

## MULTISOL SOUTH AFRICA (PROPRIETARY) LIMITED

### Conditions of Purchase – Goods and Related Services

(hereinafter referred to as the “Conditions”)

#### 1. Definitions

In these Conditions, unless the context clearly indicates a contrary intention, the following expressions and words have the meanings assigned to them below and derivative expressions and words will have a corresponding meaning:

“**Acceptance Date**” means the date as specified in clause 4.2;

“**Business Day**” means any day other than a Saturday, Sunday or official Public holiday in the Republic of South Africa;

“**Company**” means Multisol South Africa (Proprietary) Limited whose registered office is at 3<sup>rd</sup> Floor, Tygervalley Chambers, One Willie Van Schoor Dr, Belville, 7550 Cape Town, South Africa;

“**Company’s Facilities**” means any building, storage facility, equipment and any other facilities used by the Company;

“**Order**” means the order or orders placed in writing or sent by e-mail or fax by the Company;

“**Goods**” means the goods which are the subject of the Order including, without limitation, plant, machinery, equipment, vehicles and materials (including packaging), whether raw or partly or wholly manufactured;

“**Parties**” means the Company and the Supplier and “**Party**” shall mean any one of them, as the context may indicate;

“**Services**” means any services to be provided to the Company pursuant to the Order;

“**Supplier**” means the person, firm or company to whom the Order is issued; and

“**VAT**” means (i) any value added tax as provided for in the Value Added Tax Act No. 89 of 1991 of South Africa; (ii) any general service tax; and (iii) any other tax of a similar nature.

#### 2. Interpretation

2.1 Words importing the singular shall include the plural and vice versa, words importing any gender shall include the other genders and words importing persons shall include partnerships, trust, body corporate and the state.

2.2 The head notes to the clauses to these Conditions are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

2.3 References to any statute or statutory instrument will, unless the context otherwise requires, be construed as including references to that statute or secondary legislation as from time to time amended or to any statute or secondary legislation for the time being replacing, extending, consolidating or amending the same and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or secondary legislation.

2.4 References to annexures, clauses and schedules are to annexures, clauses of and schedules to these Conditions, and references to paragraphs are to paragraphs in the annexure or schedule in which such references appear.

- 2.5 The annexures and schedules form part of these Conditions and will have the same force and effect as if expressly set out in the body of these Conditions.
- 2.6 Words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context.
- 2.7 Where any term is defined within the context of any particular clause in these Conditions, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of these Conditions.
- 2.8 When any number of days is prescribed in these Conditions, same shall be reckoned exclusive of the first and inclusive of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next day which is a Business Day.
- 2.9 Expressions defined in these Conditions shall bear the same meanings in any annexure or schedule hereto which does not contain its own definitions.
- 2.10 The termination or expiry of these Conditions shall not affect those provisions of these Conditions which expressly provide that they will operate after such expiry or termination, or those which of necessity must continue to have effect after such expiry or termination notwithstanding that the clauses themselves do not expressly provide for this.

### **3. Conflicting Provisions or Related Agreements**

- 3.1 If there is any ambiguity, inconsistency, discrepancy or conflict of interpretation between any of the provisions of these Conditions and any specific provision endorsed on the face of a particular Order, the latter specific provision shall prevail.
- 3.2 If there is any ambiguity, inconsistency, discrepancy or conflict of interpretation between any of the provisions of these Conditions, the provisions in the body of these Conditions shall prevail over the provisions in the Schedules to these Conditions.

### **4. Supplier’s Acknowledgment and Acceptance**

- 4.1 The Supplier acknowledges that:
- (a) subject to clause 3.1 the Company only enters into contracts on the basis of the terms in these Conditions, which terms can only be altered or qualified by a document signed by a director of the Company in accordance with clause 24; and
  - (b) no terms or conditions endorsed upon, delivered with or contained in the Supplier’s quotation, acknowledgement or acceptance, order, specification or similar document shall form part of the Agreement and the Supplier waives any right which it otherwise may have had to rely on any other terms and conditions.
- 4.2 Where acceptance has not previously been communicated to the Company by the Supplier, the performance of any Services or delivery of any Goods by the Supplier pursuant to an Order will constitute unconditional acceptance by the Supplier of the terms of these Conditions (and any specific provision endorsed on the face of the particular Order), and the date on which such Services are rendered or Goods are delivered for the first time by the Supplier to the Company will constitute the Acceptance Date.

