

PURCHASE ORDER STANDARD TERMS AND CONDITIONS**1. DEFINITIONS**

"Buyer" shall mean and include "The Southern African Shipyards".

The Seller and the Buyer hereby agree as follows:

2. ACCEPTANCE

This Purchase Order supersedes all previous written or verbal representations and agreements between the parties with respect to the subject matter hereof and becomes a binding agreement, subject to the specific terms and conditions stated herein, upon Seller's acceptance by acknowledgment or commencement of work. This Purchase Order contains the entire agreements of the parties and expressly limits acceptance to the terms and conditions stated. Any terms or conditions proposed by the Seller inconsistent with or in addition to the terms and conditions hereof are objected to and void unless agreed to in writing by the Buyer. The remedies of the Buyer under this Purchase Order are cumulative and are in addition to any other remedies provided by law. No delay or failure on the part of the Buyer in exercising any rights under this Purchase Order, and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights hereunder.

3. PUBLISHED STANDARDS

Unless otherwise stated on the Purchase Order all services and/or material purchased shall meet current published standards dealing with its use and application.

4. NO EXTRA CHARGES

This is a **FIRM FIXED PRICE** Purchase Order. The total price payable to Seller hereunder for supplies/services furnished in accordance with the procurement requirements shall be stated in this Purchase Order. The price shall not be increased to cover any future seller price increases and shall be inclusive of packing, packaging, and cartage, premium transportation charges, reusable containers, service or carrying charges, permits, fees, and licenses, or any other charges whatsoever unless specifically agreed to in writing by the Buyer.

5. CHANGES

The Buyer may at any time, in the manner described hereinafter, and without notice to sureties, make changes within the general scope of this Purchase Order in any one or more of the following:

- drawings, designs, or specifications of supplies being specially manufactured for the Buyer,
- method of shipment or packing;
- place of delivery; and
- delivery schedules.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Purchase Order, an equitable adjustment shall be made in the purchase order price or delivery schedule or both and this Purchase Order shall be modified in writing accordingly. The Buyer's employees have no authority to direct any change affecting 4a above which increases the purchase order price except by a change order issued by the Buyer's Purchasing Agent, or to direct any other change affecting 4a through to 4d above except by a change order or other writing issued or signed by the Buyer's Purchasing Agent for its Purchasing Department. Any claim by the Seller for adjustment under this clause must be asserted in writing to the Buyer's Purchasing Agent not later than seven (7) days after the date of receipt by Seller of the change order or other writing referred to above or within such extension of that seven (7) day period as the Buyer, in its sole discretion, may grant at the Seller's

request prior to the expiration of said period or any extension thereof. Nothing in this clause shall excuse the Seller from proceeding with this Purchase Order as changed.

6. WARRANTY

The Seller warrants that all Supplies and Services supplied under this Purchase Order will be in accordance with all contract requirements and free from defects or inferior materials, equipment, and workmanship for twelve (12) months after final acceptance of the Supplies or Services. If the Buyer finds the warranted Supplies or Services need to be repaired, changed or re-performed, the Buyer shall so inform the Seller in writing and the Seller shall promptly and without expense to the Buyer replace or satisfactorily correct the Supplies or Services. Any Supplies, Services or parts thereof so corrected, shall also be subject to the provisions of this Clause, and the warranties for such Supplies, Services or parts shall be for twelve (12) months from the date of the Buyer's final acceptance of such corrected Supplies or Services. The Seller further warrants the supplies/services will meet Seller's published specifications and standards, will be new (not used or reconditioned), merchantable and suitable for the purpose intended. These warranties shall survive inspection, acceptance, and payment. Supplies/Services that do not conform to the above warranties may, at any time within 12 months after delivery to the Buyer, be rejected and returned to the Seller, and the Seller's expense, for correction or replacement. If the Seller does not promptly correct or replace same, the Buyer may correct or replace the non-conforming supplies/services at the Seller's expense. The foregoing warranties are in addition to all other warranties expressed or implied by law including incidental or consequential damages.

