3 Any other ancillary documents.

2 Definitions

In these Terms and Conditions the following terms shall have the following meanings:

The **"Approval"** and **"Approved"** refer to the written consent of the Purchaser's authorized representative.

The **"Delivery Date"** means the date of delivery of Goods or completion of the Works as set forth in the Purchase Order.

The **"Delivery Place"** means the place of delivery of the Goods or completion of the Works as set forth in the Purchase Order.

The **"Goods"** means any goods, plant, machinery, apparatus, materials, documentation and/or the like supplied or to be supplied pursuant to the Purchase Order.

The **"Price"** or the **"Contract Price"** means the amount payable to the Supplier as stated and confirmed in the Purchase Order, [which shall be exclusive of value added tax but inclusive of all other charges].

The **"Purchase Order"** means these General Terms and Conditions and the Purchase Order in the form attached thereto as Appendix A.

The **"Purchaser"** means [COFCO South Africa (PTY) Ltd].



The “**Supplier**” means any organization, natural or legal person, firm or company to whom the Purchase Order is addressed and shall include the Supplier’s successors and assigns.

The “**Terms and Conditions**” means these General Terms and Conditions of Purchase.

3 Purchase Order

3.1 The delivery of any and all Goods and/or Works shall be subject to the Purchase Order.

3.2 The Purchase Order shall only be binding on the Purchaser if it is made in writing and has been signed by authorized representatives of the Purchaser and approved by the [Finance Director] of the Purchaser. The Purchaser is not bound by any instructions which are not included in the Purchase Order.

4 Delivery of Goods/Works

4.1 The Goods/Works shall conform in all respects, including but not limited to quantity, quality, performance and description, with any particular set out or referred to in the Purchase Order or attached thereto.

4.2 The Goods/Works shall conform in all respects with the requirements of any statutes, orders, regulations or by-laws in force at the date of the Purchase Order.

4.3 The Goods/Works shall be delivered on the Delivery Date and to the Delivery Place as set forth in the Purchase Order.

4.4 Unless otherwise agreed in writing, the Goods/Works shall be considered as delivered only if the Goods/ Works have been conveyed to [authorized representatives of the Purchaser/authorized employees of the Purchaser in the Delivery Place]. The Purchaser shall issue a delivery confirmation at the Supplier’s request.

4.5 If the delivery or completion cannot be accomplished within the time specified in the Purchase Order, the Supplier shall at its own cost take all necessary steps to expedite the progress of the Purchase Order, including but not limited to working additional shifts, overtime, providing additional manpower, equipment and air freighting to meet the delivery date set forth in the Purchase Order.

4.6 In the event if the Supplier fails to deliver within the time set forth in the Purchase Order he shall pay the Purchaser liquidated damages for delay at the rate specified in the Purchase Order for each week for which the Supplier fails to complete the delivery of the Goods, or complete the Works.

4.7 Where the Purchase Order does not specify an accrual rate, the Supplier shall be liable for liquidated damages of [1]% of the Contract Price per week, but the maximum amount payable as liquidated damages should not exceed [50]% of the Contract Price.

4.8 [Failure to deliver the Goods/Works within the time specified in the Purchase Order shall entitle the Purchaser (at his option) to release himself from any obligation to accept and pay for the Goods/Works and/or to terminate all or part of the Purchase Order as per Clause 10.1.2 of the Terms and Conditions, in either case without prejudice to his other rights and remedies pursuant to the Purchase Order.]

4.9 [Any access to the Purchaser’s premises and any labour or equipment that may be provided by the Purchaser in connection with delivery of the Goods/Works shall be provided without acceptance of any liability by the Purchaser. The Supplier shall indemnify the Purchaser against all claims, proceedings,

actions, damages, costs, expenses and any other liability or loss in respect of any death or personal injury, or loss of or damage to property, occurring in the course of delivery or installation to the extent that such death or injury, or loss or damage, is caused directly or indirectly by any wrongful act or omission of the Supplier or any of its staff.]

4.10 Where any access to the Purchaser's premises is necessary in connection with delivery, the Supplier and its staff shall comply with all security measures implemented by the Purchaser or applicable law in respect of persons attending those premises. [The Purchaser shall provide copies of his written security procedures to the Supplier on request. The Purchaser shall have the right to carry out any search of staff or of vehicles used by the Supplier at the Purchaser's premises.]

