



## **GENERAL CONDITIONS OF CONTRACT OF SALE (SERVICES)**

### **1. DEFINITIONS**

- 1.1. "we/our/us" means Steinmüller Africa (Pty) Limited.
- 1.2. "you/your" means the person, company or other entity that places the Order on Steinmüller.
- 1.3. "Contract" means the agreement concluded between the parties arising out of our acceptance of the Order.
- 1.4. "Order" means the Order placed by you on us for the performance of the Services and includes all attachments to the Order.
- 1.5. "Personal Information" means personal information as defined in the Protection of Personal Information Act 4 of 2013 (POPIA).
- 1.6. "Services" means the engineering, design, quality assurance and / or any other services as more fully set out in the Order.
- 1.7. "Tender" means our quotation, offer and / or response to your enquiry document and / or invitation to tender.

### **2. GENERAL CONDITIONS OF CONTRACT**

- 2.1. These General Conditions of Contract shall apply to any and all contracts concluded between the parties and shall prevail over any other conditions supplied by you, whether before or after conclusion of the Contract, and shall supersede any prior written or verbal arrangement between the parties in respect of the subject matter of the Contract. In the event that the parties conclude a separate agreement in respect of the subject matter of the Contract, the conditions of such agreement will take precedence in the event of a conflict or ambiguity between such agreement and these General Conditions of Contract. The order of precedence of documents is as follows:

- (1) Purchase Order
- (2) Separate Agreement
- (3) General Conditions of Contract Of Sale (Services)

- 2.2. We require that you sign and return to us a copy of these General Conditions of Contract within 7 days of receipt thereof, failing which you shall be deemed to have accepted their exclusive application without amendment.
- 2.3. Any amendment to these General Conditions of Contract must be in writing, signed on behalf of both parties and attached to the Order.
- 2.4. In the event of a conflict/ambiguity/inconsistency between the provisions of such amendment and these General Conditions of Contract, the provisions of such amendment shall prevail

### **3. VALIDITY**

Unless previously withdrawn in writing, the Tender is open for acceptance for the period stated therein or, when no period is stated, within 30 days from date thereof and is subject to confirmation by us. We will not start work until we have concluded a valid Contract with you.

### **4. CESSION**

Neither party shall cede or assign any of its rights or obligations in terms of the Contract without the prior written consent of the other party: provided that nothing contained herein shall prevent us from making use, at our discretion, of independent contractors to perform aspects of the Services.

### **5. RESPONSIBILITY**

We will be responsible for the execution of the Services upon the terms set out in the Order.

### **6. PERFORMANCE AND DELIVERY**

In the absence of a stipulated time for completion of the Services, we shall render the Services in a reasonable time having regard to the nature and scope of the work to be done in completing the Services. Should there be any delays in the completion of the Services, our liability shall be limited to 0,7% of the Contract value per week, subject to a maximum of 10% of the Contract value. Such liquidated damages shall be your sole remedy for delay.

### **7. LIMITATION OF LIABILITY**

- 7.1. Our liability for damages, penalties or any other amounts arising as a result of our breach of any of the terms of the Contract shall be limited to an amount not exceeding the Contract value.
- 7.2. Notwithstanding anything to the contrary contained elsewhere in the Contract, we shall not be liable for any indirect or consequential loss or damage including, but not limited to, loss of profit, loss of use, loss of production, loss of contracts, or any other indirect or consequential loss or damage of whatsoever nature.

### **8. PAYMENT TERMS**

- 8.1. Should any portion of the price be exposed to a foreign currency, the value of this portion as well as the rate of exchange applied will be recorded in the Order. Should the exchange rate fluctuate upwards, any difference between the quoted rate of exchange and the prevailing rate of exchange on the date of payment will be for your account. Should the exchange rate fluctuate downwards, such difference will be for our account.
- 8.2. Unless otherwise agreed by the parties you shall provide us with a payment guarantee as security for payment of the order value. This guarantee will be in a form and from an institution acceptable to us and will be provided before we commence work under the Contract.
- 8.3. We shall be entitled to invoice you on completion of the Services or, where stipulated elsewhere in the Order, in accordance with such Order.
- 8.4. Payment by you must be effected within 30 days of the date of invoice without any set-off and/or deductions. Late payment shall be subject to interest at 2% per month above the prime rate charged by First National Bank Limited, calculated from the time payment is due until the date of payment.
- 8.5. We will be entitled, at our option, to either suspend or terminate the Contract in the event of late payment.
- 8.6. A certificate signed by a director as to the existence and amount of your indebtedness to us, the fact that such amount is due and payable, the amount of interest accrued thereon and any other fact relating to your indebtedness to us, shall be prima facie proof of the correctness thereof for the purpose of provisional sentence or summary judgment or any other proceedings instituted against you, and shall be valid as a liquid document for such purposes. It shall not be necessary to prove the appointment of the person signing such certificate and such certificate shall be binding on you and shall be deemed to be of sufficient particularity for the purpose of pleading in any action or proceeding instituted against you.