7. PRICE WARRANTY

The Seller warrants that the price(s) charged for the supplies/services specified in this order do not exceed the selling price(s) Seller charges its most favoured customer for the same or substantially similar items, whether sold to the industry, government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale. The Seller further agrees that in the event of an announced price reduction prior to complete shipment of supplies or performance of service, said price reduction shall be passed on to the Buyer for supplies remaining to be shipped or services still to be performed.

8. INSPECTION

All items are subject to final inspection and acceptance at destination notwithstanding any payments or inspection at source. Supplies to be furnished hereunder shall be subject to inspection by the Buyer and/or appointed inspectors upon the premises of the Seller. The Seller, without additional cost, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of inspections the Seller shall make available to the inspectors copies of all drawing, specifications and process, preservation and packaging data applicable to the articles ordered herein.

9. ASSIGNMENT/SUB-CONTRACTING

The Seller shall not assign this Purchase Order, or any rights, interest or payments, or the performance of any of its duties under this order without the prior written consent of the Buyer. Except for standard commercial items, raw materials, or other supplies identified in the Seller's proposal as procured from others, the Seller shall not subcontract the complete or any substantial portion of the work without the prior written consent of the Buyer. Any attempted or purported assignment/subcontracting by the Seller without the Buyer's prior written consent shall be void and not binding upon the Buyer.

10. DELIVERY

The Seller agrees that time is of the essence in the performance of this Purchase Order. Deliveries shall be strictly in accordance with the order

delivery schedule. The Buyer reserves the right to refuse or return, at the Seller's expense, any excess shipments or deliveries made in advance of the order schedule. Invoices for early deliveries, when accepted, may be deferred until the scheduled delivery date. The Buyer's purchase order number, requisition number and contents must be clearly shown on all packages, boxes, crates, etc., of each shipment and on all shipping papers pertaining thereto. The Seller shall be liable for any increase in freight or transportation charges arising from the Seller's failure to follow shipping instructions specified herein. The Buyer shall not be liable for any charges for boxing, crating or cartage unless specified herein. Signed bills of lading, express receipts, or air-bills, showing weight and rate for all shipments must accompany invoices. Packing slip must accompany all shipments instructions specified herein. The Seller agrees to advise the Buyer, as soon as possible, of any delays in meeting the order delivery schedule and the reasons therefore. If a delay is due to causes beyond the Seller's and, when applicable, its subcontractor's control, and without fault or negligence of either of them, the Buyer may, at its sole discretion, either adjust the delivery schedule or terminate the order for convenience. If the delay is due to the Seller's or its subcontractor's failure, and the failure is not cured within ten (10) days after the Seller's receipt of the Buyer's notice thereof, the Buyer may, at its sole discretion, either accept a revised delivery schedule and an equitable reduction in the order price or terminate the order for default. Acceptance of late deliveries shall not constitute a waiver of remedies by the Buyer.

11. TERMINATION FOR CONVENIENCE

The Buyer reserves the right, at any time, in its own best interest, and without liability, to terminate this order in whole or in part, by written notice of termination for convenience to the Seller. If the order is so terminated, then, within thirty (30) days following the Seller's receipt of the termination notice, the Seller shall submit a claim for equitable adjustment. If the termination involves only services, the Buyer shall be obligated to pay only for services performed before the termination date. The Seller shall provide buyer any supporting information necessary to document the reasonableness of the Seller's termination for convenience claim.

