

PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS

The following terms shall have the meanings assigned to them and cognate expressions shall have corresponding meanings:

- 1.1. "**Applicable Law**" means any and all laws, statutes, regulations, decisions, rulings, government policies, enactments or instruments and all other national, regional, local or municipal laws, regulations or by-laws of any kind whatsoever, which may from time to time be in force in the Republic of South Africa and be relevant to any rights or obligations under these Purchase Order Terms and Conditions;
- 1.2. "**Company**" means Fraser Alexander Proprietary Limited, Registration No.2005/028043/07;
- 1.3. "**Confidential Information**" means all financial, business and technical or other data and all other confidential information (whether written, oral or in electronic form or on magnetic or other media) concerning the business and affairs of the Company that the Supplier obtains, receives, or to which it has access as a result of any discussions or dealings with the Company or which is learned by the Supplier through observation and made during visits to any premises of the Company;
- 1.4. "**Defect**" means any fault or deficiency in the Goods or the Services or any component of the Goods arising from poor manufacturing, workmanship and/or materials;
- 1.5. "**Defects Correction Period**" means the period of 24months from the date of delivery of the Goods and/or 12 months from the date on which a Service is last performed ;
- 1.6. "**Delivery Date**" means the required delivery date for Goods or Services as set out in a Purchase Order;
- 1.7. "**Delivery Point**" means the Company's designated delivery address, as set out in a Purchase Order, for the delivery of Goods to the Company;
- 1.8. "**Goods**" means those goods described in a Purchase Order;
- 1.9. "**Parties**" means the Supplier and the Company, and a "**Party**" means either one of them;
- 1.10. "**Price**" means the Price for Goods or Services set out in a Purchase Order;

- 1.11. "**Purchase Order**" means the purchase orders of the Company which incorporate these Purchase Order Terms and Conditions by reference;
- 1.12. "**these Purchase Order Terms and Conditions**" means the Purchase Order Terms and Conditions document;
- 1.13. "**this Agreement**" means these Purchase Order Terms and Conditions;
- 1.14. "**Services**" means services as described in a Purchase Order;
- 1.15. "**Site**" means the Company's designated premises, as set out in a Purchase Order, for the rendering of Services or the delivery of Goods to the Company;
- 1.16. "**Supplier**" means the supplier as identified in a Purchase Order.

2. APPLICABILITY OF THESE PURCHASE ORDER TERMS AND CONDITIONS

These Terms and Conditions are binding on the Supplier with regard to Goods and Services supplied by the Supplier to the Company in terms of a Purchase Order.

3. SUPPLY OF GOODS AND/OR SERVICES

- 3.1. In consideration of payment of the Price by the Company, the Supplier must supply the Goods and/or provide Services to the Company in accordance with, and as specified in, the Purchase Order.
- 3.2. The Supplier acknowledges and accepts that the Goods and / or Services specified in the Purchase Order may vary as to quantity prior to the Delivery Date.
- 3.3. To the extent permitted by law and to the extent the Supplier's terms and conditions are supplied to the Company in respect of the Goods or Services (included as printed on other documents), those terms and conditions will be of no legal effect and will not constitute part of the Purchase Order (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to the Purchase Order).
- 3.4. Where the Purchase Order relates to Goods and/or Services which are the subject of a written agreement to which the National Credit Act 34 of 2005 is applicable, (or not, as the case may be) between the Supplier and the Company, the terms of this Agreement apply to the extent of any inconsistency with that agreement.

- 3.5. Where the Purchase Order relates to Goods and/or Services which are the subject of a written approved standard form of contract between the Supplier and the Company, the terms of that agreement apply to the extent of any inconsistency with this Agreement.
- 3.6. The Supplier must, in supplying the Goods or performing the Services:
- a) not interfere with the Company's activities or the activities of any other person at the Delivery Point or the Site;
 - b) be aware of and comply with, and ensure that the Supplier's staff are aware of and comply with:
 - I. all applicable laws;
 - II. all Site standards and procedures, to the extent that these documents are applicable to the supply of the Goods or the performance of the Services by the Supplier; and
 - III. all lawful directions and orders given by the Company's representatives or any person authorised by law or the Site's standards and procedures to give directions to the Supplier;
 - c) ensure that the Supplier's staff entering the Site perform the Services or deliver the Goods in a safe manner and in a manner that does not prejudice safe working practices, safety and care or property and continuity of work at the Site;
 - d) provide all such information and assistance as the Company reasonably requires in connection with any statutory or internal health and safety, environment or community investigation in connection with the Purchase Order, the supply of the Goods or the performance of the Services; and
 - e) on request by the Company, provide to the Company and its personnel any information and assistance required to identify, elevate, implement and report on any matter required by Applicable Law in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under the Purchase Order.
- 3.7. For the duration of these Purchase Order Terms and Conditions, the Supplier shall:
- a) carry out the Supplier's duties and functions under these Purchase Order Terms and Conditions with due care and diligence, in a professional manner and in conformity with the standards required by the Company;

