



## **GENERAL CONDITIONS OF CONTRACT OF SALE (GOODS, INCLUDING DESIGN, MANUFACTURE AND RELATED 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 us.
- 1.3. "Contract" means the agreement concluded between the parties arising out of our acceptance of the Order and comprises the general conditions of contract as set out herein and the Order.
- 1.4. "Order" means the Order placed by you on us as recorded on the reverse side hereof or to which these conditions are appended or any Order placed by you on us for the supply of Goods by us to you which refers to these conditions and applies to the supply of Services and includes all attachments to the Order.
- 1.5. "Goods" means and includes products, machinery, apparatus, materials, articles, equipment and things of all kinds including necessary work done and any Related Services to be rendered in terms of the Order.
- 1.6. "Personal Information" means personal information as defined in the Protection of Personal Information Act 4 of 2013 (POPI).
- 1.7. "Related Services" means the engineering, design, quality assurance and/or any other services to be rendered in conjunction with the supply of Goods to be supplied in terms of the Order.

### **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.
- 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. In the event of an agreement having been concluded between the parties to augment or amend these General Conditions of Contract and a conflict/ambiguity/inconsistency arises between the provisions of such agreement which has been duly authorised by one of our directors, the provisions of such agreement 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Unless previously withdrawn in writing, the Tender is open for acceptance for the period stated therein or, when no period is stated, within 30 days from date thereof and is subject to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. SALE**

We hereby sell and you hereby purchase the Goods on the terms and subject to the conditions set out in this Contract.

### **5. WARRANTIES**

- 5.1. We warrant that the Goods will be free from defects in material and workmanship if properly installed, commissioned, maintained and operated under normal conditions for the intended purpose by suitably skilled and trained persons, for a period of 12 (twelve) months from date of delivery ex works, at which point our liability will cease.
- 5.2. Any defects in the Goods which are attributable to (i) the installation and/or operation of the Goods other than in accordance with our recommendations; and/or (ii) inadequate maintenance or misuse of the Goods, or failure to maintain appropriate environmental conditions for the operation of the Goods; and/or (iii) improper or unauthorized modification or repairs of the Goods; and/or (iv) lightning or surges in the main power supply beyond the capability of the Goods; and/or flooding or accidental damage; and/or (v) damage in transit to, or the incorrect storage of, the Goods; and/or (vi) the combination of the Goods with other equipment or software not agreed to by us in writing are expressly excluded from the terms of this warranty, and we are entitled to charge you for the full cost of any repairs to, or replacement of, such defective items, together with the costs of carriage, insurance and any duties payable on return thereof to you.
- 5.3. We warrant that we will make good, either by repair or replacement at our sole discretion any defects in the Goods which arise solely from defective materials (excluding free issue material) or workmanship and which are notified to us during the warranty period. Defective items are to be returned by you to us at your cost and to our premises from which the Goods were delivered or collected. Repaired and/or replacement items (where applicable) repaired in terms of this warranty will be returned to you at our cost. Our responsibility for repairing defects is limited to activities which form part of our scope of work.
- 5.4. Except for the warranty set out above, we do not give any other warranties expressed or implied by law, with regard to the Goods and you must satisfy yourself as to their suitability for your intended purpose.

### **6. LIMITATION OF LIABILITY**

- 6.1. 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.
- 6.2. 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. Our liability for liquidated damages or penalties for delay 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 the sole remedy for delay.

### **7. CESSION**

Neither party shall cede or assign any of its rights and 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 Goods and Related Services.

