

**CONCOR CONSTRUCTION PROPRIETARY LIMITED**

**GENERAL CONDITIONS OF PURCHASE AND SALE  
REVISION TWO DATED 08th May 2014  
TO BE READ WITH THE RELEVANT PURCHASE ORDER**

NOW THEREFORE IT IS AGREED that:

1. **Definitions**
    - 1.1 In these conditions, unless the context requires otherwise:
      - 1.1.1 "Days" means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
      - 1.1.2 "Delivery" means delivery in accordance with clause 5;
      - 1.1.3 "Goods" means whatever is purchased or ordered in terms of the Purchase Order, and includes, where applicable, work to be done or services to be rendered, in terms of the Purchase Order;
      - 1.1.4 "Invoice Address" is the address to which all invoices pertaining to the Purchase Order are to be directed and is the address as given by the Purchaser on the Purchase Order and entitled "Invoice Address"
      - 1.1.5 "Purchase Order" means and includes:
        - 1.1.5.1 The document entitled "Purchase Order" issued by the Purchaser;
        - 1.1.5.2 The contents of these general conditions of purchase and sale;
        - 1.1.5.3 All other documents referred to and attached to the Purchase Order
        - 1.1.5.4 The specifications referred to and attached to the Purchase Order;
        - 1.1.5.5 Any schedule of drawings attached to the specifications; and
        - 1.1.5.6 Provided that, if there should be any conflict between any of the above documents, then the contents of the document defined in paragraph 1.1.5.1 above shall prevail.
      - 1.1.6 "Purchase Price" means the nett purchase price excluding any settlement discounts stated in the Purchase Order;
      - 1.1.7 "Purchaser" means the division Concor Construction Proprietary Limited named in the Purchase Order;
      - 1.1.8 "Seller" means the party to whom the Purchase Order is addressed;
      - 1.1.9 "The Parties" means the Seller or the Purchaser.
    2. **Purchase and Sale**

The Purchaser buys the Goods from the Seller in accordance with the Purchase Order and the Parties agree to be bound by the Purchase Order.
    3. **Offer and Acceptance**
      - 3.1 No orders other than a Purchase Order signed by an authorised signatory of the Purchaser shall be valid.
      - 3.2 Unless the Seller, within 24 hours of receipt of the Purchase Order advises the Purchaser to the contrary by letter, telefax or Electronic mail it shall be deemed to have accepted the Purchase Order, including these conditions, without qualification or amendment.
    4. **Purchase Price**

Unless specifically agreed to in writing, it is agreed that the Purchase Order is binding on the Parties on condition that the price of the Goods will be that as recorded on the Purchase Order by the Purchaser.
    5. **Delivery**
      - 5.1 The Seller undertakes to deliver the Goods at the place and to the person specified by the Purchaser in the Purchase Order.
      - 5.2 Time shall be of essence in regard to the Delivery of the Goods.
      - 5.3 Should any Delivery not take place by the date stipulated for Delivery in the Purchase Order the Seller shall be liable to the Purchaser to a penalty of 1% of the Purchase Price per week or part thereof for each Day the Goods are not Delivered alternatively for damages suffered by the Purchaser without prejudice to any other remedy in law of the Purchaser.
      - 5.4 Delivery is to be effected, as far as is reasonably possible, from local stocks.
      - 5.5 A delivery note, reflecting the correct number of the Purchase Order, signed by the Purchaser, its employee, agent or representative shall constitute *prima facie* proof, on its mere production, that the Goods delivered thereunder are in accordance with the quantity reflected thereon.
      - 5.6 Should a delivery note not reflect the correct Purchase Order number, the Purchaser may, at its discretion and reserving all other rights it may have, not take delivery of the Goods. The Seller shall be liable for all costs consequent to such election.
    6. **Passing of Ownership**

Ownership of the Goods shall pass from the Seller to the Purchaser on Delivery or on payment for the Goods, whichever is the earlier.
    7. **Risk**

All risk of any loss or damage to the Goods whether such loss or damage be total or partial, from whatsoever cause arising, shall remain with the Seller until Delivery of the Goods.
    8. **Warranties**

The Seller warrants and represents that all Goods purchased in terms of the Purchase Order shall be free of patent or latent defects, liens, claims or any other encumbrances and that such Goods shall be satisfactory in every respect for the purpose for which they are intended by the Purchaser.
    9. **Goods defective in Workmanship and/or Specifications**

The Purchaser shall, at its option and at the cost of the Seller either repair, replace or substitute Goods sold or delivered and shown to be defective, the fact and extent of which the Purchaser shall be the sole judge and without prejudice to other rights the Purchaser may have in law.
    10. **Standards and Quality**