### **9. CONFIDENTIALITY**

Any plan, drawings, designs or other information pertaining to the technical, marketing, commercial, financial or business affairs of the disclosing party, to which the receiving party is exposed in connection with the Order, shall remain the property of the disclosing party, and any information derived therefrom or otherwise communicated, whether verbally or in writing, shall not, without the disclosing party's written consent, be published or disclosed to any third party, amended or used except for the purpose of performing the Services.

### **10. PATENT, COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**

All patent, copyright, trade mark or other intellectual property rights which may arise or to which we may become entitled as a result of the performance of the Services shall vest in us unless otherwise provided in the Contract.

### **11. WARRANTIES FOR SERVICES**

- 11.1. We warrant that the Services will be performed by competent and duly qualified personnel.
- 11.2. We undertake to rectify or correct defects in the Services within a reasonable time after such defects have been pointed out to us by you. You shall, within five (5) days of completion of Services, report any defects in writing to us and the onus shall be on you to prove the correctness of any allegations made as to such defects. Our responsibility for repairing defects is limited to activities which form part of our scope of work.
- 11.3. The foregoing represents our sole obligation to you and is your sole remedy with regards to defects in the Services.
- 11.4. Where we have supplied only concept engineering services, informative statements such as masses and dimensions are given as guideline figures only and you shall not be entitled to make any claim against us arising out of variations, discrepancies or apparent errors in such informative statements.
- 11.5. It shall be your responsibility to purchase equipment where specified in strict accordance with our design specifications. We shall not be responsible for performance deficiencies which arise from equipment procured by you in accordance with the design specifications prepared by us if such equipment has not been procured in strict accordance with our specifications.
- 11.6. Under no circumstances will we be responsible for any, incidental, indirect or consequential damages arising from our performance of the Services and/or breach of contract and/or warranty. Notwithstanding anything to the contrary contained elsewhere in the Contract, our total liability for all matters under the Contract shall be limited to the Contract value.
- 12. VARIATION ORDERS**  
If, between order date and the completion of the work, variations occur as a consequence of your requirements or any change in legislation or technical regulations, then the price and / or delivery date shall be adjusted to provide for these variations. No Order shall be varied and/or altered and/or amended, unless you notify us in writing of the variation and/or additional work required. As soon as reasonably possible after having received such notification, we will advise you of the effect the requested amendment will have on the contract price and delivery dates. We will not commence work in terms of any such variation notification until the revised terms of the Order have been agreed to in writing and signed by the parties.
- 13. INFORMATION AND CLAIMS**
- 13.1. Our prices are based on the cost of material, labour, transport and of conforming to any statutory obligations, including taxes, duties and levies ruling at the date of the Order.
- 13.2. If, between order date and the completion of the work, variations occur as a consequence of your requirements or an increase in any statutory charges, then the price shall be adjusted to provide for these variations.
- 13.3. You shall be responsible for the accuracy of any calculations, drawings and/or technical data provided to us for the purpose of executing the Order and shall be liable for any additional costs incurred by us as a consequence of any inaccuracies in such calculations, drawings and/or data. You warrant the fitness for purpose of any free issue provided by you and shall be liable for any additional costs incurred by us as a consequence of any defects in such free issue items.
- 13.4. If you fail to provide any information required by us for the execution of the Order on due date and/or if you fail to give us access to any site or interfere, delay or disrupt us in any way whatsoever during the course of executing the Order, or we are delayed for any reason not attributable to us, you shall be liable for all costs and/or damages sustained as a consequence thereof and we will be entitled to an extension of time to complete the Order.
- 13.5. We shall submit claims to you for such costs/damages/delays. You shall respond to such claim within 14 days of receipt thereof failing which such claim shall be deemed to have been accepted by you. The Contract will be amended accordingly and we shall submit an invoice for the claimed amount on expiry of the 14 days.