5 Inspection, Rejection and Guarantee

5.1 The Supplier shall allow the Purchaser or his authorized representatives to make any inspections or tests it may reasonably require with regard to the Goods/Works delivered under the Purchase Order.

5.2 The Purchaser may by written notice to the Supplier reject any part of the Goods/Works which fail to meet the requirements specified in the Purchase Order, in particular with regard to quality, quantity, weight or measurement. Such notice shall be given within [7] days from the date when the Goods/Works concerned have been actually delivered to the Delivery Place. If the Purchaser rejects any of the Goods pursuant to this Clause, the Purchaser shall be entitled (without prejudice to his other rights and remedies) at the option of the Purchaser and at the Supplier's cost either:

5.2.1 to have the Goods/Works concerned within [14] days from the notice either repaired by the Supplier or replaced by the Supplier with Goods which comply in all respects with the requirements of the Purchase Order; or

5.2.2 to obtain a refund from the Supplier in respect of the Goods concerned within [14] days from the notice.

5.3 In the event of a defect in the Goods/Works which appears after the delivery, the Seller shall grant to the Purchaser a guarantee for the period of [24 months from putting into commercial operation of the Goods/Works or 36 months from date when the Goods have been actually delivered to the Delivery Place], whichever shall be the shorter. If the Purchaser shall within such guarantee period or within 30 days thereafter give a written notice to the Supplier of any defect in any of the Goods/Works which arises during such guarantee period under proper and normal use, the Supplier shall within [14] days from the notice remedy such defects (whether by repair or replacement at the option of the Purchaser) without cost to the Purchaser and without prejudice to any other rights or remedies of the Purchaser.

5.4 In the event that the Supplier does not perform any of its obligations under this Clause in a timely manner, the Purchase shall be entitled to effect any repair or replacement by any reasonable means at the Supplier's cost.

5.5 Any Goods rejected or returned pursuant to the provisions above shall be returned to the Supplier at the Supplier's risk and expense.



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6 Property and Risk

6.1 Property and risk in the Goods shall pass to the Purchaser [on the date when the Goods have been actually delivered to the Delivery Place and accepted by the Purchaser], without prejudice to any of the rights or remedies of the Purchaser pursuant to the Purchase Order.

6.2 The Purchaser is obliged to insure the Goods [on the date when the Goods have been actually delivered to the Delivery Place and accepted by the Purchaser].

6.3 The risk in the Works shall pass to the Purchaser when the Works are completed in accordance with the Purchase Order and accepted by the Purchaser.

6.4 The Seller shall not be entitled in any instances to retain title to any part of the Goods/Works delivered to the Purchaser, regardless of whether the Purchaser has performed its obligations under the Purchase Order.

7 Payment

7.1 All fees and costs to be paid shall be expressly specified in the relevant Purchase Order and no increases shall be accepted without prior written consent of both Parties. No charge for transportation, packing, crating, storage, containers, or other levies shall be payable by the Purchaser in addition to the Price set forth in the Purchase Order.

7.2 Unless otherwise agreed in writing, all invoices shall identify the Goods/Works delivered and the Purchase Order. All invoices shall be submitted within [30] days from the Delivery Date. All undisputed amounts shall be paid within [60] days from the date of each invoice.

7.3 The Purchaser shall have the right to set-off or deduct all claims for money due or to become due to the Supplier by way of any counter-claim arising out of this or any other transaction between the Purchaser and the Seller.

8 Liability and Indemnification

8.1 The Supplier (the Indemnitor) shall indemnify and hold the Purchaser and its subsidiaries, divisions and affiliates, and their respective employees, directors, officers, principals (partners, shareholders or holders of an ownership interest, as the case may be) and agents (the Indemnitee) harmless against any and all claims, demands or causes of action of every kind and character (including any death or personal injury) arising from or in connection with the Supplier's performance of the Purchase Order.

8.2 [Neither Party shall have any liability to the other Party for indirect or consequential loss or damage of any kind including, but not limited to: loss of profits, loss of production, loss of business or costs incurred from business interruption, loss of revenue, loss of opportunity, loss of contracts, loss of expectation, loss of use, loss of goodwill or damage to reputation, loss of anticipated savings, cost or



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expenses incurred in mitigating loss and loss or damage arising from the claims of any third party that may be suffered by the other Party.]