- b) exercise the skill required of a reasonable person in the position of the Supplier in carrying out the Services;
- c) use its best endeavours to protect and promote the business of the Company and preserve its reputation and goodwill;
- d) in relation to the Company, act honestly and in good faith;
- e) avoid any material conflict between its own interests and those of the Company and in particular:
 - I. shall not derive any economic benefit to which the Supplier is not entitled by reason of the Services from the Company or from any other person;
 - II. shall notify the Company at the earliest opportunity practical in the circumstances of the nature and extent of any direct or indirect material interests which it may have in conflict with the Company; and
 - III. shall not compete in any way with the Company in its business activities.
- f) The Supplier shall ensure that its employees, officers, directors, members and/or agents, if any, comply with the provisions of this clause.
- g) During the Contract Term, the Supplier shall be entitled to perform other work for any other person or entity, provided that such work does not result in a conflict with the duties owed by the Supplier to the Company or detract from the proper performance by the Supplier of the Services. Any consideration derived from such work shall be for the benefit of the Supplier.
- h) For the purposes of these Purchase Order Terms and Conditions, "Intellectual Property" means intellectual property including, without limitation, trademarks, service marks, photos, newspaper articles, trade names, domain names, designs, patents, petty patents, utility models and like rights, in each case whether registered or unregistered and including applications for the grant of any of the aforementioned; copyright (including, without limitation, rights in computer programs and data bases and moral rights), inventions, designs, know-how, confidential information, trade secrets, and all rights in and to any of the aforementioned, and all rights or forms of protection having equivalent or

similar effect to any of the aforementioned, which may subsist in any country in the world.

- i) For the purposes of these Purchase Order Terms and Conditions, "Contract Material" shall include all material and work product, including but not limited to, documents, computer software, photos, newspaper articles, and/or programs in whatever language and on whatever medium, equipment, reports, information and data produced and stored by any means whatsoever, which is created for the purpose of, or in the course of the performance of, the Services in terms of these Purchase Order Terms and Conditions.
- j) All drawings, papers, work product and records of any kind relating to the business of the Company and/or created for the purpose of, or in the course of the performance of, the Services in terms of these Purchase Order Terms and Conditions, whether or not made by the Supplier, are and shall be the property of the Company and the Supplier shall deliver to the Company at its request at any time, any and all such drawings, papers, records and the like, which may be under the control of, or in the possession of, the Supplier.
- k) The provisions of this clause shall survive the termination or cancellation of these Purchase Order Terms and Conditions for any reason whatsoever.
- l) Subject to any pre-existing rights of the Supplier (or any third party), existing at the Delivery Date, any work(s), including, without limitation, the Contract Material ("the Works"), created pursuant to these Purchase Order Terms and Conditions shall be for the benefit of and become the absolute property of the Company.
- m) If the Supplier becomes aware or has reason to believe that registrable Intellectual Property is embodied in or has arisen from the Works created pursuant to these Purchase Order Terms and Conditions it shall forthwith notify the Company in writing giving such details as the Company may reasonably require.
- n) the Company shall determine whether any protection should be sought for any registrable Intellectual Property arising directly or indirectly from or embodied in Works created pursuant to these Purchase Order Terms

and Conditions and shall have the absolute right to register and apply to register such Intellectual Property in its own name and at its own expense in any country of the world. The Supplier shall procure that its employees, agents, sub-contractors, sub-consultants and/or representatives give without charge all reasonable assistance to the Company to enable it to seek and obtain such protection.