- 13.6. Any amounts due in terms of this clause will be paid by you within 30 (thirty) days of date of invoice.
- 14. CANCELLATION**  
Unless agreed to in writing the Order shall not be capable of being cancelled by you. In the event that we agree to a cancellation of the Order by you, the following shall apply and be immediately due and payable by you:
- 14.1. For all work completed on or before the date of termination, the full contract price corresponding to such Services;
- 14.2. The reasonable costs incurred by us in preparing our termination claim and settling and paying any termination claims of our sub-contractors or suppliers; and
- 14.3. any other unavoidable costs and a cancellation fee of 5%
- 15. SUSPENSION OF PERFORMANCE OF THE CONTRACT**  
In the event that the Order is suspended by you without any fault on our part, we will be entitled to receive payment for any reasonable and unavoidable costs incurred due to the suspension. We will be entitled to terminate the Contract at our discretion for a suspension that continues for longer than 30 days.
- 16. FORCE MAJEURE**
- 16.1. *Force majeure* shall mean any circumstances beyond our reasonable control and shall include but not be limited to the following:
- 16.1.1. War, revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, military or usurp conditions, epidemic, pandemic, major accident.
- 16.1.2. Strike or lockout or other industrial action by workers or employees.
- 16.1.3. Fire, flood or other natural disaster.
- 16.2. If we are prevented or delayed from performing any of our obligations by *force majeure*, we shall as soon as reasonably possible notify you of the circumstances constituting *force majeure* and of the obligations affected, and we shall thereupon be excused from the performance or punctual performance of such obligation from the date of such notification for so long as the circumstances of prevention or delay continue.
- 16.3. If, by virtue of the provisions of this Clause above, we are excused from performance or punctual performance of any material obligation for a continuous period of 120 days, we may, at any time thereafter, provided that such performance or punctual performance is still excused, terminate the Contract by notice in writing.
- 17. GOVERNING LAW AND LEGAL PROCEEDINGS**
- 17.1. The Contract will be governed in accordance with the laws of the Republic of South Africa.
- 17.2. All disputes arising out of this Contract which do not relate to non-payment are to be referred to mediation or adjudication in accordance with the Dispute Board Rules of the International Chamber of Commerce ("the Rules") to a mediator or adjudicator agreed between the parties. Should the parties fail to agree on a mediator or adjudicator, the appointment of such mediator or adjudicator shall be made by the Chairman of the Association of Arbitrators (Southern Africa).
- 17.3. Failing a resolution within 14 days after commencement of mediation or if either party is dissatisfied with the decision of the adjudicator, as the case may be, either party may refer the dispute to arbitration in terms of the Rules of the Association of Arbitrators (Southern Africa) to an arbitrator agreed between the parties. Should the parties fail to agree on an arbitrator within a period of 14 days after the arbitration has been demanded, the arbitrator shall be appointed by the Chairman of the Association of Arbitrators (Southern Africa).
- 17.4. Notwithstanding the foregoing provisions, either party shall be entitled to obtain interim relief in respect of urgent matters by way of an interdict or mandamus pending finalization of such disputes.
- 17.5. You cannot withhold and/or set-off and/or defer payment pending the outcome of any dispute between us.

**18. TAXES AND DUTIES**

The Contract price shall exclude all Value Added Tax applicable in terms of legislation. Such Value Added Tax shall be shown as a separate component of the Contract price. You shall be responsible for the payment to the relevant Authorities of any and all customs and excise duties or statutory levies or any other costs incurred by us relating to the execution of the Order.

**19. NOTICES**

The parties choose as their *domicilia citandi et executandi* for all purposes in terms of the Contract, the addresses set out in the Order.

**20. BREACH**

If either party should breach any term of these Conditions and/or the Order (other than late payment) and fail to remedy such breach within seven (7) days of the date of receipt of notice from the other party, the other party shall be entitled to terminate the Contract.

**21. PERSONAL PROTECTION OF INFORMATION: CONSENT & DECLARATION**

These terms and conditions should be read in conjunction with our Privacy Notice(General) found on our website: [www.steinmuller.bilfinger.com](http://www.steinmuller.bilfinger.com)

21.1. Where we process your Personal Information, we are obliged to provide you with a number of details pertaining thereto. These details are housed under the Privacy Notice(General) . You are required to familiarise yourself with this document prior to providing us with Personal Information.