The Goods shall be of the standard, quality and type set out in the Purchase Order. Should no specification, patent, sample or drawings be specified or provided, the Goods shall be of proper and sound quality, fit for the purpose for which they are intended by the Purchaser and shall be further subject to the satisfaction and approval of the Purchaser.
    11. **Discrepancies**
      - 11.1 Should it appear to the Seller that there are contradictions, discrepancies or conflict in any way relating to or arising out of the
  12. **Breach**
    - 12.1 In the event of the Seller on the one hand or the Purchaser on the other hand or the Purchaser on the other ("the defaulting party") committing a breach of any provisions of the Purchase Order, then save where the payment of money is concerned, and where no notice shall be required to be given by any Party to the other, the Party which is not so in breach ("the aggrieved Party") shall be obliged to give the defaulting party written notice to remedy the breach. If the defaulting party fails to comply with that notice within 5 (FIVE) Days of receipt then the aggrieved party shall be entitled to cancel the Purchase Order or claim specific performance, in either event without prejudice to the aggrieved party's right to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have at law or in terms of the Purchase Order.
    - 12.2 Should the Seller commit any corrupt act or breach of the Competition Act, No. 89 of 1989, in the sole opinion of the Purchaser, the Purchaser may summarily cancel the Purchase Order without prejudice to its rights in law and its right to claim damages.
  13. **Expedited Dispute Process**
    - 13.1 In the event of any claim or dispute ("the Dispute") between them the Parties may, within three (3) Days of the date of delivery of a written request of either Party, refer the Dispute, (i) each Party shall appoint as its representative a senior officer and; (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the dispute quickly, informally and inexpensively.
    - 13.2 Should the senior officers not resolve the Dispute within five (5) Days of the Dispute being referred to them, the matter may be referred to Court at the instance of either party.
  14. **Force Majeure**

Should the Seller be delayed in or prevented from making a delivery and/or rendering a service and/or executing any work owing to force majeure or act of God which is beyond the Seller's control, the Seller shall not be liable for any loss or damage resulting therefrom but shall appraise the Purchaser thereof within one day of the occurrence of such event.
  15. **Assignment**

The Seller shall not cede or assign a Purchase Order or any part thereof, or any share or interest therein, or entrust the performance of any work related thereto to any person without the prior written consent of the Purchaser.
  16. **The Seller's Duties**
    - 16.1 The Seller shall furnish the Purchaser with all necessary and reasonable information and documentation as in law it may be obliged to give in regard to any hazards and risks in the Goods.
    - 16.2 The Seller shall furnish the Purchaser with full details as to the health and safety measures the Purchaser should effect in regard to the handling, storage, usage and disposal of the Goods.
  17. **Packaging**

In the absence of any special written agreement to the contrary, all packaging shall be deemed to be included in the Purchase Price and shall be the property of the Purchaser. Packing and covering, to ensure the safe transport and delivery of the Goods, shall be proper and effective and the Seller shall be responsible for packing the Goods in such a manner as to ensure protection against loss or damage in transit due to faulty packing. The Purchaser shall be entitled to recover from the Seller any loss or damage with the Purchaser suffered arising from or connected with the failure to comply with this clause.
  18. **Intellectual Property**

The Seller indemnifies the Purchaser against any claims which might be made against the Purchaser for the infringement or unauthorised use of patent rights. Trade marks, copyrights, design or other intellectual property rights in respect of the Goods. All royalties and expenses arising from the use of such patent rights, trade marks, copyrights, design or intellectual property rights shall be payable by the Seller. The Seller hereby agrees that the Purchaser or any person whom the Purchaser appoints, shall have the free and unrestricted right to repair or replace any broken or worn part of any Goods notwithstanding that such Goods are subject to any patent, trade mark, design or copyright. The Seller expressly warrants that it has the authority to grant this unrestricted right to the Purchaser, or any person whom the Purchaser appoints.
  19. **Invoices and Payment**
    - 19.1 Invoices, in duplicate, shall immediately after delivery of relevant Goods, be sent by the Seller directly to the Purchaser at the invoice address and shall state the Purchase Order number which appears on the face of the Purchase Order.
    - 19.2 If the Purchaser orders Goods by reference to part numbers set out in the Purchase Order, the Seller shall specifically refer to such part number in all its invoices for any such Goods sold and delivered to the Purchaser.
    - 19.3 The Seller's statements shall be made out on delivery but not later than the 25<sup>th</sup> of the month, and final invoices shall be forwarded so as to reach the Purchaser by not later than the last day of the month, failing which payments of any invoices received after this date may be deferred without prejudicing the Purchaser's right to deduct any settlement discount stipulated in the Purchase Order.
    - 19.4 Payment will only be made against an invoice addressed to the invoice address and which complies with all the requirements of the VAT Act. Failure of the Seller to comply will result in late payment without forfeiture of settlement discounts.
  20. **Charges at Point of Dispatch**