8.3 If there is more than one Supplier liable for the performance of the Purchase Order, all Suppliers shall be liable on a joint and several basis for performance of all obligations, liabilities, covenants and agreements of the Suppliers, whether existing on the date of the Purchase Order or in the future, arising out of or in connection with the Purchase Order, and the Purchaser is towards each of them entitled to demand full performance of the entire obligation. In any event, the Suppliers are solidary debtors and a settlement of the entire obligation of any Supplier discharges the other Supplier against the Purchaser.

9 Confidentiality and Proprietary Rights

9.1 The Supplier understands and agrees that by way of submitting the Purchase Order it may be furnished with or otherwise have access to information, whether disclosed in writing, orally or by other means, that the Purchaser considers to be confidential, including but not limited to business, financial and technical information, plans, drawings, patterns, research, software, inventions, formulae, vendor and customer information, equipment, reports, forecasts, prices, cost and personnel data, designs, methods, techniques, trade secrets, processes and know-how, whether tangible or intangible and whether or not stored, compiled or memorialized physically, electronically, graphically or in writing (the "**Confidential Information**"). Confidential Information disclosed to the Supplier hereunder is and shall remain the exclusive property of the Purchaser.

9.2 The Supplier irrevocably and unconditionally agrees:

9.2.1 that the Confidential Information will be kept confidential, and shall not, without the Purchaser's prior written consent, be disclosed by the Supplier in any manner whatsoever, in whole or in part, and shall not be used by the Supplier in any way other than solely for the purpose of the Purchase Order. The Supplier shall not sell, transfer, publish, disclose, or otherwise use or make available any portion of the Confidential Information to third parties, except to those of its directors, officers, employees, or attorneys who have a need-to-know the same in furtherance of the purposes of the Purchase Order. The Supplier shall not reproduce the Confidential Information except as necessary in furtherance of the purpose of the Purchase Order;

9.2.2 to secure, protect and maintain the confidentiality of the Confidential Information, using at least as great a degree of care as it uses to maintain the confidentiality of its own information of a similar nature or importance, but in no event less than reasonable care;

9.2.3 to indemnify the Purchaser for any costs, claims, demands or liabilities of whatsoever nature arising directly or indirectly out of a breach of the Supplier's confidentiality obligations under the Purchase Order;

9.2.4 that the Purchaser, nor any of its respective directors, employees, advisers or agents shall be liable for any loss or liability of any nature, howsoever caused or arising, in relation to the Supplier's use of the Confidential Information or for any errors or omissions of any Confidential Information supplied;

9.2.5 to keep confidential and not reveal to any person, firm or company the fact that discussions or negotiations are taking place or have taken place between the Purchaser and the Supplier in connection with the purpose of the Purchase Order without the Purchaser's express prior written consent;

9.2.6 to ensure that each person to whom disclosure of the Confidential Information is made is aware in advance of obligations arising under these Terms and Conditions and where such persons are not the Supplier's employees to ensure that each such person gives an undertaking in respect of the Confidential Information, in terms of this Clause;

9.2.7 upon written demand of the Purchaser either to return the Confidential Information and any copies of it to the Purchaser or to confirm in writing that, save as required by law or regulation, it has been destroyed; and

9.2.8 that no representation or warranties of any kind are made or given as to the accuracy or completeness of any Confidential Information supplied.

9.3 Notwithstanding the above terms, there shall not be a breach of the above terms in the following circumstances:

9.3.1 disclosure by the Supplier of any such part of the Confidential Information to any other persons to the extent that such information disclosed either is at date of the Purchase Order or prior to such disclosure becomes (through no fault of the Supplier or any of its respective officers, employees or agents) public knowledge;

9.3.2 disclosure by the Supplier of any such part of the Confidential Information which was lawfully in the Supplier's possession prior to the Purchase Order;

9.3.3 disclosure by the Seller of any such part of the Confidential Information pursuant to a request to disclose, in connection with judicial proceedings, or a similar process by a court of competent jurisdiction or by a governmental and/or regulatory body in respect of any part of (or all of) of the Confidential Information or as required to be disclosed by law.