## 5. **Delivery and Advice Notes**

- 5.1 The Supplier shall comply in all respects with the Company's programme for the delivery of the Goods and performance of the Services. The Supplier shall comply with any reasonable request, from the Company, for information about the Supplier's progress measured against the programme without delay.
- 5.2 All Goods supplied against the Order shall be properly packed and secured in such a manner as to reach their destination in good condition, and shall (unless otherwise directed by the Company) be delivered by the Supplier to the Company's Facilities carriage paid, in accordance with the Company's instructions and bearing the Company's order number on each package.
- 5.3 Delivery shall be completed when the Goods have been unloaded at the point of delivery specified in the Order and delivery of the Goods has been accepted by the Company.
- 5.4 If Goods are delivered before the date specified in the Order, the Company shall be entitled at its sole discretion to refuse to take delivery or to charge for insurance and storage of the Goods until the date specified for delivery in the Order.
- 5.5 If a carrier is specified in connection with the Order such carrier shall be deemed to be an agent of the Supplier and not of the Company.
- 5.6 A consignment or part deliveries may be rejected unless the Company has agreed in writing to accept such deliveries.
- 5.7 Unless otherwise stated in the Order, the Supplier is solely responsible for obtaining all the export and import licences for the Goods and the Supplier shall be solely responsible for any delays due to such licences not being available when required.
- 5.8 In the case of any Goods supplied from outside of South Africa, the Supplier shall ensure that accurate information is provided to the Company as to the country of origin of the Goods. The Supplier shall be liable to the Company for all duties and taxes in respect of such import into South Africa.

## 6. **Instructions**

- 6.1 All instructions, information and warnings supplied with the Goods shall be supplied in a form suitable for photocopying or electronic copying by the Company.
- 6.2 The Seller hereby permits the Company to copy those instructions, information and warnings.

## 7. **Marking of Goods and Publicity**

### 7.1 Marking of Goods

Unless the Parties agree otherwise, no maker's name or other trade mark shall appear on any Goods supplied pursuant to the Order.

### 7.2 Restriction on Publicity

- (a) Neither the Order nor the name of the Company shall be disclosed to any third party or used by the Supplier or any sub-contractor for advertisement or publicity purposes without the Company's prior written consent.
- (b) Save as expressly provided in this clause 7, no announcement shall be made by or on behalf of any Party relating to the subject matter of these Conditions without the prior written approval of the other Party.

### 7.3 Permitted Announcements

A Party may make an announcement relating to the subject matter of these Conditions if (and only to the extent) required by the law of any relevant jurisdiction or by a governmental authority, provided that prior written notice of any announcement required to be made is given to the other Party. The Party making the announcement shall take all reasonable steps to agree the contents of such announcement with the other Party prior to making such announcement.

## 8. Time

8.1 Where a time is specified in the Order (including without limitation a time for delivery or installation) such stated time shall be an *essentialia* of the Agreement.

8.2 Failure by the Supplier to adhere to any provision as to time contained in the Order shall entitle the Company, at its sole discretion, to treat the Agreement as repudiated in whole or in part (“Repudiation Rights”). The Company shall retain the Repudiation Rights and shall be entitled to exercise the Repudiation Rights (make an election) at any time, notwithstanding that it has acquiesced in any delay, unless a written extension of time has been given to the Supplier by the Company and the time of any extension has not elapsed.

8.3 Unless an extension of time has been agreed by the Company in accordance with clause 8.2, where the Supplier has failed to effect delivery on the date or dates specified in the Order, the Company shall be entitled to purchase substitute Goods and to hold the Supplier accountable for any and all loss or additional costs (or both) incurred in doing so.

