

AlcoNCP (PTY) LIMITED GENERAL CONDITIONS FOR PURCHASE ORDERS

1. DEFINITIONS AND PRECEDENCE

1.1. Definition of Terms

In interpreting this Order, the following words shall have the meanings herein assigned to them unless there is something in the subject matter or context inconsistent with such construction.

- 1.1.1 "AlcoNCP" shall mean AlcoNCP (Pty) Limited of 121 Sea Cow Lake Road, Durban and its successors in title and assigns.
- 1.1.2 "The Supplier" shall mean the other party named in the Order and shall include Sub-suppliers as well as both the Supplier's and Sub-supplier's successors in title and assigns.
- 1.1.3 "Goods" shall mean and include machinery, apparatus, materials, articles, equipment and things of all kinds to be supplied including all work to be done and services rendered by the Supplier under the Order.
- 1.1.4 The "Order" shall mean the agreement between AlcoNCP and the Supplier for the supply of the Goods.
- 1.1.5 The "Order Date" shall mean the date agreed between AlcoNCP and the Supplier for the commencement of the Order.
- 1.1.6 The "Order Price" shall mean the sum named in or ascertainable in terms of the Order as the price to be paid in respect thereof, subject to such additions to or deductions from such sum as may be made under the provisions contained in the Order, but excluding value added tax.
- 1.1.7 "Sub-order" shall mean any agreement, made with the prior written consent of AlcoNCP, between the

Supplier and a Sub-supplier, or between two Sub-suppliers, in terms of which any part of the Order is sub-let.

- 1.1.8 "Sub-supplier" shall mean any person (other than the Supplier) named in the Order for the supply of any part of the Goods or any person to whom any part of the Order has been sub-let by the Supplier, or by another Sub-supplier, and the successors in title and assigns of such Sub-supplier.
- 1.1.9 "Documentation" shall mean and include all drawings and other pertinent documents which are to be supplied to AlcoNCP by the Supplier in terms of the Order.
- 1.1.10 "Amendment" shall mean any variation in relation to the Order agreed in writing between the Supplier and AlcoNCP, and "Amend" shall be interpreted accordingly.

1.2. **Precedence**

The various sections forming the Order shall be comparatively interpreted in accordance with the following order of precedence.

- 1.2.1 Any Special Conditions contained in the Order.
- 1.2.2 These General Conditions for Purchase Orders.
- 1.2.3 The specification, as read together with any AlcoNCP NCP' specifications and standards and any drawings included in the Order.

Should any ambiguity, contradiction or error occur between such sections of the Order, the Supplier shall advise AlcoNCP NCP in writing and request a ruling thereon. Any work performed by the Supplier prior to clarification by AlcoNCP NCP shall be at the Supplier's risk.

2. **ACCEPTANCE**

Unless the Supplier shall, within 5 working days of the Order Date or any Amendment by AlcoNCP NCP, advise AlcoNCP NCP of any error or omission in the Order or Amendment, it shall be deemed to have accepted the Order or Amendment in its entirety.

3. **DOCUMENTATION**

The Supplier shall supply to AlcoNCP any Documentation which is stipulated in the Order as being required by AlcoNCP. Such Documentation shall be supplied by the Supplier at the time or times and in the form and manner detailed in the Order, or, if not so detailed, then in accordance with the requirements of AlcoNCP. All Documentation shall be in the English language and S.I. system of measurement. All Documentation shall become and remain the property of AlcoNCP. Any review by AlcoNCP of any Documentation shall not relieve the Supplier from any of its obligations in terms of the Order and the Supplier shall remain responsible for any discrepancies, errors or omissions in any of the Documentation and any effect thereof on any Goods.

4. **CESSION, ASSIGNMENT AND SUB-LETTING OF THE ORDER**

The Supplier shall not, without the consent in writing of AlcoNCP, cede or assign the Order or any part thereof, or enter into any Sub-order other than for the supply or execution of minor items or for any Goods in respect of which a Sub-supplier is named in the Order. Any such consent shall not release the Supplier from its obligations under the Order.

5. **PATENT RIGHTS**

The Supplier hereby indemnifies AlcoNCP against all actions, claims, demands, costs, charges and expenses arising from and against all loss or damage suffered or incurred by reason of any infringement or alleged infringement of letters patent, registered designs, trade marks or copyright protected in the Republic of South Africa or by reason of any infringement or alleged infringement of any other rights of third parties, resulting from the use by the Supplier in the execution of the Order of any Goods or process. The rights and obligations contained herein shall survive the Order, and shall continue in full

force and effect for a period of ten years from the Order Date.

6. STATUTORY & OTHER LIABILITIES

Suppliers must also ensure compliance with the ETI (Ethical Trade Initiative) base codes as founded on the conventions of the International Labour Organization (ILO) which is an internationally recognized code of labour practice.