9.4 If the Information is to be disclosed pursuant to Clause 9.3.3. above, the Supplier will promptly notify the Purchaser and cooperate with the Purchaser to the extent legally permissible if the Purchaser should seek to obtain an order or other reliable assurance that confidential treatment will be accorded to designated portions of the Confidential Information.

9.5 [If development forms part of the Purchase Order, the ownership of any intellectual property rights, including but not limited to patents, registered or unregistered designs and copyright, arising from such development shall be transferred to the Purchaser on a free-of-charge basis and the Supplier shall cooperate in any measure necessary to make such transfer effective as soon as any such right arises.]

10 Termination of Purchase Order

10.1 The Purchaser may terminate the Purchase Order by written notice having immediate effect in any of the following events:

10.1.1 if the Supplier becomes insolvent, files for bankruptcy, liquidation or re-organization, is declared bankrupt or has applied for suspension of debts, goes into liquidation or re-organization, a receiver or administrator is appointed, or the Supplier enters into any other arrangement or proceedings relating to any form of insolvency. In that case, the Supplier shall ensure that the full title to the Goods/Works is transferred to the Purchaser;

10.1.2 if the Supplier does not perform its obligations regarding time of delivery and/or completion or it becomes apparent that delivery or completion cannot be accomplished within the time specified in the Purchase Order;

10.1.3 if the Supplier breaches any other material provision of the Purchase Order, which breach or failure, if capable of remedy, is not remedied within [30] days or such other period as may be specified by the Purchaser, after written notice thereof is received by the breaching the Purchaser.

10.2 For the avoidance of doubt, after termination of the Purchase Order, Clauses [9 and 14] shall remain in force.

11 Force Majeure

11.1 If, by way of “force majeure” which shall mean for the purpose of the Purchase Order, any cause beyond the reasonable control of the affected Party and provided that such Party could not reasonably have foreseen such occurrence at the time of entering into the Purchase Order and could not reasonably have avoided it or overcome its consequences, including, without limitation:

11.1.1 acts of God, fires, explosion or epidemic or earthquake, hurricane or other similar natural disaster;

11.1.2 war (including civil war), riots, invasion, acts of terrorism, civil disturbance, acts of the public enemy;

11.1.3 maritime or aviation disasters;

11.1.4 acts of environmental activists or non-governmental organizations;

11.1.5 contamination of radioactivity from any nuclear fuel or from any nuclear waste;

11.1.6 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

11.1.7 any strikes or industrial disputes at a national, regional or local level, labour disputes;

11.1.8 any act in consequence of compliance with any order of any government or governmental authority,

11.2 For the avoidance of doubt, the following events shall not constitute Force Majeure:

11.2.1 any shortage in supply of equipment, materials or people (other than resulting from any event or circumstance set out above);

11.2.2 any failure by the Supplier for reasons within its control to obtain or maintain any permit, consent, authorization or approval which it is responsible for obtaining under the Purchase Order;



11.2.3 lack of funds, financial hardship or inability or failure of a Party, to make a payment due, make a profit or achieve a satisfactory rate of return resulting from the performance or failure to perform its obligations under the Purchase Order.

12 Miscellaneous

12.1 Unless otherwise agreed in writing, neither Party shall assign the Purchase Order or its rights and obligations hereunder in whole or in part without the prior consent of the other Party.

12.2 The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy. No waiver shall be effective unless it is communicated to the other Party in writing. A waiver of any right or remedy arising from a breach of the Purchase Order shall not constitute a waiver of any right or remedy arising from any other breach of the Purchase Order.

13 Severability

13.1 If any provision of the Purchase Order is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the Purchase Order shall continue in full force and effect as if the Purchase Order had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Purchase Order, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

14 Governing Law, Jurisdiction and Dispute Settlement

14.1 The Purchase Order shall be governed by, construed and interpreted in accordance with the substantive laws of [South Africa] exclusive of any rules with respect of [conflicts of laws].

14.2 Unless specifically agreed otherwise, all disputes arising out of or in connection with the Purchase Order shall be subject to [the exclusive jurisdiction of the South African courts]. Before referring any dispute to formal resolution process the parties shall attempt to settle the matter among themselves (referring it to their managing or commercial directors as appropriate) and shall also consider reference to an appropriate form of alternative resolution procedure.