- o) For good and sufficient consideration, the receipt of which is hereby acknowledged, the Supplier hereby assigns, transfers and makes over to the Company, for all countries of the world, all its rights, title and interest in and to any Intellectual Property arising directly or indirectly from or embodied in the Works created pursuant to these Purchase Order Terms and Conditions, together with any improvements, additions or modifications thereto, free from any third party lien, charge or other encumbrance, and the Company hereby accepts the assignment, transfer and making over.
- p) Insofar as the assignment, transfer and making over contained in o) above cannot or may not be made in advance, the Supplier hereby undertakes to so assign, transfer and make over in the future, without charge, as and when the Company so requires.
- q) The Supplier hereby undertakes, when called upon to do so by the Company, without charge, to sign all documentation and do any and all things necessary to obtain and/or record such Intellectual Property and/or the assignment thereof to the Company.
- r) The Supplier undertakes to procure the assignment to the Company of any Intellectual Property arising directly or indirectly from or embodied in the Works created pursuant to these Purchase Order Terms and Conditions to the extent that such Intellectual Property is owned by any of its employees, agents, sub-contractors, sub-consultants and/or representatives or any other third party commissioned by it to produce materials or work on its behalf in connection with any Works, together with any improvements, additions or modifications thereto, free from any third party lien, charge or other encumbrance. In order to ensure compliance with this obligation, the Supplier undertakes to inform the Company forthwith of any intention on the part of the Supplier to make

use of any sub-consultants or other third parties in the fulfilling of its obligations in terms of these Purchase Order Terms and Conditions. The Supplier shall, without charge, ensure that such sub-consultants or other third parties are aware of the terms and conditions of this clause and shall obtain a written confirmation and undertaking from the said sub-consultant or third party that it considers itself bound by the terms and conditions of this clause, as if it were a party to these Purchase Order Terms and Conditions.

- s) The Supplier hereby waives and shall procure, without charge, the waiver of any and all moral rights, including moral rights in terms of the Copyright Act no 98 of 1978 as amended, in the Works created pursuant to these Purchase Order Terms and Conditions to which it or any sub-consultant or third party may be entitled.
- t) the Company shall have the right to make such use as it thinks fit of the Works created pursuant to these Purchase Order Terms and Conditions without further payment to the Supplier.
- u) The Supplier shall not use and/or exploit the Works created pursuant to these Purchase Order Terms and Conditions for any purpose whatsoever, without the prior written consent of the Company.
- v) The Supplier shall ensure that any Works created pursuant to these Purchase Order Terms and Conditions shall, if in printed form, bear the following wording on the cover and first page thereof: "© the Company". In respect of Works prepared by the Supplier for the Company, which do not readily allow such a method of marking, a suitable equivalent shall be utilised.
- w) The Supplier hereby indemnifies and undertakes to keep the Company fully and effectively indemnified against any and all actions, claims, proceedings, demands, damages, costs, charges and expenses occasioned to the Company as a result of any infringement or alleged infringement of any Intellectual Property of any third party, arising directly or indirectly as a result of the use by the Company (or by any of its licensees, employees, agents, contractors, sub-contractors, consultants, sub-consultants or assignees) of the Works created pursuant to these Purchase Order Terms and Conditions.

- x) The Supplier warrants and represents to the Company that:
 - I. it has the legal capacity, right, power and authority (or shall procure from its consultants the right and authority) to enter into the assignment of the Intellectual Property as is provided for in this clause;
 - II. as far as work performed by it and/or its employees is concerned, it is, or shall become, the initial legal and beneficial owner of the Works created pursuant to these Purchase Order Terms and Conditions;
 - III. the Works created pursuant to these Purchase Order Terms and Conditions do not infringe (and no part thereof infringes) any Intellectual Property of any third party in any jurisdiction;
 - IV. it has not entered, nor shall it enter without the prior written consent of the Company, into any agreement or arrangement (whether or not legally enforceable) for the assignment or licensing or other use of the Works created pursuant to these Purchase Order Terms and Conditions, which could in any way prevent, restrict or otherwise inhibit the Company's use and exploitation of the Works created pursuant to these Purchase Order Terms and Conditions.
- y) The Supplier shall, without charge, execute (or procure the execution of) such further documents and do (or procure the doing of) such further acts as the Company may reasonably request from time to time to perfect the rights assigned to it pursuant to the provisions of this clause.
- z) The Supplier shall from time to time, whether during the Contract Term or after the expiry or early termination of these Purchase Order Terms and Conditions, upon request by the Company and at the Company's expense, do all things which may be required to protect or enforce the rights of the Company in terms of this clause.
- aa) The rendering of the Services does not make either Party the agent of the other or create a partnership, joint venture or similar relationship between the Parties and neither Party shall have the power to nor shall it purport to obligate or bind the other in any manner whatsoever. The Parties are in all respects independent contractors.