7. SECRECY AND USAGE

The Supplier shall keep and hold secret and confidential all information, whether written or oral, received or otherwise obtained by it in connection with the plant or the businesses of AlcoNCP shall not use or disclose the said information other than for the purposes of the Order.

AlcoNCP shall keep and hold secret and confidential all information, whether written or oral, received or otherwise obtained by either of them in connection with the Goods, and which the Supplier has identified to AlcoNCP in writing as being confidential proprietary information, or in connection with the business of the Supplier, and shall not use or disclose the said information other than for the purposes of the Order, provided that AlcoNCP shall be entitled to use the Documentation for the subsequent erection, commissioning, testing, operation, maintenance, repair, development, modification or improvement of the Goods. Any documents supplied to the Supplier by AlcoNCP for the purpose of the Order shall remain the property of AlcoNCP and shall be returned to AlcoNCP on delivery of the Goods.

These provisions shall not apply to information which is already known to the recipient or which the recipient obtains with free right of disposal thereof, or which is or becomes public knowledge. The rights and obligations contained herein shall survive the Order, and shall continue in full force and effect for a period of ten years from the Order Date.

8. AMENDMENTS

AlcoNCP may, from time to time during the execution of the Order, by notice in writing, direct the Supplier to Amend the Order, and the Supplier shall carry out such Amendments and be bound by the same conditions, so far as

applicable, as though the said Amendments were stated in the Order, provided that, if any such direction affects or is likely to affect the Order Price and/or the Supplier's obligations in terms of the Order, then such direction shall not be binding on the Supplier unless and until the Supplier and AlcoNCP shall have agreed upon a suitable Amendment to the Order. The Supplier shall not alter, amend or modify any part of the Goods, even at its own expense, without the prior approval of AlcoNCP.

9. SUPPLIER'S DEFAULT

Should the Supplier fail or neglect to carry out its obligations in terms of the Order, or refuse or neglect to comply with any reasonable orders given to it in writing by AlcoNCP in connection with the Order, or make a material breach of any of the provisions of the Order, AlcoNCP may give notice in writing to the Supplier to make good the failure, neglect, refusal or breach complained of.

Should the Supplier fail to comply with the notice or to justify its actions within a reasonable time, AlcoNCP shall have the right to terminate the Order forthwith by giving written notice to the Supplier, and upon such termination the provisions of clause 10.0 hereof shall become effective.

10. JUDICIAL MANAGEMENT/INSOLVENCY

Should the Supplier become insolvent or commit an act of insolvency or pass a resolution for winding up, (not being a members' voluntary winding up for the purpose of reconstruction or amalgamation), or be subject to a winding-up or provisional or final liquidation order of Court, or be placed under provisional or final judicial management, then AlcoNCP may, at its option, terminate the Order forthwith by notice in writing to the Supplier or to the liquidator or judicial manager or to any person in whom the Order may become vested, whereupon the provisions of clause 10.0 hereof shall become effective.

11. TERMINATION

11.1. Effect of Termination under clauses 8.0 or 9.0

In the event of termination of the Order by virtue of the provisions of

clauses 8.0 or 9.0 hereof, the Supplier shall be liable for any amount by which the costs and expenses incurred by AlcoNCP in completing the Order exceed the amount which AlcoNCP would have paid to the Supplier to complete the Order. Any such excess amount shall be set off against all sums of money due and payable by AlcoNCP to the Supplier for all expenditure and liabilities properly incurred by the Supplier prior to termination.

11.2. **Termination by ALCONCP**

AlcoNCP shall have the right at any time to terminate the Order but if such termination shall not be caused by one of the grounds specified in clauses 8.0, 9.0 or 23.0 hereof, AlcoNCP shall pay to the Supplier compensation for all expenditure and liabilities properly incurred by the Supplier, and a sum agreed between the parties hereto as reasonable compensation for direct loss suffered by the Supplier solely as a result of such termination, and the Supplier shall not be entitled to any further or other payment.

11.3. **Arbitration**

If any dispute shall arise between AlcoNCP and the Supplier in connection with or as a result of termination in terms of clauses 10.1 or 10.2 hereof, such dispute shall be referred to arbitration in terms of clause 18.0 hereof.