Unless otherwise provided in the Purchase Order all charges at points of dispatch, such as weighing, loading, sheeting, storage and demurrage, shall be borne by the Seller.
  21. **Price Adjustment**
    - 21.1 The Purchase Price and rates stipulated in the Purchase Order will be fixed and not subject to adjustment. Where a price adjustment is considered at the discretion of the Purchaser the following conditions will apply:
      - 21.1.1 notwithstanding the provisions of clause 21.1 above the Parties agree that quantities of the Goods may not be fixed and firm. The quantities stipulated in the Purchase Order may be varied at the sole discretion of the Purchaser. The Purchaser shall only be liable to pay, in terms of these terms and conditions and the Purchase Order, only such Purchase price as may be relevant to such varied quantities.
      - 21.1.2 such claims must be submitted by the Seller in writing at least 45 Days prior to the proposed date of the adjustment by the Seller;
- 21.1.3 the Purchaser shall not be liable for any adjustment whatsoever beyond the Delivery date and/or date of completion stipulated in the Purchase Order;
- 21.1.4 notwithstanding anything contained in the Purchase Order, acceptance of any claim for the adjustment of the Purchase Price shall be at the sole discretion of the Purchaser;
- 21.1.5 no purchase price shall be effective until accepted in writing by the Purchaser.
22. **Compliance with all Laws and Regulations**
  - 22.1 Where it is necessary, in terms of a Purchase Order, for the Seller to go about or perform any work on the Purchaser's premises.
    - 22.1.1 the Seller, shall immediately upon acceptance of the Purchase Order, submit proof to the satisfaction of the Purchaser that the Seller has at its expense made provision for securing the Purchaser against any claim which may be against it under the Compensation for Occupational Injuries and Diseases Act 1993, or any amendment of, or a substitution of such Act, or at common law, by suitable insuring and registering all persons employed by it with the Compensation Commissioner.
  - 22.2 The Seller acknowledges that its employees will comply with all laws and regulations applicable to the place where delivery is effected.
23. **Insurance**
  - 23.1 During the duration of the Purchase Order the Seller shall be insured against the following risks at its own cost.
    - 23.1.1 Any liability for damages payable at law for injury or death to any of its employees, third parties and the Purchaser.
    - 23.1.2 Against liability in respect of any of its assets or plant used by the Seller for the purpose of executing the Purchase Order, which without limiting the generality of the foregoing, includes any temporary site accommodation and the contents thereof.
24. **Export / Import Permits**
  - 24.1 In the case of export, the Seller shall do all that is necessary, including obtaining all documentation and permits;
    - 24.1.1 to enable the Goods to be exported into the country of destination and;
    - 24.1.2 to enable payment to be effected in accordance with the Purchase Order.
25. **Overriding Effect**

The Purchase Order shall override all terms and conditions stipulated, incorporated or referred to by Seller in any document or negotiations and shall be the only document recording the Parties respective rights and obligations in terms thereof.
26. **Variation**

No amendment or variation of the Purchase Order shall be of any force or effect unless recorded in writing and signed on behalf of the Purchaser by an authorised signatory.
27. **Relaxation not Waiver**

No relaxation or indulgence of the Purchase Order by the Purchaser in favour of the Seller shall be construed as a waiver of the Purchaser's rights.
28. **Governing Law**

The rights and obligations of the Parties shall be governed by the law of the Republic of South Africa and the Seller agrees to submit to the jurisdiction of the courts of the Republic of South Africa for determination of all disputes. The parties further agree to submit to the jurisdiction of the Magistrates Court for the District of Johannesburg in addition to any other South African court, which may have jurisdiction by operation of law ("the Court").
29. **Domicilium citandi et executandi**
  - 29.1 The Parties elect such addresses as appear on the Purchase Order as their domicilium citandi et executandi for all purposes of the Purchase Order.
30. **Interpretation**
  - 30.1 In this agreement, unless the context required otherwise:
    - 30.1.1 Words importing any one gender shall include the other two genders.
    - 30.1.2 The singular shall include the plural and vice versa
    - 30.1.3 A reference to natural persons shall include created entities and vice versa.
    - 30.1.4 Any word or expression defined in clause 1 shall, if expressed in the singular, include the plural and vice versa and cognate expression shall have a corresponding meaning.
    - 30.1.5 Clause headings have been inserted for convenience only and shall not be used for or assist or effect the interpretation of the Purchase Order.