12. TERMINATION FOR DEFAULT

The Buyer may, without liability, and in addition to any other rights or remedies provided herein or by law, terminate this order in whole or in part by written notice of default if the Seller: (a) fails to deliver the supplies or perform the services within the time specified; (b) fails to make sufficient progress with the work, thereby endangering completion of performance within the time specified; or (c) fails to comply with any of the other instructions, terms, or conditions. The Buyer's right to terminate for default may be exercised if the Seller does not cure the failure within ten (10) days after receiving the Buyer's notice of such failure. The Buyer may, by written notice, terminate this Purchase Order in whole or in part for default if in the Buyer's opinion, the Seller appears to be insolvent or in an unsound financial condition so as to endanger performance. If the Buyer terminates this order in whole or in part, the Buyer may purchase similar supplies or services from others and the Seller shall be liable for any additional costs above the original price for the terminated supplies/services. In the event of a partial termination, the Seller shall continue the work not terminated. The Seller shall not be liable for any additional costs if failure to perform arises from causes beyond the Seller's or the Seller's subcontractors control and without fault or negligence of either of them; provided, however, that the supplies/services to be furnished by the Seller's subcontractor (at any tier) were not obtainable from others in time for the Seller to meet the order delivery requirements. The Buyer shall pay the Seller the order price for any completed supplies/services delivered and accepted. The Buyer and the Seller shall agree on the amount of payment for manufacturing materials (parts, tools, dies, jigs, planes, drawings, etc) delivered and accepted by the Buyer. The Buyer may withhold from any payments due the Seller, any sum necessary to protect the Buyer against any liability or expenses due to the termination for default. The Seller shall provide the Buyer any supporting

information necessary to document the reasonableness of the Seller's termination for default claim.

13. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Seller agrees to indemnify, defend, and hold harmless the Buyer, its customer, and those for whom the Buyer may act as agent, from any costs, expenses, damages, or liability that the Buyer may incur as a result of any proceedings charging infringement of any patent, copyright, or trademark by reason of sale or use of any supplies/services/data furnished by the Seller. The Seller shall have no liability regarding alleged patent infringement for supplies furnished to the Buyer in accordance with the Buyer's design specifications.

14. INDEMNIFICATION

The Seller shall be liable for the loss of or damage to the Buyer's or the Buyer-furnished or Government-furnished property while such property is in the Seller's possession. The Seller agrees to carry fire and extended insurance coverage on all such property and to indemnify and save the Buyer harmless from any and all judgments, orders, awards, costs, and expenses, including reasonable attorney's fees and also claims on account of damage to property or bodily injury (including death), which may be sustained by the Seller, the Seller's employees, the Buyer, the Buyer's employees or third persons, arising out of or in connection with work performed for the Buyer on premises occupied or under control of the Buyer or the Seller. The Buyer's property, such as drawings, specifications, data and the like, furnished to the Seller for performance of the work shall remain in the property of the Buyer, shall be considered private and confidential Buyer information and shall not be given to others not having a need-to-know or used by Seller for its own purposes. Any designs, drawings, dies, molds, tooling, technical data/information, materials, equipment, etc., that the Seller makes or buys from others for producing the supplies/services and charged to the Buyer's account, shall become the Buyer's property immediately upon manufacture or procurement. When practical, all such Buyer property shall be marked as belonging to the Buyer, shall be held by the Seller on consignment at the Seller's risk, and shall be used exclusively to perform the work requirements of this Purchase Order. Upon order completion all Buyer furnished property shall be returned to the Buyer in the same condition as received, allowing for all reasonable wear and tear, except to the extent that the property has been incorporated into supplies delivered or consumed in the performance of the work.

15. WAIVER OF IMMUNITY

In agreeing to so indemnify and save harmless contractor, sub-contractor specifically and expressly waives any immunity and assumes liability on account of any claim, or action, made or brought against the contractor, its officers, agents or employees, for the death of or injury to persons or property involving sub-contractor, its employees, agents and representatives, arising from any cause whatsoever except to the extent caused by the sole negligence of the Contractor, or, in the case of concurrent negligence of contractor and sub-contractor, only to the extent of the sub-contractor's negligence or failure to comply with any of the terms or conditions of this agreement. Sub-contractor specifically agrees and acknowledges that this Agreement of Indemnification and save harmless together with sub-contractors waiver of immunity was the subject of discussion and negotiation between sub-contractor and contractor and that sub-contractor's promises and waiver herein are part of the consideration for the contractor's entering into this sub-contract and sub-contractor's obligations and waiver herein were considered by sub-contractor when arriving at a price for which sub-contractor agreed to do the work contemplated by the sub-contract.