## 9. Price and Payment

### 9.1 Price

- (a) Unless otherwise agreed by the Parties in writing all prices quoted by the Supplier to the Company are fixed and inclusive of delivery fees, VAT (if applicable) and all other applicable duties and taxes (“**Contract Price**”);
- (b) The Company shall not be liable for any payment in respect of any charges for Goods supplied or Services performed in excess of the Goods or Services specified in the Order, or any variation of the Order, unless otherwise agreed in writing by the Parties in accordance with clause 24.
- (c) The Company will not be obliged to pay for or return containers, crates or packing materials or other durable packaging of any description except as otherwise agreed in writing by the Parties.

### 9.2 Payment

- (a) Payment shall be due at the end of the month in which 60 days have elapsed since the relevant invoice was issued to the Company by the Supplier (60 days net monthly).
- (b) No payment of, or on account of, the Contract Price shall constitute any admission by the Company as to proper performance by the Supplier of its obligations.

### 9.3 Interest

- (a) The Supplier shall be entitled to charge the Company interest on any overdue payments under these Conditions.
- (b) Such interest shall be calculated on a daily basis from the due date until the date of payment at the rate of 2% (one percent) above the base lending rate of the Standard

Bank from time to time prevailing, which rate shall apply both before and after any judgment taken to enforce any payment due under these Conditions.

#### 9.4 Invoicing and Statements

- (a) Invoices shall not be rendered by the Supplier until delivery of all of the Goods and performance of all the Services which are the subject of the Order has been completed.
- (b) The Supplier agrees:-
  - (i) to send on the day of despatch for each consignment such advices of despatch and invoices as may be indicated on the Order; or
  - (ii) to send a monthly statement of account quoting the invoice numbers applicable to each consignment of Goods and element of the Services that have been delivered by the Supplier and for which payment is due; and
  - (iii) to clearly mark the Company's order number on all packages, packing notes, advice notes, invoices, monthly statements and all other correspondence relating to the consignments of Goods.
- (c) Without prejudice to any other remedy, where the Supplier fails to comply with the provisions of clause 9.4(b), the Supplier accepts that a delay in payment may ensue. The Company shall be entitled to take advantage of any prompt payment discount offered to the Company irrespective of any delay in payment due to the Supplier failing to comply with the provisions of clause 9.4(b).

#### 10. Risk and Title

##### 10.1 Goods Purchased

Unless otherwise agreed in writing between the Parties:

- (a) risk in the Goods purchased shall pass to the Company upon completion of delivery as specified in clause 5.3; and
- (b) title to the Goods or any part of the Goods shall pass upon the earlier of delivery of the Goods as specified in clause 5.3 and the time of any payment being made for the Goods.

##### 10.2 Insurance

The Supplier shall be responsible for transport and unloading costs and insurance of the Goods to their full value against all risk of damage or loss prior to completion of delivery as specified in clause 5.3.

##### 10.3 Data, Tools and Equipment

- (a) All materials, drawings, specifications and other data provided by the Company in connection with the Order will at all times remain the property of the Company and shall be delivered up to the Company forthwith on request and are to be used by the Supplier solely for the purpose of completing the Order and in accordance with clause 16.
- (b) All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under the Contract shall be and remain at the sole risk of the Supplier whether or not they are upon premises of the Company or other premises specified in the Order.

- (c) Any tool or plant which the Supplier may construct or acquire specifically in connection with the Goods and on respect of which the Supplier charges the Company shall be and remain the Company's sole and unencumbered property and the Company may at any time call for possession of such tool or plant.

## 11. **Inspection and Testing**

11.1 Any inspector or representative authorised by the Company shall be entitled to inspect:

- (a) the Goods (either complete or in the process of manufacture); or
- (b) any Services being performed; and
- (c) any tools or plant supplied pursuant to these Conditions and any other materials supplied by the Company to the Supplier;

at any reasonable time either at the Supplier's Facilities or at the facilities of any sub-contractor and to require all defects or deficiencies to be made good and alterations made.

