

## **STANDARD TERMS AND CONDITIONS**

### **Supply of goods and/or services**

These conditions govern the supply of goods and/or services to Bushveld Vanchem (Pty) Ltd ("Bushveld Vanchem") by its suppliers under a Purchase Order.

#### **1. PRECEDENCE OF DOCUMENTS:**

These terms and conditions are applicable to the Purchase Order to the exclusion of any other terms, including any terms or conditions which the Supplier purports to apply under any quotation, proposal, invoice, confirmation of order, specification or other document, save and except that these terms and conditions shall not apply where there is an existing executed agreement between the Purchaser and the Supplier pertaining to the goods and/or services as set out in the Purchase Order.

#### **2. INTERPRETATION:**

Unless the context otherwise requires, the following terms have the meanings given when used in this Contract:

- 2.1. Contract means the Purchase Order, these standard terms and conditions together with all documents incorporated into these terms and conditions by reference.
- 2.2. Purchase Order means the request or order from the Purchaser to the Supplier to supply goods and/or services.
- 2.3. Purchaser's Corporate Policies means the most current version of the policies, codes and principles published by Bushveld Vanchem, as amended from time to time, copies of which are available on request from the Purchaser.
- 2.4. SHE Requirements means all relevant law and government requirements relating to workplace safety health and the environment, and the most current version of the Purchaser's policies with respect to safety, health, and the environment and stakeholder relationships.
- 2.5. Supplier means the corporate body or person to whom or to which the Purchase Order is addressed and includes the Supplier's successors in title and permitted assigns.

#### **3. NON-EXCLUSIVE RELATIONSHIP:**

The Supplier acknowledges and agrees that the Purchaser may engage any other party to supply goods and/or services of a similar nature to the goods and/or services being supplied by the Supplier in terms of the Purchase Order.

#### **4. PURCHASE ORDER:**

- a) The supplier shall not supply goods and/or services to the Company without being in possession of a Valid Purchase Order issued by an authorized Bushveld Vanchem official.
- b) Bushveld Vanchem enforces a Pay as per Purchase Order Policy, as a result the onus shall be on the supplier to verify the pricing details on the Purchase Order prior to delivery and report any inconsistency to the responsible Procurement Official displayed on the Purchase Order.

- c) Post-delivery invoice variations will only be entertained with the written consent of the Financial Director or Chief Executive Officer. Such variations may result in a delay in payment and all costs associated (interest, forward cover etc.) shall be for the supplier's account.

**5. ESCALATION:**

Unless otherwise specifically stated in the Purchase Order, prices are fixed and free from any and all escalation.

**6. QUALITY:**

- a) Goods and/or services shall be supplied strictly in accordance with the terms (quantities, units, description, prices and delivery) stated in the relevant Purchase Order.
- b) The Supplier warrants that the goods and/or services will:
  - i. be of merchantable quality and fit for their intended purpose;
  - ii. be free from all defects and imperfections affecting performance;
  - iii. be of current manufacture, appropriate grade and suitable capacity;
  - iv. conform in all respects to the specifications; and
- c) The Supplier shall provide a warranty on the goods and/or services for a period of no less than twelve (12) months from the delivery date unless a greater period has been stipulated by the Supplier, in which event, the greater period shall apply.

**7. RISK AND TITLE:**

- a) Risk and title in and to the goods shall pass to the Purchaser upon delivery of the goods to the site (stated in the relevant Purchase Order) and acceptance of the goods by the Purchaser.
- b) The Supplier warrants that the goods as at date of delivery are free and clear of any lien, claim, demand, security, interest or any other encumbrance.

**8. PACKAGING:**

The Supplier shall ensure that the goods are packaged as per the instructions in the Purchase Order. In the event that there are no instructions in the Purchase Order, the Supplier shall meet the packaging standards as is customary in the industry so as to ensure adequate protection for the goods and eliminate damage.

**9. DELIVERY:**

- a) The Purchaser shall not accept any goods in excess of the quantity specified in the Purchase Order. Such goods as may be in excess of the specified quantity in the Purchase Order shall be removed by the Supplier from the Purchaser's site within seven (7) days, at the Supplier's own cost and title and risk in these goods shall remain with the Supplier.
- b) The Supplier shall, at the Supplier's cost, replace any goods lost or damaged in transit, howsoever caused.

**10. TESTS AND INSPECTIONS:**

The Purchaser has the right to conduct tests and/or inspections of the goods after delivery and/or after payments have been made, as the Purchaser may deem necessary.