12. INSPECTION, TESTING AND REJECTION

AlcoNCP's representative/s shall be entitled, at AlcoNCP's cost, to inspect, examine and test on the Supplier's or other premises the materials and/or workmanship and/or performances of any Goods, and if any Goods are being manufactured on other premises, the Supplier shall obtain for AlcoNCP permission for such representative/s to inspect, examine and test as if such Goods were being manufactured on the Supplier's premises. Such inspection, examination or testing, if made, shall be in addition to any inspection, examination or testing to be carried out by the Supplier in terms of the Order, and shall not release the Supplier from any obligation under the Order nor be interpreted to imply that any Goods are free of any patent or latent defects. The Supplier shall give to AlcoNCP reasonable prior written notice of the date on and the place at which any Goods will be ready for testing as provided in

the Order. If after inspecting, examining or testing any Goods, AlcoNCP's representative/s decide/s that such Goods are defective or not in accordance with the Order, he/they may reject such Goods by giving to the Supplier notice in writing of such rejection, stating therein the grounds upon which the said decision is based.

13. DELIVERY AND OWNERSHIP

Goods shall be delivered by the Supplier in accordance with the relevant provisions contained in the Order. The costs of such delivery to the point of delivery as stated in the Order, and the costs of all suitable containers, packing and crating are included in the Order Price. The Supplier shall give AlcoNCP reasonable prior written notice of its intention to deliver any Goods. Ownership in any Goods shall vest in AlcoNCP when delivered by the Supplier to the specified point of delivery.

14. SUPPLIER'S LIABILITY

The Supplier shall not be liable to AlcoNCP for:-

- 14.1. any consequential loss suffered by AlcoNCP (such as but not limited to loss of production, profits or contracts) except as provided for in the Order;
- 14.2. except as provided in the Order or except as brought about by the Supplier, any claim made against AlcoNCP;
- 14.3. any loss or damage caused by or arising from information supplied by AlcoNCP.

15. EXTENSION OF TIME FOR DELIVERY

If by reason of any cause beyond the reasonable control of the Supplier, the Supplier is delayed or impeded in the delivery of any Goods, whether such delay or impediment occurs before or after the time or extended time fixed for such delivery, provided that the Supplier shall without delay have given to AlcoNCP notice in writing of its claim for an extension of time, AlcoNCP shall on receipt of such notice, grant the Supplier from time to time in writing either

prospectively or retrospectively such extension of the time fixed by the Order for delivery as may be reasonable.

16. DELAY IN DELIVERY

Should the Supplier fail to deliver the Goods within the time or extended time fixed by the Order for such delivery, it shall pay to AlcoNCP as a penalty for late delivery, that portion of the Order Price as detailed in the Order for every week or part thereof between the said delivery date and the actual delivery date as certified by AlcoNCP. The Supplier's total liability in terms of this clause will not exceed the portion of the Order Price detailed in the Order as the limitation of the Supplier's liability in terms hereof.

17. GUARANTEES

- 17.1. The guarantee period shall commence when all the Goods have been delivered by the Supplier in terms of clause 12.0 hereof, but not prior to the date specified in the Order for such delivery, and shall, subject to the provisions of clause 16.2 hereof, terminate 12 (twelve) months thereafter. The Supplier shall be responsible for making good with all possible speed and at no cost to AlcoNCP any defect that may become apparent or develop in any of the Goods during the guarantee period, or, where necessary, for replacing any such defective Goods. The Supplier's liability for latent defects shall, notwithstanding the termination of the guarantee period in terms hereof, survive the Order, and shall continue for a period of three years from the date of delivery of the Goods.
- 17.2. If the Supplier repairs, replaces or renews any Goods in terms of clause 16.1 hereof, or in terms of this clause, the provisions of the whole of this clause 16.0 shall apply to such Goods until the expiration of a period of 12 (twelve) months from the date of such repair, replacement or renewal.
- 17.3. If any defect contemplated in clauses 16.1 or 16.2 hereof be not remedied or replacement Goods supplied by the Supplier within a reasonable time, AlcoNCP may proceed to remedy the defect or replace the defective Goods at the Supplier's risk and expense but without prejudice to any other rights which AlcoNCP may have

against the Supplier in respect of the failure of the Supplier to carry out its obligations.

- 17.4. Without limiting or restraining the nature and scope of the foregoing and without derogating from any guarantees contained in law, the Supplier guarantees that the Goods will be free from fault and defects and that they will serve the purpose for which they are devised, with all of which the Supplier declares itself fully acquainted.

18. TERMS OF PAYMENT

Unless otherwise stipulated in the Order, the Order Price will be paid by AlcoNCP to the Supplier in full within 30 (thirty) days of receipt by AlcoNCP of the Supplier's correct and acceptable statement. The Supplier shall submit an invoice and any necessary substantiating documents to AlcoNCP in respect of each and every amount which becomes due and payable to the Supplier in terms of the Order. Should there be any delay on the part of the Supplier in completing its obligations in terms of the Order, or should there be any defect in the Goods, then AlcoNCP may withhold all or part of any payment to cover such delay or defect until the Supplier has completed its obligations in terms of the Order or rectified such defect.