11.2 The exercise or failure to exercise any right granted by this clause 11 shall not constitute, or be relied upon as, acceptance or approval of all or any part of the Goods, the Services or the good condition of the said tools, plant or material.

## 12. **Quality and Guarantee**

12.1 The Goods shall:

- (a) be new and of first class quality;
- (b) be supplied strictly in accordance with the quantities, drawings, specifications, standards and stipulations contained in or annexed to the Order and any other provision agreed in writing by the Parties;
- (c) not contain any contaminant or impurity other than as expressly consented to in writing by the Company; and
- (d) unless otherwise agreed in writing, conform to all relevant laws, standards, industry guidelines, specifications and conditions.

12.2 All work and Services performed by the Supplier shall:

- (a) be performed with reasonable skill and care;
- (b) be supplied in accordance with good manufacturing practice;
- (c) comply with all relevant laws, standards, specifications and conditions; and
- (d) comply with the provisions of the Order and any other provision agreed in writing by the Parties.

12.3 The Supplier:

- (a) warrants that it has the expertise indicated by it prior to the contract being entered into; and
- (b) confirms the accuracy of all statements and representations made by the Supplier in respect of the Goods and Services prior to or in the Order.

12.4 Nothing contained in these conditions shall in any way detract from the Supplier's obligations under common law or statute or any express warranty or condition contained in the Order.

12.5 The Supplier agrees to assign to the Company upon request the benefit of any warranty, guarantee or similar right which the Supplier has against any third party manufacturer or supplier of the Goods or any part thereof.

### 13. **Health and Safety**

The Supplier warrants that:

13.1 the Supplier will comply with the duties imposed on it by the Occupational Health and Safety Act No. 85 of 1993 or any amendment thereto or re-enactment thereof and of all other relevant laws insofar as they are applicable to the site or the Goods or the Services; and

13.2 all Goods supplied will be supplied with all necessary information sheets and registrations sufficient to comply with the relevant laws.

### 14. **Indemnity**

14.1 The Supplier agrees to indemnify the Company against:

(a) all losses, costs, damages, expenses and claims caused to and made against the Company which would not have been caused or made had the Supplier fulfilled its express or implied obligations under this contract;

(b) any claims for infringement of any patents, design right, copyright, registered design, or trade mark by reason of the use or sale of the Goods supplied (save where the same shall have been manufactured in accordance with specifications or designs supplied solely by the Company) and against all losses, costs, damages, expenses and claims which the Company may incur or have to bear or for which the Company may become liable as a result of any such claims;

(c) all claims in respect of royalties payable by the Supplier in respect of the Goods;

(d) all claims arising out of errors and omissions in drawings, calculations, packing details or other particulars supplied by the Supplier; and

(e) all claims made against the Company arising out of the acts and omissions of the Supplier, its employees, agents or its sub-contractors.

### 15. **Consumer Protection Act**

15.1 The Supplier warrants that all Goods supplied to the Company together with all the necessary instructions, information and warnings supplied with them will be designed, manufactured and produced in such a manner as to ensure that under no circumstances could the Goods be held to be defective pursuant to the Consumer Protection Act No. 68 of 2008 (hereinafter the "Consumer Protection Act").

15.2 If the Supplier becomes aware at any time of any incidents, events or discoveries which are in any way relevant to the safe operation of Goods previously supplied, the Supplier shall without delay issue written notice of such incident, event or discovery to the Company.

15.3 The Supplier shall indemnify, reimburse and compensate the Company for all losses and damages (including costs, expenses and charges for legal action in which the Company may be involved) which the Company may incur or have to bear as a result of any claim or claims arising as a result of the Goods being found to be defective pursuant to the provisions of the Consumer Protection Act.