### **8. RESPONSIBILITY**

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

### **9. TERMS OF PAYMENT**

- 9.1. 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.
- 9.2. Terms of payment are subject to our approval at the time of acceptance of the Order. The Order shall stipulate the following:
  - 9.2.1. Scope of Work
  - 9.2.2. Details of the specifications

- 9.2.3. Drawings and manuals included
- 9.2.4. Testing and inspection requirements
- 9.2.5. Delivery date, place and requirements
- 9.2.6. Purchase price and escalation
- 9.2.7. Further annexures if required
- 9.3. 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.
- 9.4. We will be entitled, at our option, to either suspend or terminate the Contract in the event of late payment.
- 9.5. Terms of payment are as set out in the Order or if not specified in the Order payments are 30 days from date of invoice.
- 9.6. If any delay in delivery is caused by you, payment shall be due 30 days after the date of scheduled delivery as if there had been no such delay.
- 9.7. The Contract price excludes Value Added Tax. You are 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.
- 9.8. 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.
- 10. 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.
- 11. CANCELLATION**
- No Order which has been accepted by us may be cancelled by you, unless agreed to in writing by us. In the event we agree to cancellation of such an Order the following shall apply and will be immediately due and payable by you:
- 11.1. for Goods acquired and/or completed on or before the date of termination, the full contract price corresponding to such Goods;
- 11.2. the reasonable costs incurred by us in preparing our termination claim and settling our termination against third parties where applicable; and
- 11.3. a cancellation fee to be negotiated between the parties.
- 12. TESTS**
- If you require testing of the Goods in your presence, such test will be conducted at our works and will be charged for. In the event that you do not attend such tests on the date specified the tests will proceed in your absence and will be deemed accepted by you. You will bear the cost of any additional testing not included in the Order.
- 13. DELIVERY AND PACKING**
- 13.1. Dates for delivery specified in the Order are estimates. We will make every effort to meet such dates and will inform you of delays. We are not liable for any damages or losses if we fail to meet the estimated delivery date. You may not cancel an Order if the Goods are not delivered on the estimated delivery date.
- 13.2. Unless otherwise specified in the Order, the Contract price is for Goods ex-works and in accordance with the specifications.
- 13.3. Claims for short supply will not be considered unless made in writing to us within five (5) days after delivery.
- 14. OWNERSHIP AND RISK**
- Unless expressly provided otherwise in an Order, risk in the Goods will pass to you on delivery ex-works. You are responsible for insuring the Goods from date of delivery ex-works. Ownership in the Goods will pass to you upon payment in full in terms of the Order.
- 15. STORAGE**
- If the manufacture or delivery of the Goods is delayed for any reason whatsoever, other than for reasons solely attributable to us, we may elect to place the Goods in storage. All costs associated with such storage and the risk in connection therewith will be borne by you.
- 16. PATENT, COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**
- 16.1. All patent, copyright, trademark or other intellectual property rights which may arise or to which we may become entitled in respect of the Goods and/or as a result of the execution of the Order will vest in us.
- 16.2. You must notify us immediately in writing of any claims for alleged infringement of patent rights or any other intellectual property rights and of any proceedings based thereon received by you in respect of the Goods.
- 16.3. We have the right to settle, compromise or defend, at our expense, any and all such actions which may be brought against you. You will at our expense, provide all reasonable assistance to defend or settle any such claim.
- 16.4. If any Goods are, or in our opinion are likely to be, held to be infringing, we can at our expense and option either (a) procure the right for you to continue using it, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing or (d) direct the return of the Goods and refund to you the price paid for such Goods less a reasonable amount for your use thereof up to the time of return.
- 17. INFORMATION AND CLAIMS**
- 17.1. 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.
- 17.2. 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.
- 17.3. You are responsible for the accuracy of any calculations, drawings and/or technical data provided to us for the purpose of executing the Order and are liable for any additional costs incurred by us as a consequence of any inaccuracies in such calculations, drawings and/or data.
- 17.4. You warrant the fitness for purpose of any free issue provided by you to us and are liable for any additional costs incurred by us as a consequence of any defects in such free issue items.
- 17.5. If you fail to provide any information required by us on due date for the manufacturing of the Goods and/or performance of the Related Services and/or if you fail to give us access to any site or interfere 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 will be liable for all costs incurred and/or damages sustained by us as a consequence thereof and we will be entitled to an extension of time to complete the order.

17.6. We shall submit claims to you for costs incurred and/or damages sustained. You shall respond to such claim within 14 days of receipt thereof and failure to respond within the said 14 days, the information contained in such claim shall be deemed to have been accepted by you and we shall submit an invoice for the claimed amount on expiry of the 14 days.