19. ARBITRATION

Any question, dispute or difference arising between AlcoNCP and the Supplier in connection with the Order which cannot be resolved between the parties, and of which notice has been given, where required, by the Supplier, shall be referred to the arbitration of a person to be agreed upon and in terms of the South African Arbitration Act (Act No. 42 of 1965) or any statutory modification or re-enactment thereof. Any such proceedings shall take place at an agreed venue in the Transvaal Province, Republic of South Africa. Performance of the Order shall continue during arbitration proceedings unless AlcoNCP shall order the suspension thereof or of any part thereof. No payments due or payable by AlcoNCP shall be withheld on account of a pending reference to arbitration. The award of the arbitrator shall be final and binding on the parties.

20. CONSTRUCTION OF ORDER

The Order shall in all respects be construed and operate as a South African agreement and in conformity with the law of the Republic of South Africa. The clause headings hereto shall not be used in interpreting the Order.

21. PUBLICITY

No advertisement shall be displayed by the Supplier in connection with the Order without the prior written consent of AlcoNCP. The taking of photographs of any Goods without the prior written consent of AlcoNCP is expressly forbidden. No photographs, sketches, drawings, information, etc, regarding Goods may be published in magazines or elsewhere without the prior written approval of AlcoNCP.

22. TAXES, DUTIES AND PERMITS

Unless otherwise stipulated in the Order, and where applicable, the Supplier shall be responsible for obtaining any necessary import permits and for the payment of any customs duty and import surcharge payable on the importation of any Goods into the Republic of South Africa, and the Order Price is deemed to include any such duty and surcharge. AlcoNCP shall not be responsible for any other taxes or duties levied by the Government of the Republic of South Africa, other than value added tax, on the Supplier in respect of the Supplier's obligations in terms of the Order.

23. ORDER PRICE ADJUSTMENT

- 23.1. Should the Order contain provisions for adjusting the Order Price in order to allow for any increase or decrease in the cost to the Supplier of performing its obligations in terms of the Order, then, subject to the provisions of clause 22.2 hereof, the Order Price will be adjusted accordingly.
- 23.2. ALCONCP shall take no account of any increases in costs incurred by the Supplier in performing its obligations in terms of the Order over and above any increases in costs calculated in accordance with the provisions of clause 22.1 hereof, if applicable, unless same are

attributable to AlcoNCP.

24. FORCE MAJEURE

If either party to the Order is prevented from or delayed in performing any of its obligations under the Order by force majeure, then it may notify the other party in writing of the circumstances constituting the force majeure and of the obligation performance of which is thereby delayed or prevented, and the party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation/s from the date of such notification for so long as the circumstances of prevention or delay may continue, provided that, if either party shall be excused the performance or punctual performance of any obligation for a continuous period of 4 (four) months, then either party may at any time thereafter and provided such performance or punctual performance is still excused, by written notice to the other terminate the Order. In the event of such termination, the provisions of clause 10.0 hereof shall not be applicable, but should any dispute arise in connection with or as a result of such termination, such dispute shall be referred to arbitration in terms of clause 18.0 hereof.

25. NOTICES, CORRESPONDENCE, INVOICES, STATEMENTS AND DELIVERIES

- 25.1. All notices required in terms of the Order shall, unless amended by notice in writing from the relevant party, be addressed to the relevant party at the addresses set out in the Order.
- 25.2. All correspondence, invoices and monthly statements of account shall bear AlcoNCP's Order number and be in the English language. All packages of Goods delivered in terms of the Order shall be clearly marked with the Order number and any other details called for in the Order.

26. CLAIMS FOR EXTRA PAYMENT

ALCONCP will not consider claims for extra expense to which the Supplier may consider itself entitled arising out of the Order unless the Supplier has notified ALCONCP as soon as reasonably practicable of its intention to make such a claim and in any case within 2 (two) months of the start of the circumstances

on which the claim is based. The Supplier shall submit to ALCONCP at the end of each month full particulars of all such outstanding claims.

27. SUPPLIER'S NON-COMPLIANCE WITH ORDER CONDITIONS

Should The Supplier fail to comply with any of the conditions contained in this Order, notwithstanding any other right which ALCONCP might have either in terms of the Order or at law, ALCONCP shall have the right to suspend all payments due to the Supplier until such condition/s is/are fully complied with.

28. NO WAIVER OF RIGHTS

Any relaxation or indulgence afforded by either party to the other relative to any of the terms and conditions of the Order shall not in any way prejudice such party's rights in terms thereof nor be construed as a waiver of same.

29. ENTIRE AGREEMENT

The Order constitutes the entire agreement between the parties and both this clause and the Order may be amended only by written agreement signed by both parties.