15.4 The Supplier undertakes to maintain adequate insurance cover (with insurers of repute) in respect of liability pursuant to the Consumer Protection Act and, upon request, to produce to the Company without delay a copy or copies of the relevant policy or policies of insurance.

## 16. Confidentiality

- 16.1 The Seller shall keep secret all information of a secret or confidential nature (including without limitation all information relating to the customers of the Company, all manufacturing techniques or related information revealed by the Company and all information labelled as secret or confidential by the Company) (together the “Confidential Information”) communicated to the Seller.
- 16.2 The Seller shall not disclose any such Confidential Information to any person except as permitted by this clause 16. The Seller may only disclose such Confidential Information to its employees to the extent such disclosure is necessary provided that before any such disclosure the Seller shall procure that each of its employees concerned shall be bound to it by similar obligations of confidentiality.
- 16.3 The provisions of this clause 16 shall not apply to such Confidential Information:
- (a) which is or becomes public knowledge (except by reason of default on the part of the Seller); or
  - (b) which the Seller obtains from a third party who does not place an obligation of confidence on the Seller; or
  - (c) which the Seller is required to be disclosed by law or pursuant to the regulations of any government agency or court with proper jurisdiction to require disclosure.
- 16.4 Upon any termination of this contract the obligations of confidentiality contained in this clause 16 shall continue in full force and effect.

## 17. Intellectual Property

- 17.1 All designs, inventions, patents, know how, new technology and improvements made, designed or developed by the Supplier and all confidential information generated by the Supplier pursuant to the Supplier’s provision of the Goods and the Services to the Company (collectively the “Intellectual Property”) shall be the absolute property of the Company. The Supplier shall procure, at no charge to the Company, the execution of any and all papers reasonably requested by the Company to perfect ownership of the same by the Company.
- 17.2 Where the Supplier is permitted by the Company to use any Intellectual Property of the Company for the purposes of the provision of the Goods or the Services, then that Intellectual Property shall remain the absolute property of the Company and the Supplier shall use that Intellectual Property only for the purpose of fulfilling its obligations and exercising its rights under these Conditions or otherwise as permitted by the Company in writing.
- 17.3 All material, drawings, patterns, gauges, samples, specifications and other technical data supplied by the Company in connection with the provision of the Services shall be and shall at all times remain the property of the Company. The contents of the same and all such data shall be regarded as “Confidential Information” for the purposes of clause 16.
- 17.4 Where any Confidential Information is supplied by the Company to the Supplier, the Supplier shall return the same and all copies thereof on the demand of the Company. The Supplier shall not use any such Confidential Information except in connection with the provision of the Services to the Company.

## 18. Force Majeure

- 18.1 The Company shall not be liable for non-performance under these Conditions to the extent to which the non-performance is caused by events or conditions beyond the control of the Company, provided that the Company makes all reasonable efforts to perform.



- 18.2 It is expressly recorded that for purposes of this clause the following shall be considered circumstances beyond the control of the Company and the force majeure provisions shall apply:-
- (a) the non-performance, inability to perform or delay in performance by third parties relating to the provisioning of equipment, services and/or facilities to the Company that affects the Services or Goods; and/or
  - (b) acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, flood, storm or fire.
19. **Sub-Contractors**
- 19.1 The Supplier shall not without the written consent of the Company sub-contract or assign all or any part of the Order.
- 19.2 Any authority given by the Company for the Supplier to sub-contract the Order or any part of it shall not impose any duty on the Company to enquire as to the competency of any authorised sub-contractor.
- 19.3 The Supplier shall remain solely responsible for the acts and omissions of any sub-contractor (whether authorised or not).
20. **Breach**
- 20.1 Should either Party commit a material breach of these Conditions (the “**Defaulting Party**”) and, fail to remedy such breach within 30 (thirty) Business Days of receiving written notice from the other Party (the “**Aggrieved Party**”) requiring it to do so, then the Aggrieved Party may, in addition to any other rights and remedies that it may have, whether in terms of these Conditions or in law, including the right to recover damages:
- (a) claim specific performance; or
  - (b) terminate these Conditions or the Services in event of a material breach, such termination to be effective immediately upon receipt by the Defaulting Party of written notice to that effect..
- 20.2 The Company may, without prejudice to any other rights herein, at any time and by written notice, terminate the Agreement:
- (a) if the Supplier becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency or a business rescue practitioner is appointed for the Supplier; or
  - (b) if the Supplier commits an act of fraud or if the Company has any reason to believe that the Supplier or anyone acting on its behalf, whether with or without the Supplier’s knowledge, engages in corrupt practices in connection with Agreement.
- 20.3 It is agreed that any reorganisation of the Supplier’s business and/or company shall not be a breach of these Conditions provided that the Supplier remains in control of the company.
- 20.4 The provisions of this clause 20 are severable from the rest of the provisions of these Conditions and shall survive its termination and continue to be of full force.