**11. HAZARDOUS SUBSTANCES:**

In the event that the goods supplied by the Supplier are hazardous substances as defined in the Hazardous Substances Act, No 15 of 1973, the Supplier warrants that the goods are safe and without risk to health and safety when used, handled, processed, stored or transported; and the Supplier shall provide the Purchaser with detailed documented information about, inter alia, the use of the substance, the potential risk to health and safety associated with the substance, any restrictions or control on the use of this substance, the safety precautions to ensure that the substance is without risk to health and safety, and the procedure to be followed in the event of an accident involving exposure to these substances.

**12. INVOICES AND PAYMENT:**

- a) Payment of all invoices is subject to full delivery being completed.
- b) All payments are conditional upon receipt by the Purchaser of the Supplier's tax invoice that complies in all instances with the Value Added Tax Act (Act 89 of 199:1,) (or any amendments and/or substitutions thereof) and must reflect the Purchase Order number.
- c) Payment will be made as per the payment terms set out in the Purchase Order. If no terms appear on the Purchase Order, the Purchaser will pay the Supplier sixty (60) days after date of statement. For early payment of any invoice i.e. 30 days from date of statement, an early settlement discount of at least 2.5% is required.
- d) The Purchaser shall not be liable for any interest for late payments unless expressly agreed otherwise in writing by the Purchaser.
- e) All payments shall be made by means of electronic funds transfer only.
- f) The Purchaser may refuse payment of any tax invoice which it may contest.

**13. INCOME TAX ACT:**

- a) The Supplier warrants that it understands the criteria that apply to distinguish independent contractors from personal service providers as envisaged in the Income Tax Act.
- b) The Supplier indemnifies the Purchaser against all losses, claims, liabilities, damage or expense which the Purchaser may suffer or be exposed to as a result of, or which may be attributable to any liability of the Supplier for tax in respect of payments made in terms of the Purchase Order. For these purposes "tax" includes SITE, PAYE, VAT and all other forms of duties or taxation, and any penalties or interest.

**12. INTELLECTUAL PROPERTY:**

- (a) The Supplier warrants that neither the supply of goods, the use of the goods by the Purchaser, nor any design, materials, documents and methods of working provided by the Supplier in the performance of the services will infringe any patent, design, trade mark or name, copyright or other protected right, whether registered or not.
- (b) In this regard, the Supplier shall indemnify the Purchaser against all liabilities, damages, claims, losses, costs and all other expenses (including legal costs) whatsoever that the Purchaser may incur as a result of any alleged infringement or infringement of intellectual property rights.

- (c) Title to, copyright in and other intellectual property rights in any documents or other property created by the Supplier for or in connection with the services vests in the Purchaser on creation and the Supplier hereby cedes and assigns all such rights to the Purchaser with effect from the date of creation in order to vest such intellectual property in the Purchaser.

**13. LIMITATION OF LIABILITY:**

- (a) Neither the Purchaser nor the Supplier shall be liable or responsible to each other for any indirect, consequential or incidental damages, including but not limited to loss of profit or loss of production arising out of a breach of the Contract.
- (b) Clause 13(a) shall not apply to clause 11(b), clause 12(b) and clause 14(a) and (b).

**14. INDEMNITY:**

The Supplier shall be liable for and indemnifies and holds the Purchaser harmless against all claims, damages, losses or costs whatsoever relating to or as a result of:

- (a) the injury or death of any person,
- (b) a breach by the Supplier of any law in the course of, or caused by the performance of its obligations under the Contract,
- (c) any damage to property on the Purchaser's site, to the extent that the damage, death, injury or breach is due to an act and/or omission of the Supplier.

**15. INSURANCE:**

The Supplier shall effect and maintain all insurances that a prudent person in the Supplier's position would consider appropriate, in the circumstances having regard to the Supplier's obligations under the Contract.

**16. SAFETY:**

- (a) The Supplier shall comply with the SHE Requirements when on the Purchaser's site.
- (b) The Supplier shall comply with the Purchaser's Corporate Policies.
- (c) The Supplier undertakes to comply with all applicable legislation including (but not limited to) the Occupational Health and Safety Act No 85 of 1993, Mine Health and Safety Act No 29 of 1996, Compensation for Occupational Injuries and Diseases Act No 130 of 1993 and Hazardous Substances Act No 15 of 1973.

**17. CONFIDENTIALITY:**

- (a) The Supplier shall keep the contents of the Purchase Order and any information of or relating to the Purchaser or its operations or affairs or the goods and/or services which may be acquired by the Purchaser confidential, save and except for information:
  - (i) which is publicly available or becomes publicly available through no act or default of the Supplier; or
  - (ii) which came into the possession of the Supplier on a non-confidential basis from a source other than the Purchaser which source is not bound by a confidentiality agreement or other obligation

of secrecy to the Purchaser or another person and is not otherwise under an obligation of secrecy to the Purchaser or another person ("Confidential Information").