21.2. By providing us with your Personal Information, you consent (to the extent that consent is required under POPIA), to:

21.2.1. the processing of your personal information for the purpose of creating a vendor profile on our system, administration of our obligations in terms of any agreement you have with us and for related legal and operational reasons;

21.2.2. the sharing of your personal information with our other entities, employees, agents, subcontractors and affiliates (who may be outside of the Republic of South Africa) on condition they will keep such information private and confidential;

21.2.3. the retention and disposal of such information in terms of applicable legislation.

21.3. Your Personal Information will be stored electronically in a centralised data base and where appropriate, some information may be retained in hard copy. In either event storage will be secured and audited regularly and retained in accordance with applicable legislation.

21.4. You warrant the accuracy and completeness of all Personal Information supplied to us by you and undertake to immediately advise us of any changes to such information.

21.5. Where we provide Personal Information to you for the purpose of performing under the Contract, we consent to the processing of our Personal Information where such consent is required in accordance with POPIA. You undertake to process such Personal Information strictly in compliance with POPIA and other applicable data privacy laws. Notwithstanding any limitation of liability contained herein or in any other agreement between the parties, you hereby indemnify and hold us and / or any affected third party harmless against all liability, loss or damage incurred as a result of your non-compliance with POPIA. Where we provide Personal Information to you to be processed on our behalf in your capacity as an "Operator" as defined POPIA, then in such case the provisions of the Operator Agreement will apply and are to be incorporated into and read together with this any other Agreement for the supply of goods or services Contract.

**22. CODE OF CONDUCT**

22.1. We expect integrity and ethical, law-abiding behaviour from all our business partners in line with the Global Compact Initiative and the minimum standards set out below and request that you insist that your own subcontractors and suppliers comply with these principles and standards:

22.2. You should actively and consistently counteract criminal or unethical influence on decisions taken by us or other companies and institutions and fight corruption within your own companies.

22.3. You should not participate in anti-competitive bid rigging and should take action against illegal cartels.

22.4. You should comply with all legal requirements and effectively eliminate illegal employment.

22.5. You should respect the health and personal rights of your employees and adhere to the principles of respect, fairness and non-discrimination.

22.6. You should employ and remunerate your employees on the basis of fair and compliant contracts and maintain international minimum labour standards.

22.7. You should observe relevant legal environmental standards and minimise environmental pollution.

22.8. You are required to report your own violations of this Code of Conduct, insofar as these affect your business relations with us, and are also asked to report any knowledge of misconduct on the part of our employees.

22.9. You are required to actively resolve any suspicious cases and to cooperate unconditionally with us in this regard. If there are reasonable grounds to believe that you have failed to meet your obligations in this regard, we shall be entitled to terminate business relations with you with immediate effect.

22.10. Should you violate this Code of Conduct, we retain the right to initiate further legal measures, particularly damage claims. We reserve the right, from time to time, to update this Code of Conduct, and expect that you accept any such changes.

22.11. Contact Person: Compliance Representative - Tel: 011 806 3000 Fax: 086 613 1965.

**23. GENERAL**

23.1. These conditions and those of the Order supersede any prior written or verbal arrangements between the parties.

23.2. All conditions herein and in the Order are material terms and any breach thereof shall be a material breach.

23.3. In the event that any of the clauses of these conditions are found to be invalid, unlawful or unenforceable, such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.

23.4. No alteration, variation or cancellation by agreement of, addition to, or deletion from this Contract shall be of any force or effect, unless in writing and signed by or on behalf of both parties.

23.5. These Conditions govern all Tenders made, contracts or sub-contracts entered into and Orders accepted by us for the provision of Services. No terms or conditions contained in any Order or other document issued by you shall be valid unless accepted by us in writing with a statement setting out which clauses herein are modified or changed thereby.

23.6. Save as specifically provided in these conditions, you shall have no claims of whatsoever nature against us.

23.7. All headings in this Contract are for convenience only and shall not be deemed part thereof or be taken into consideration in the interpretation of any provision thereof.

23.8. The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of such an agreement shall not apply.

Thus done and signed by the Contractor in \_\_\_\_\_ on \_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ .

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Job Title (duly authorised)

