

ROSELICK CONSULTING (PTY) LTD - GENERAL CONDITIONS OF TENDER, CONTRACT AND SALE

1. DEFINITIONS

- 1.1. Seller/Contractor Roselick Consulting (Pty) Ltd.
- 1.2. Purchaser/Customer The party to whom the tender is made and whose order is accepted by the Seller in terms of Clause 2, (such acceptance hereinafter being referred to as "Acceptance of Order").
- 1.3. Works/Goods The materials, products and/or services described in the Seller's tender as confirmed in the Acceptance of Order.
- 1.4. Contract These General Conditions of Tender, Contract and Sale, the Seller's Tender and the Acceptance of Order, together with only such other terms and conditions as may be specifically and in writing between the parties.

2. ACCEPTANCE OF ORDER

- 2.1. The Purchaser's order in response to the Seller's Tender shall constitute an Offer, and a contract shall only come into existence when the Seller accepts the Purchaser's order, by issuing an Acceptance of Order or by commencing work in response to the order. Unless otherwise specifically stipulated in writing in the Seller's Tender or in the Acceptance of Order, any other terms and conditions, including those forming part of the Purchaser's Enquiry or Purchaser's order which deviate from these terms and conditions or those in the Seller's Tender and Acceptance of Order, shall not form part of the Contract, and shall be of no force or effect.
- 2.2. In the event that the Purchaser and the Seller engage in negotiations over amendments or additions to or deletions from these General Conditions, these General Conditions shall govern the Works until such negotiations are final and these General Conditions amended (if at all) by agreement in writing.

3. SCOPE OF CONTRACT

- 3.1. The Seller's obligations in terms of the Contract will be to execute the Works/Goods in accordance with such designs, instructions, itemised details, plans, drawings, programmes and specifications (the Specifications) as form part of Contract, and in particular the Seller will not be responsible for the adequacy of or for any costs occasioned by the inadequacy of any such specifications or for any foundations or supporting structures or other work as may have provided, prepared or specified by or on behalf of the Purchaser.

4. LIABILITY

4.1. Liability for defects

The Seller undertakes that the Works/Goods will conform to such specifications in respect each order as have been specifically accepted by the Seller in writing in the Seller's Tender or in the appropriate Acceptance of Order and in the event of the Works/Goods proving to be not in accordance with such specifications, the Seller shall, if requested to do so in writing within a reasonable time of discovery of such failure to conform to such specifications (hereinafter referred to as defects), but not in any event after 12 months have elapsed from the date of delivery of such defective Works/Goods to the Purchaser, at its option, repair or replace the defective portions/components of the Works/Goods, by supplying the repaired or replacement portions/components of the Works/Goods to the initial place of delivery, or at the further option of the Seller, to credit the Purchaser with the invoiced value of the defective portions/components of the Works/Goods in question. Notwithstanding anything to the contrary anywhere contained, the Seller shall have no liability in respect of any defects in the Works/Goods, whether latent or patent, not notified to the Seller in writing before the end of the aforesaid 12 month period.

4.2. Liability for Delay

Subject to the provisions of Clause 8, the Seller undertakes to complete the Works/Goods in accordance with such programme in respect of each order, as has been specifically accepted by the Seller in writing in the Seller's Tender or in the appropriate Acceptance of Order, ;and in the event that the Works/Goods are not completed in accordance with such programme or any extensions or revisions of such programme, or if delays are caused by discovery, after delivery, of defects in the Works/Goods, the Seller's liability shall be limited to such penalty for late delivery as may have been specifically accepted by the Seller in writing in respect of each order accepted by the Seller. Such penalty shall only be payable in the event that and to the extent that the Purchaser is himself legally obliged to pay penalties in respect of such delay, and in no event shall such penalty exceed 10% of the unescalated Contract Price of such portions of the Works/Goods as cannot, because of the delay, be put to the use intended, and such penalty shall constitute the Seller's sole liability and the Purchaser's sole remedy for such delay.

4.3. Liability for Loss, Accident or Damage: Unless the Purchaser has agreed to insure the Works/Goods, the Seller undertakes that the Works/Goods will be insured during the execution thereof against such loss, accidents or damage as may occur to such Works/Goods or to persons or property during the execution of such Works/Goods as may be insured against in terms of the Seller's standard

4.3.1. Workman's Compensation Insurance Cover:

4.3.2. Contractors All Risks Insurance Cover;

4.3.3. Contractors Public Liability Insurance Cover,

4.3.4. Contractors Common Law Liability Insurance Cover,

4.3.5. from time to time but not otherwise, provided always that unless otherwise agreed in writing in each particular instance, the Seller shall not insure and shall accept no responsibility for equipment or material furnished by or on behalf of the Purchaser to the Seller for the purposes of executing the contract. Further details in respect of such policies are available on request.