4. DELIVERY

- 4.1. The Supplier must deliver the Goods to the Delivery Point and perform the Services by the Delivery Date.
- 4.2. The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any Applicable Law.
- 4.3. Packages must be marked with the Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight of each package.

5. TITLE AND RISK

- 5.1. The Company will have title to the Goods when the Company pays for those Goods.
- 5.2. The Company will bear risk in the Goods when the Company takes delivery of the Goods at the Delivery Point.

6. PRICE

- 6.1. The Company must pay the Supplier the Price for the Goods and/or Services at the time set out in the Purchase Order, subject to the actual delivery of the Goods and rendering of the Services and subject to the requirements of clause 7 having been satisfied.
- 6.2. The Price is inclusive of:
 - a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with the Purchase Order;
 - b) the cost of any miscellaneous items or services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of the Services;
 - c) the Supplier's compliance with its obligations in terms of this Purchase Order; and
 - d) all taxes.

7. INVOICING AND PAYMENT

- 7.1. On delivery of the Goods and/or completion of the Services, the Supplier must provide to the Company:

- a) a Contractor Reference Document, and
- b) if the Company directs, an invoice which meets all the requirements of a valid original tax invoice, which must include the information set out in clause 7.2.

7.2. Any invoice must include the following details:

- a) a reference to the Purchase Order including the line item numbers on the Purchase Order;
- b) a detailed description of the delivered Goods and / or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
- c) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order, including the amount of any VAT and other taxes; and
- d) Company operation, Site and Company contact name.

7.3. If the Company requests, the Supplier must provide the Company with all relevant records to calculate and verify the amount set out in any invoice.

7.4. The Company shall pay all invoices that comply with clause 7.2 within 60 days (or such other period as the Parties agree in writing) of the date on which the relevant invoice is generated (in the case of a recipient created tax invoice) or the date on which the relevant invoice is received from the Supplier(in all other cases), except where the Company:

- a) is required by Applicable Law to pay within a shorter time frame, in which case the Company must pay within that time frame;
- b) exercises any right to retain, withhold, reduce or set-off any amount due to the Supplier;
- c) disputes the Supplier's invoice, in which case:
 - I. the Company may withhold payment of the disputed part of the Supplier invoice pending resolution of the dispute; and
 - II. if the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company must pay that amount upon resolution of that dispute; or
- d) is required by Applicable Law to withhold a portion of payment for services rendered by a foreign contractor.

- 7.5. The Company may reduce any payment due to the Supplier under the Purchase Order by any amount which the Supplier must pay to the Company, including costs, charges, damages and expenses and any debts owed by the Supplier to the Company on any account whatsoever. This does not limit the Company's right to recover these amounts in another manner.

8. CONDITIONS AS TO QUALITY OF THE GOODS AND THE SERVICES

The Supplier shall ensure that:

- 8.1. the Goods and Services supplied by the Supplier match the description of the Goods and Services in the Purchase Order;
- 8.2. if the Supplier gave the Company a sample of the Goods before the Company issued the Purchase Order, that the Goods correspond with the sample;
- 8.3. if the Supplier provided the Company with a demonstration of the Services before the Company issued the Purchase Order, the Services correspond in nature and quality with the Services demonstrated;
- 8.4. if the Supplier showed the Company a result achieved by the Services before the Company issued the Purchase Order, the Services correspond in nature and quality with the services that achieved that result;
- 8.5. the Services are performed with the professional skill, care, and diligence expected of a skilled and experienced professional supplier;
- 8.6. the Goods and Services are fit for the purposes set out in, or which an experienced professional supplier would reasonably expect from, the Purchase Order;
- 8.7. the Goods are new and of saleable quality;
- 8.8. to the extent that the Services are design Services, the work being designed will be fit for the intended purpose as described in the Purchase Order;
- 8.9. any items which the Supplier uses or supplies in conjunction with the Services are of saleable quality, comply with any standards specified in the Purchase Order and are fit for their usual purpose and any purpose described in the Purchase Order; and
- 8.10. the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods.