17.7. Any amounts due in terms of this clause will be paid by you within 30 (thirty) days of date of invoice.

#### **18. CONFIDENTIALITY**

Any plan, patterns, drawings, designs or other information supplied by you to us in connection with the Order remains your property and any information derived from you or otherwise communicated to us will not, without your written consent, be published or disclosed to any third party or made used of by us except for the execution of the Order.

#### **19. FORCE MAJEURE**

19.1. *Force majeure* means any circumstances beyond the reasonable control of a party and includes but is not limited to: war, revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, military or usurp conditions, epidemic, major accident, strike or lockout or other industrial action by workers or employees, fire, flood or other natural disaster.

19.2. If a party is prevented or delayed from performing any of its obligations by force majeure (other than the obligation of payment), it must as soon as reasonably possible notify the other party of the circumstances constituting force majeure and of the obligations affected, and such party will thereafter 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 continues.

19.3. The affected party will take reasonable steps to mitigate the effects of *force majeure*.

19.4. If a party is excused from performance or punctual performance of any material obligation as a result of force majeure for a continuous period of 120 days, either party may, at any time thereafter, provided that such performance or punctual performance is still excused, terminate the Contract by notice in writing.

#### **20. GOVERNING LAW AND LEGAL PROCEEDINGS**

20.1. The Contract is governed by the laws of the Republic of South Africa.

20.2. All disputes which do not relate to non-payment will be referred for mediation or adjudication in terms of 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).

20.3. 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).

20.4. Notwithstanding the provisions of clauses 19.2 and 19.3 above, 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.

20.5. You cannot withhold and/or set-off and/or defer payment pending the outcome of any dispute between us.

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

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

21.1. You consent to:

21.1.1. the collection, processing and use of your personal information for the purpose of creating products and/or services that may meet your needs; administration of our obligations in terms of any agreement you have with us; processing orders and/or applications submitted by you and for related legal and operational reasons;

21.1.2. 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; and

21.1.3. the retention of such information in terms of applicable legislation.

21.2. You warrant the accuracy and completeness of all personal information supplied to us by you and undertakes to immediately advise us of any changes to such information.

#### **22. BREACH**

If either party breaches any term of this Contract (other than late payment) and fails to remedy such breach within 7 (seven) days of the date of receipt of written notice to do so, the non-defaulting party can seek an order for specific performance within the agreed period in writing and, if the breach is not remedied, terminate the agreement.

#### **23. CODE OF CONDUCT**

23.1. 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:

23.2. 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.

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

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

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

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

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

23.8. 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.

23.9. 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.

23.10. 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.

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

#### **24. GENERAL**

- 24.1. These conditions and those of the Order supersede any prior written or verbal arrangements between the parties in respect of the Order of the Goods.
- 24.2. All conditions herein and in the Order are material terms and any breach thereof shall be a material breach.
- 24.3. 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.
- 24.4. 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.
- 24.5. Any conditions imposed by you will not apply and the only applicable conditions are the conditions of this Contract.
- 24.6. You cannot cede, assign, subcontract or make over any rights or obligations in terms of the Contract without our prior written consent.
- 24.7. You are deemed to have satisfied yourself as to all the conditions and circumstances affecting the Contract and are responsible for any incorrect information however obtained.
- 24.8. Save as specifically provided in this Contract, you have no claims of whatsoever nature against us and no costs other than those specified in the Order will be paid by us.
- 24.9. The parties choose as their domicilia citandi et executandi for all purposes in terms of the Contract, the addresses set out in the Order.
- 24.10. This Contract shall come into effect on the date on which the Order is accepted by us.
- 24.11. You warrant that you will comply with all legislation applicable to the purchase and operation of the Goods, including but not limited to environmental legislation and occupational health and safety legislation and indemnify us against any claims in respect thereof.
- 24.12. Save as specifically provided in these terms and conditions, any notice given shall be valid and effective only if in writing.
- 24.13. 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.
- 24.14. 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)