4.4. Notwithstanding anything to the contrary anywhere contained the liability of the Seller howsoever arising out of the Contract or in Delict shall not extend beyond the obligations specifically assumed in terms of this Clause 4, and the Seller:

- 4.4.1. gives no other warranties express or implied in respect of (without limitation) workmanship, materials, fitness for purpose, merchantability or products liability not set out herein;
- 4.4.2. in respect of bought out or proprietary items not of its own manufacture, gives no greater warranty and accepts no greater liability than that given or accepted by and enforceable against the supplier/manufacturer thereof;
- 4.4.3. gives no warranties in respect of Works/Goods used other than for the intended purpose, or for defects arising through fair wear and tear or neglect;
- 4.4.4. shall in no event be liable for the Purchaser's loss of profits, loss of use, loss of production, loss of contracts, loss of custom or goodwill, or for any special, indirect or consequential damages howsoever arising.

5. DELIVERY

- 5.1. Unless otherwise stipulated in the Contract, the Contract Price is based on "ex works" delivery and is exclusive of VAT, packaging, freight and insurance during transport.
- 5.2. The risk in and to the Works/Goods will pass to the Purchaser on Delivery and claims for non delivery or for shortages or damage upon receipt of the Works/Goods must be made by the Purchaser within the earlier of 7 (seven) days of the relevant consignment note or receipt of the Works/Goods as the case may be, failing which the Seller shall have no liability in respect of such claims.
- 5.3. Should the Purchaser fail or refuse to take delivery of the Works/Goods when delivery is tendered by the Seller, the Purchaser shall be liable for such costs as may be incurred by the Seller in consequence thereof.

6. CONTRACT PRICE

- 6.1. Unless otherwise specifically agreed in writing in each particular instance:
- 6.2. the Contract Price to be paid by the Purchaser for the Works/Goods shall be as set out in the tender, and is based on the costs of materials, transport, labour, exchange rates and import duties, ruling at the date of the Seller's Tender, and any variation in such costs or rates occurring between the date of Tender and the date of completion of the Works/Goods, shall be for the account of the Purchaser and shall be determined in accordance with the formula included in the Contract, and if no formula is so included, in accordance with, the prevailing relevant formulae, principles and indices published by SEIFSA;
- 6.3. the Contract Price does not include the cost of Patterns, Gauges, tools and Dies, which shall be charged separately, and which shall in all cases remain the property of the Seller.
- 6.4. the Contract Price shall be paid in cash, free of exchange, deduction or set off within 30 (thirty) days of date of Seller's statement, provided that in any event, notwithstanding delivery of the Works/Goods to the Purchaser or to any third party, it is specifically agreed that it is the intention of the parties that the Works/Goods shall not accede to any other property, whether movable or immovable, and that as far as any other goods or equipment concerned the Goods shall, for the purposes of accession, be deemed to be the Principal items, and that ownership of the Works/Goods and any items accessory thereto shall at all times remain vested in the Seller, and shall not pass to the Purchaser until the full Contract Price has been paid. In the event of non-payment, the Purchaser hereby irrevocably authorises the Seller or its duly authorised agents to repossess the Works/Goods wheresoever they may be found, and further at its option to detach or unmix by itself, its agents or servants, the Goods from anything to which they are attached or in which they are installed or annexed without being responsible for any damage that may be caused thereby and, may, for such purpose, by itself, its servants or agents, enter upon any land or building, vehicle or vessel or other place upon which the Goods are reasonably thought to be situated;
- 6.5. payments delayed after the due date for payment shall be subject to interest charges, compounded monthly with effect from the date of delivery, at 5% above the rate prescribed from time to time in terms of the Prescribed Rate of Interest Act No 55 of 1975.
- 6.6. Should any amount be outstanding and due and payable to the Purchaser by any third party in respect of the Works/Goods, and should the Purchaser not have made payment in terms of this clause 6, the Purchaser hereby cedes "in securitatem debiti" all its right, title and interest in such payment from such third party to the Seller and the Purchaser hereby undertakes to advise the third party accordingly, and to sign all and any documentation to give effect to such cession, and the Seller hereby accepts such cession.
- 6.7. Where payment by the Purchaser is effected by cheque and where the post is used, the risk of loss arising from the use of a cheque or the use of the post, shall rest with the Purchaser.