16. LIENS

All labour, material and equipment delivered or furnished hereunder shall be free of all liens and rights in rem. At the Buyer's request the Seller shall furnish the Buyer a formal and full release of all liens or rights in rem.

17. TAXES

The prices hereunder include all applicable South Africa Revenue Services taxes in effect on the date of, and during the performance of this Purchase Order. The amounts of any such taxes will be shown separately on the Seller's invoice.

18. PAYMENT

Upon submission of proper invoices, the Seller shall be paid the prices stipulated herein for supplies delivered and accepted, or services rendered and accepted. The date for calculation of any cash discount offered by the Seller and provided for on the face of this Purchase Order is (I) the date material is received, (ii) the date material is scheduled to be received under this Purchase Order, or (III) the date an acceptable invoice is received, whichever is later. From such date the discount will be taken when payment is made within 30 days. Proper invoices include the following:

- a. invoice date and the Seller's invoice number;
- b. name of the Seller;
- c. the Purchase Order number, line item number, description of Supplies and Services, quantity, unit of measure, unit price, and extended total;
- d. date of shipment and shipping point;
- e. name and address to which payment is to be sent in accordance with the terms specified in this Purchase Order.
- f. name, title, phone number and address of person to be notified in the event of a defective invoice;
- g. any other information or documentation required by other provisions of the Purchase Order;
- h. any prompt payment discounts available; and
- i. the invoice amounts for individual Supplies shall be shown separately on an invoice.

A separate invoice shall be issued for each shipment. No invoice shall be issued prior to the shipment of Supplies or performance of Services and no payment will be made prior to receipt of the Supplies or Services and a corresponding proper invoice. All invoices shall (a) bear such certifications as may be required or approved by the Buyer. No more than one Purchase Order shall appear on an invoice, (b) show the amount of any SARS, customs and excise taxes or other direct tax included therein.

19. TITLE

The Seller shall bear the risk of loss of, or damage to, the Supplies until they are delivered in conformity with this Purchase Order at the appropriate destination point. Unless otherwise stated in this Purchase Order, title to Supplies covered by this Purchase Order shall pass from the Seller to the Buyer at the F.O.B. Destination point or as payment is made, whichever first occurs. Neither payment nor passing of title shall constitute acceptance of the Supplies by the Buyer. The Seller is responsible for loss or damage resulting from the Seller's negligence.

20. COMPLIANCE WITH THE LAW AND REGULATIONS

The Seller warrants and certifies that in the performance of this Purchase Order, it will comply with all applicable national laws, rules, regulations and orders in effect on the date of this order, including, but not limited to the following, as amended: (a) the Basic Conditions of Employment Act; (b) the Occupational Health and Safety Act; (c) the Hazardous Substances Act; (d) the PFMA; and (e) any other national laws concerning labour relations, non-discrimination in employment, minimum wages, overtime compensation, and hours of employment. The Seller agrees to indemnify and hold the Buyer harmless against any loss or liability due to the Seller's violation or non-compliance with such regulation. Upon the Buyer's request, the Seller shall furnish evidence demonstrating such compliance.

21. NOTICE OF LABOUR DISPUTE

Whenever the Seller has knowledge that any actual or potential labour dispute is delaying or threatens to delay the timely performance of this Purchase Order, the Seller shall immediately give notice thereof, including all relevant information with respect thereto to the Buyer. The Seller shall insert the substance of this clause, including this sentence, in any sub-contract hereunder as to which a labour dispute may delay the timely performance of this Purchase Order, except that any sub-contractor need give the required notice and information only to its next higher-tier sub-contractor.