9. CANCELLATION OF A PURCHASE ORDER

- 9.1. The Company may cancel a Purchase Order in whole or in part for any reason upon oral and / or written notice to the Supplier, and
- a) subject to clause 7, the Company shall pay for any part of the Goods delivered or Services performed prior to the cancellation;
 - b) if the Supplier has shipped any Goods before cancellation but the Goods have not yet been delivered to the Delivery Point as at the date of cancellation, the Company may either:
 - I. subject to clause 7, accept the Goods when delivered, and pay the price for them; or
 - II. return the Goods to the Supplier at the Company's expense.
 - c) if the Supplier has not shipped the Goods at the time of cancellation, on receiving the written notice of cancellation, the Supplier must stop manufacture of the Goods in accordance with and to the extent specified in the notice, and take all reasonable and possible steps to mitigate any costs incurred in relation to the Goods; and
 - d) If clause 9.1(b)ii or 9.1(c) applies:
 - I. to the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Supplier for the Company, the Company shall reimburse the Supplier in respect of any cost reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and the Supplier is not able to recover such cost in another manner; and
 - II. the Supplier is not entitled to the price of the Goods or Services, or to any compensation for the cancellation other than as specified in clause 9.1(a).

10. CONFIDENTIAL INFORMATION

- 10.1. The Supplier may not, and must ensure that the Supplier's staff do not, without the prior written approval of the Company:
- a) use Confidential Information other than as necessary for the purposes of fulfilling the Supplier's obligations under the Purchase Order; or
 - b) disclose the Confidential Information, other than to the Supplier's staff who need the information to enable the Supplier to perform in terms of the

Purchase Order, to the Supplier's legal advisors, accountants or auditors, or where disclosure is required by Applicable Law.

10.2. The rights and obligations under this clause 10 endure in perpetuity.

11. DEFECTS

11.1. If, during the Defects Correction Period, the Company finds any Defect in the Goods or Services, the Company may:

- a) reject the Goods with the Defect and return them to the Supplier, in which case the Supplier shall replace the Goods at no cost to the Company and shall reimburse the Company for the Goods and any additional expenses incurred as a result of the Defect;
- b) reject the Services with the Defect, in which case the Supplier shall re-perform the Services at no cost to the Company; or
- c) make good or engage another Supplier to make good the Defect, in which case the Supplier shall reimburse the Company for any expenses incurred as a result of the Defect.

11.2. If the Company elects remedy in clause 11.1(c), then:

- a) if the Company has already paid the Supplier for the Goods or Services with the Defect, the Supplier shall repay the Company the cost of those Goods or Services; or
- b) if the Company has not already paid the Supplier for the Goods or Services with the Defect, the Company shall not be liable to pay the Supplier for those Goods or Services.

11.3. The acceptance of any Goods or Services with a Defect by the Company will not oblige the Company to accept any other Goods or Services with a Defect and will not affect any of the Company's rights under the Purchase Order or in terms of Applicable Law.

12. INDEMNITY IN RESPECT OF THE CONSUMER PROTECTION ACT

12.1. In this indemnity, the following terms have the meanings assigned to them below, namely:

- a) "**Consumer Protection Act**" means the Consumer Protection Act 68 of 2008;

- b) **“Harm”** means harm, as described in section 61(5) of the Consumer Protection Act; and
- c) **“Supplier”** means a supplier, as defined in section 1 of the Consumer Protection Act, which also meets the requirements of section 61(2) of the Consumer Protection Act.

12.2. Unless a contrary intention clearly appears, the terms used in this indemnity shall have the meanings assigned to them in section 1 or section 53, as the case may be, of the Consumer Protection Act.

12.3. It is recorded that in terms of the Purchase Order Terms and Conditions, the Company purchases, markets, stores and/or distributes the goods of the Supplier, which goods are ultimately supplied to consumers.

12.4. The Parties acknowledge that in terms of section 61 of the Consumer Protection Act, the producer, importer, distributor, retailer, and/or Supplier, may be jointly and severally liable for any Harm caused wholly or partly as a consequence of:

- a) supplying any unsafe goods; or
- b) a product failure, defect or hazard in any goods; or
- c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the Harm resulted from any negligence on the part of the producer, importer, distributor, retailer or Supplier, as the case may be. The Supplier must notify the Company in writing on delivery of all Products to the Company of any potential hazard that may arise from or that is associated with the use of any Product.

12.5. Without derogating from the indemnity given in this clause, the Supplier hereby indemnifies and holds harmless the Company from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by the Company as a result of or arising out of any Harm alleged or proven by a consumer, or other person contemplated in section 4(1) of the Consumer Protection Act, to the extent such Harm is attributable to the negligent or intentional conduct of the Supplier or any contravention by the Supplier of Applicable Law.

13. GOVERNING LAW

June 2018

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

14. JURISDICTION

The Parties irrevocably and unconditionally consent to the jurisdiction of the High Court of South Africa (Gauteng Local Division) (or any successor to that division) in regard to all matters arising from this Agreement.