## 21. **Termination**

21.1 The Company may exercise its rights under clause 20 above notwithstanding that:-

- (a) the Company has accepted all or part of the Goods; or
- (b) the title in the Goods has passed to the Company.

Upon any termination, the Company may in its absolute discretion keep or return any of the Goods in the possession of the Company. The Company shall be liable to pay only for such of the Goods, if any, that the Company so keeps, the price being determined pro rata with respect to the total Contract Price. Termination shall be without prejudice to any claim that the Company may have against the Supplier arising out of a breach of these Conditions by the Supplier. On such payment by the Company no further sum or sums shall be due by way of damages, loss of profits or otherwise from the Company by reason of such cancellation.

21.2 Where a defect is discovered in the Goods:

- (a) which is reasonably apparent on a visual inspection, then within ninety (90) days after delivery of the Goods to the Company; or
- (b) which is not reasonably apparent on a visual inspection, then within ninety (90) days after the Company has discovered the defect in question;

in either event the Company shall be entitled to require the Supplier to rework or replace the Goods so that the defect is not present or else the Company may by written notice, reject the Goods and terminate the contract.

21.3 Where the Company exercises its rights under clause 21.2 above to require the Supplier to rework or replace the Goods, the Supplier shall be responsible for making good with all possible speed the defective or damaged Goods or faulty workmanship as the case may be including the full replacement of the Goods where necessary together with all costs of re-delivery to the Company's site and installation and all other incidental costs and expenses incurred by the Company.

21.4 The rights of the Company in this clause 21 are in addition to any that the Company may have in law.

## 22. **Value Added Tax**

The Supplier shall issue a proper tax invoice in respect of VAT in accordance with the relevant legislation before the Company shall be required to make payment for Goods or Services supplied in accordance with the Order.

## 23. **Entire Contract**

These Conditions constitutes the entire contract between the Parties with regard to the matters dealt with in these Conditions and no representations, terms, conditions or warranties not contained in these Conditions shall be binding on the Parties.

## 24. **Variation and Cancellation**

No agreement varying, adding to, deleting from or cancelling these Conditions, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

## 25. **Indulgences**

No indulgence granted by a Party shall constitute a waiver of any of that Party's rights under these Conditions; accordingly, that Party shall not be precluded, as a consequence

of having granted such indulgence, from exercising any rights against the other Party which may have arisen in the past or which may arise in the future.

26. **Severability**

Each and every clause and paragraph of these Conditions is severable from each and every other clause and paragraph of these Conditions and should any clause or paragraph of these Conditions or any part thereof be void or voidable for any reason then the rest of these Conditions shall remain of full force and effect.

27. **Warranty of authority**

Each Party warrants to the other Party that it has the power and authority to sign and perform these Conditions and that these Conditions has been duly authorised by all necessary actions of its directors and constitutes a valid and binding obligation on it in accordance with the terms of these Conditions.

28. **Governing Law and Jurisdiction**

28.1 These Conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

28.2 The parties hereby consent and submit to the exclusive jurisdiction of the South African courts in respect of any dispute or claim arising out of or in connection with these Conditions.