22. GOVERNING LAW

This Purchase order and the performance of the parties hereunder shall be construed in accordance with and governed by the Laws of the Republic of South Africa, and to the jurisdiction of the Durban and Coast Local Division of the High Court of South Africa.

23. DISPUTES

Any claim, dispute or disagreement arising under or relating to this Purchase Order between the Buyer and the Seller which is not settled by agreement may be litigated before any court in the Durban having competent jurisdiction. Pending resolution of such matter, the Seller shall proceed diligently with the performance of this Purchase Order in accordance with the decision and directions of the Buyer. The parties agree that irrespective of the place of performance of this Purchase Order, the Purchase Order shall be construed and interpreted according to the laws (both substantive and procedural) of the Court of Durban.

24. LABOUR AND LABOUR/MATERIAL CONTRACTS

If this Purchase Order is for labour only, or for labour and material, and the work is to be performed at the job site designated by the Buyer, each of the following requirements apply:

- a. The Seller shall submit to the Buyer's Security Department at the job site, prior to the commencement of work, the names, addresses and badge numbers of its employees to be engaged in the work.
- b. The Seller, prior to the commencement of any hazardous operation, shall obtain the approval of the Security Officer on the job site and shall insure that an adequate number of trained fire watchers are on the job site at all times during the performance of such operation.
- c. The Seller shall insure that adequate fire precautions are maintained, fire equipment kept in readiness and that no unauthorized person enters or has access to the job site.
- d. The Seller shall remove all refuse from the job site after completion of work, and shall comply with the provisions of the South Africa National Environmental Management Act and Maritime Pollution Act inclusive and other applicable laws and regulations.
- e. Without limitation of the above hereof, the Seller shall furnish to the Buyer acceptable evidence of appropriate insurance coverage, including the following: (i) Workmen's Compensation Insurance under the applicable national law, (ii) insurance as required by the Workers Compensation Act, or other applicable National Law, and (iii) Public liability and property damage with adequate limits to cover the Seller's liability (minimum of RM 10) for personal injuries and/or property damage resulting directly or indirectly from performance hereof;
- f. The Seller shall take all necessary precautions to prevent any injury to persons or damage to property during the progress of work. The Seller shall name the Buyer as an additional insured on the public liability and property damage policies and certificates shall be issued to the Buyer evidencing same within 10 calendar days of the effective date of this agreement. Any deductibles shall be to the Seller's account.

25. SUB-CONTRACTING

If this Purchase Order is for labour only, or for labour and material, and the work is being performed at a job site designated by the Buyer, the following provision shall apply:

- a. The subcontractor shall assume toward the contractor, so far as the sub-contract work is concerned, all the obligations and responsibilities which the contractor assumed toward the owner by the main contract, or otherwise by operation of law as a result of work performed by sub-contractor covered under the main contract.
- b. The subcontractor further agrees not to assign or sub-let the work or any portion thereof without the written consent of the contractor. The sub-contractor further agrees that any warranty, expressed or implied, which contractor owes owner by virtue of the main contract (or which arises by operation of law) and which pertains to the work, shall be owed to both owner and contractor by sub-contractor. Further, the sub-contractor will be bound by any provisions in the main contract for liquidated damages, and shall pay such damages for any delay to the extent caused by, or arising out of the acts or omissions of the sub-contractor.

26. COMPLIANCE WITH LAWS

The Seller shall comply with all applicable National laws and regulations in performing this Purchase Order. The Seller covenants to hold the Buyer and its assignees harmless from any and all costs, damages and expenses (including reasonable attorney's fees) incurred by the Buyer and its assignees as a result of any failure of the Seller to comply with any such law, regulation or order. It is understood and agreed that all performance under this Purchase Order is subject to all applicable waste regulations of the National Environmental Management Act and/or other government departments having jurisdiction over the operations of the Buyer and the Seller with respect to the Suppliers or Services specified herein.

27. SET-OFF

The Buyer shall have the right at all times to set-off any amount due or payable to the Seller hereunder against any claim or charge the Buyer may have against the Seller under this or any other contract with the Seller.