- (b) The Supplier undertakes not to publish, disclose or reveal any Confidential Information to any other person or party whatsoever, other than as may be required by law, without the Purchaser's prior written consent.
- (c) The Supplier shall not, without the prior written approval of the Purchaser:
  - (i) take any photographs of the Purchaser's site or any part thereof;
  - (ii) publish any article, story or advertisement in connection with the goods and/or services on the site or elsewhere.

**18. DEFAULT:**

In the event that -

- (a) the Supplier breaches any of its obligations under the Contract,
- (b) the Supplier is placed under liquidation or is sequestrated, either provisionally or finally, whether voluntary or compulsorily,
- (c) the Supplier is placed under business rescue or ceases to carry on business or disposes of some or all of its assets, the Supplier is unable to pay its debts as they become due, then the Purchaser may, without prejudice to any other rights it may have, terminate the Contract with immediate effect without payment for compensation to the Supplier for any damages whatsoever.

**19. DISPUTE RESOLUTION:**

Any dispute between the parties arising out of the Contract shall be submitted to arbitration in accordance with the commercial arbitration rules of the Arbitration Foundation of Southern Africa (AFSA). The arbitration shall be held in Johannesburg.

**20. FORCE MAJEURE:**

- (a) Should either the Purchaser or the Supplier (hereinafter referred to as "the invoking Party") be prevented from fulfilling any of its obligations in terms of this Contract as a result of any act of God, war, fire, flood, legislation, insurrection, sanctions, trade embargo, illegal strikes or any economic or other cause beyond the reasonable control of such party (any such event hereinafter called "force majeure") then the invoking party will forthwith give written notice thereof to the other party specifying the cause and anticipated duration of the force majeure.
- (b) Performance of any such obligations will be suspended from the date on which notice is given of force majeure until the date on which notice is given of termination of force majeure ("Suspension Period").
- (c) The involving party will not be liable for any delay or failure in the performance of any obligation where under, or loss or damage due to or resulting from the force majeure during the Suspension Period.

**21. ANTI-CORRUPTION:**

A director, employee or agent of the Supplier must not:

- (i) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or

- (ii) enter into any business agreement with, any director, employee or agent of the Purchaser other than as a representative of the Purchaser or in the ordinary and proper course of business between any of those parties.

**22. NOTICES:**

Notices must be in writing, in English and addressed to the receiving party at the physical address specified in the Purchase Order and will be deemed to have been received

- (a) if posted, on the 10th day after posting;
- (b) if delivered personally, upon delivery;
- (c) if sent by facsimile or email:
  - (i) on a business day, on dispatch of the transmission; or
  - (ii) on a day other than a business day, on the next business day.

**23. RIGHT TO AUDIT:**

The Supplier must permit the Purchaser, or its designated internal / external audit representatives, reasonable access to the Supplier's premises for the purpose of conducting audits of the Supplier's records and/or processes to the extent necessary to verify the Supplier's compliance with the Purchase Order and these terms and conditions.

**24. ASSIGNMENT:**

The Supplier may not, without the prior written consent of the Purchaser, assign or otherwise deal with any right, title, interest or obligation under the Contract.

**25. SUBCONTRACT:**

The Supplier shall not subcontract the whole or portions of the Purchase Order without the prior written consent of the Purchaser. The Supplier shall be responsible for the acts or defaults of any subcontractor, his agents or employees, as if they were the acts or defaults of the Supplier.

**26. GOVERNING LAW:**

The Agreement is governed by and must be construed and enforced in accordance with the laws of the Republic of South Africa.

**27. ENTIRE AGREEMENT:**

Subject to clause 1, the Contract contains the entire agreement between the parties as to the subject matter hereof and supersedes any previous arrangements or understandings (if any) relating to the subject matter hereof.

**28. SEVERABILITY:**

If any provision contained in the Contract is void, illegal or unenforceable, that provision is severable from the Contract and the remainder of the Contract has full force and effect.

**29. NON-WAIVER:**



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No failure by a party to enforce any provision of this Contract will constitute a waiver of such provision or affect in any way a party's right to require the performance of such provision at any time in the future.

**30. AMENDMENT:**

The Contract may be altered only in writing signed by both parties.

**31. NO OTHER RELATIONSHIP:**

Nothing contained in the Contract is to be construed as constituting a joint venture, agency or partnership between the Supplier and the Purchaser. It is specifically recorded that the Supplier is an employer in its own right.

**32. SURVIVAL:**

Any provision of the Contract which contemplates performance or observance subsequent to any termination or expiration of the Contract shall survive any termination or expiration of the Contract and continue in full force and effect.

*Effective Date: 25 January 2017*

*Chief Executive Officer*