7. RENUNCIATION OF BENEFITS

The Purchaser hereby renounces the benefits of and any other rights not expressly referred to in these General Conditions or not expressly agreed in writing to which it may be entitled, or which it may acquire in terms of the Agricultural Credit Act No 28 of 1966 as amended, the Moratorium Act No 25 of 1963 or any other similar rights under any other statute.

8. VARIATIONS

The Seller shall execute the Works/Goods strictly in accordance with the Contract. Should the Purchaser require variations to the Works/Goods, or to the quantities thereof, or should the Seller be hindered, delayed or prevented from performing in terms of the Contract or be exposed to extra cost owing to extensions to or omissions from the order, deviations from the specifications, late, defective or non receipt of information or free issue materials, or by any other act, default or omission by or on behalf of the Purchaser, the Seller shall be entitled to an appropriate variation to the rates or to the Contract Price or to the programme, or any other obligation of the Seller, provided that no such variation required by the Purchaser shall, without the written consent of the Seller, be such as will, together with such other variations as may have been requested, involve a variation of more than 10% (ten per centum) to the Contract Price or to the quantities set out in the Contract.

9. FORCE MAJEURE

- 9.1. Neither party shall be liable to the other for inability to perform or delayed performance in terms of the Contract, should such inability or delay arise from any cause beyond the reasonable control of such party, the existence or happening of which cause has been drawn to the attention of the other party within a reasonable time of the occurrence of such cause (hereinafter referred to as a Force Majeure event).
- 9.2. For the purpose of this clause a Force Majeure event shall, without limitation of the generality of the foregoing, be deemed to include, strikes, lock outs, labour disputes, accidents, plant and machinery breakdowns, fire, explosions, theft, war, (whether declared or not), invasion, acts of foreign enemies, hostilities, riot, civil insurrection, flood, earthquake, lightning, act of local or national government, martial law, failure or delay on the part of the Seller's supplier(s), of services, bought out or raw materials to meet delivery dates, or any failure or delay on the part of the Purchaser or the Purchaser's agents or other Contractors to provide the Seller with free issue materials, specifications or defects or changes in such specifications, or any other cause beyond the reasonable control of the party affected.

10. PATENTS COPYRIGHT AND CONFIDENTIALITY

- 10.1. The Purchaser shall indemnify and hold harmless the Seller against all claims and expenses of whatsoever nature and description arising from the alleged or actual infringement of any Letters Patent, Trade Marks, Designs or Copyright occasioned by the Seller's performance of this Contract.
- 10.2. The Seller warrants however that any designs specified by it shall not infringe any such Letters Patent, Trade Marks, Designs or Copyright
- 10.3. The Purchaser shall keep confidential and shall not use for any purpose other than the Contract itself, all drawings and designs supplied by the Seller in terms of the Contract, and the Purchaser shall indemnify the Seller against any loss suffered by the Seller as a result of the breach of this clause.

11. BREACH

Should either party be in breach of any material obligations imposed in terms of the Contract, and fail to remedy such breach or take positive steps towards remedying such breach within 14 (fourteen) days of written notice of such breach from the other party, then the non defaulting party shall be entitled to cancel the Contract, without prejudice to such other rights as such non defaulting party may have in terms of this agreement or at law.

12. GOVERNING LAW AND DISPUTES

- 12.1. The Contract shall be construed and interpreted in accordance with the laws of the Republic of South Africa.
- 12.2. Any dispute arising between the parties in respect of the Contract shall at the option of the Seller be justiciable either in the Supreme Court of South Africa or in the Magistrates Court having jurisdiction over the Purchaser/Customer in terms at Section 28 of the Magistrates Court Act, 32 of 1944 and the parties hereby consent to such jurisdiction as required in terms of Section 45 of that Act, notwithstanding the fact that the dispute might otherwise have fallen outside the jurisdiction of such Magistrates Court and the Purchaser consents to such jurisdiction.

13. FUTURE CONTRACTS

These General Conditions (as they may be amended from time to time by the Seller) shall also apply to any future, oral or written contract for the supply of goods and/or services by the Seller to the Purchaser, save to the extent that these General Conditions are in any future contracts specifically varied or excluded or are inconsistent with what is expressly agreed in any such future contract.

14. LANGUAGE

These General Conditions are available in the other official language, upon request.

15. REWORK

Should the purchaser deem it fit to rework components in house due to a receiving inspection failure; the costs of such an operation must be approved by the Seller before such rework is carried out.