28. SELLER CONTACTS WITH BUYER'S CUSTOMER AND OTHER VENDORS

If the Seller is a sub-contractor to the Buyer under a Buyer prime contract, the Buyer shall be responsible for all liaisons and communications with the Buyer's customer or Buyer's other vendors for the term of this Purchase Order. The Seller shall not communicate with the Buyer's customer or Buyer's other vendors regarding this Purchase Order unless authorized to do so by the Buyer.

29. INFORMATION DISCLOSED TO THE BUYER

Any information or knowledge the Seller discloses to the Buyer regarding this Purchase Order shall not be deemed confidential or proprietary unless expressly agreed upon by the parties in writing. Any such unpatented information or knowledge shall be acquired by the Buyer free of any restriction.

30. PACKAGING AND PACKING

The Seller shall be responsible for properly packing and packaging the supplies in suitable containers for protection during shipment in accordance with transportation regulations and good commercial practice. No additional charge will be allowed for packing and packaging unless specifically agreed to in writing. The Seller shall label each package with the corresponding Purchase Order number. The Seller shall prepare an itemized packing list bearing the Purchase Order number, description of items, part number, and quantity shipped for each package. One copy of the packing list shall be placed in the shipping container, and one copy shall accompany the Seller's invoice.

31. UNAUTHORIZED CHANGES TO SUPPLIES/SERVICES

Upon the Buyer's approval of the Seller's drawings, designs, specifications, etc., the Seller shall make no changes affecting form, fit, or function of the supplies without the Buyer's prior written approval. Any approvals by the

Buyer shall not relieve the Seller of responsibility for any errors or deficiencies that may exist, or for performing the work and furnishing the supplies/services in strict accordance with the Purchase Order requirements.

32. PERMITS, FEES, AND LICENSES

Except as may be otherwise provided in this Purchase Order, the Seller shall obtain and pay for all permits, fees, and licenses required for the work at no additional charge to the Buyer.

33. ORDER OF PRECEDENCE

The following descending order of precedence shall apply in the event of an ambiguity, discrepancy, or conflict in the documents comprising this Purchase Order: (a) the Purchase Order, (b) the statement of work, (c) the technical specifications, (d) the drawings, and (e) any other documents referenced or appended to the Purchase Order. However, in the event of an ambiguity, discrepancy, or conflict in any of the technical requirements or drawings, the Seller shall immediately consult the Buyer for a resolution.

34. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The Seller certifies that the price(s) proposed have been arrived at independently, without consultation, communication, or agreement with any others for the purpose of restricting competition, and that the Seller has not and will not knowingly disclose the price(s), directly or indirectly, to any other offeror.

35. PUBLIC RELEASE OF INFORMATION

No public release of information, news release, announcement, advertisement, denial or confirmation of this order or the subject matter hereof, shall be made without the Buyer's prior written approval.

36. WAIVER OF RIGHTS

Failure of either party to insist on performance of any provision of this order shall not be construed as a waiver of that provision, or a waiver of the Buyer's or the Seller's right to require compliance with such provision in any later instance. If any provision of this order is found to be illegal or unenforceable under law, that provision shall be deleted; however, all other provisions of this order shall not be affected thereby, and shall remain in full force and effect.

37. QUANTITY

It is the Seller's responsibility to furnish the quantity of supplies/services called for in this Purchase Order. No variation in the quantity specified herein will be accepted as compliance with this order. The Buyer reserves the right to return excess shipments at the Seller's expense.

38. GRATUITIES

The Seller warrants that it has not offered or given, and will not offer or give to any employee, agent, or representative of the Buyer, a payment, gratuity, or kickback for obtaining or rewarding favourable treatment by the Buyer with respect to the terms, conditions, price, performance, or award of an order. A breach of this warranty shall be considered a material breach of the order and may result in the Buyer's termination of the Purchase Order and/or notification to the Buyer's customer of such breach.