



RAND REFINERY

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**Standard Purchase Terms &
Conditions for The Supply
and Delivery of Goods**

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12 February 2009
Rand Refinery (Pty) Limited
Conditions of Purchase Order Contracts

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1.0 **DEFINITIONS AND INTERPRETATIONS**

In these Conditions and the Purchase Order Contract the following words and expressions shall have the meanings hereby assigned to them unless the context otherwise requires.

1.1 Definitions

- 1.1.1 “Rand Refinery” means Rand Refinery (Pty) Limited.
- 1.1.2 “Buyer” means the Buyer acting on behalf of Rand Refinery.
- 1.1.3 “Company” means Rand Refinery (Pty) Limited
- 1.1.4 “Purchase Order Contract” means the Contract placed by Rand Refinery, which shall constitute the agreement between Rand Refinery and the Contractor for the supply of the Goods and / or Services stipulated therein.
- 1.1.5 “Purchase Order Date” means the date on which the Contract is awarded.
- 1.1.6 “Purchase Order Price” means the sum named in or ascertainable from the Contract as the price to be paid in respect of the Goods, subject to amendments or deductions from such sum as may be made under the provisions of the Purchase Order Contract.
- 1.1.7 “Supplier” and/or “Contractor” means any corporate body or person to which or to whom a Purchase Order Contract has been awarded for the supply of the Goods and shall include the Contractor’s legal personal representatives, successors and permitted assigns.
- 1.1.8 “Delivery Date” means the date stated in the Purchase Order on which the Goods are to be delivered.
- 1.1.9 “Documentation” means any drawings, diagrams, calculations, designs, specifications and other pertinent documents, which are to be supplied to Rand Refinery by the Contractor in terms of the Purchase Order Contract, together with any modifications to such documents as, may from time to time be approved in Writing by Rand Refinery.
- 1.1.10 “Goods” means machinery, apparatus, materials, articles, documentation and things of all kinds to be supplied in terms of the Purchase Order Contract.
- 1.1.11 “Technical Information” means all drawings, diagrams, calculations, designs, specifications and other documents, as may be furnished in Writing by, for, or on behalf of Rand Refinery to the Contractor.
- 1.1.12 “Writing” means any manuscript, typewritten or printed statement, signed by an authorised representative of either Rand Refinery, or the Contractor as the case may be, and any E-mail, facsimile or telegram, from one party to the other and shall include Technical Information and Documentation.



2.0 ACCEPTANCE

Acceptance of any Purchase Order Contract, whether by written acknowledgement or by performance of contractor, shall mean acceptance of all Rand Refinery Purchase Order Terms and Conditions. No other Terms and Conditions shall be binding on Rand Refinery unless written approval thereof is given by Rand Refinery.

3.0 INSTRUCTIONS AND ORDERS

All Purchase Order Contracts to the Contractor must have a Purchase Order Number and shall only be given by the buyer. All Purchase Orders must be authorised by the Buyer. Deliveries will not be accepted if an official Purchase Order has not been placed.

Purchase Orders from Rand Refinery shall reflect the agreed price, quantity and specifications for the Goods and Services ordered. The contractor shall notify the buyer about any discrepancies within 1(one) working day. Should instructions and orders be given orally they shall, whenever practicable, on the request of the Contractor, be confirmed in Writing by the Buyer within 2 (two) working days of the request.

Only in **Emergencies and Breakdowns** after office hours (including weekends and official public holidays) can the contractor accept a Purchase Order from an authorised senior Rand Refinery Representative without an order number. The Purchase Order must be confirmed with the Buyer within 1(one) working day.

4.0 ORDER AMENDMENT

The Buyer shall have the right to make changes to any Purchase Order Contract by issuing an amendment order.

5 TERMS OF PAYMENT

The contractor, showing a summary of all Tax Invoices issued to Rand Refinery for a calendar month, must produce a monthly statement and deliver same to Rand Refinery before the 20th of the month (or preceding working day). Payment to the Contractor shall be made 30 Days from date of statement. No COD payments will be made unless there are justifiable reasons agreed to by the Financial Director of Rand Refinery or his representative.

Electronic Fund Transfer (EFT)

EFT payments will be made to all Contractors. All new contractors must submit the relevant EFT form to Rand Refinery Creditors department for the attention of The Creditors Supervisor. All existing Contractors / Suppliers must inform the Rand Refinery Creditors Department in Writing of any changes which will effect any EFT payment within 1(one) working day.

Note: Payment will not be made until all the contractors' obligations in terms of the Purchase Order Contract have been met, including the provision of all relevant substantiating documentation as required. Rand Refinery will not be held responsible for any delays in payment due to errors in Contractor's invoices or statements and EFT delays.



6.0 **INVOICES**

- 6.1 Tax invoices, for goods and services rendered must be original Tax Invoices
- 6.2 State the correct Rand Refinery Purchase Order Number.
- 6.3 Agree to the Purchase Order Contract in every respect
- 6.4 Be submitted on time, in accordance with Rand Refinery standard payment terms of 30 days from date of statement.
- 6.5 Be itemized, showing all costs including applicable terms, labour rates, material costs, discounts and delivery dates.
- 6.6 Show Value Added Tax as a separate Item.

Failure to comply with said items (as applicable) may result in a delay of payment with all rights reserved, including discounts.

Tax Invoices and Statements must be addressed to:

Rand Refinery (Pty) Limited
P.O. Box 565
Germiston
1400

Attention: Creditors Department.

7.0 **ASSIGNMENTS AND SUB-CONTRACTING**

7.1 Assignment

The Contractor shall not, without the consent in Writing of Rand Refinery, assign or transfer the Purchase Order Contract or any part thereof or any rights or obligations therein to any other corporate body or person.

7.2 Sub-Contracting

The Contractor shall not sub-contract the whole or any part of the Purchase Order Contract without the prior written consent of Rand Refinery, and such consent if given shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor.



8.0 DOCUMENTATION AND TECHNICAL INFORMATION

8.1 Language

The Purchase Order Contract (including all documents forming a part thereof) shall be drawn up, construed and interpreted in English. Similarly all drawings, operating and maintenance manuals supplied to Rand Refinery the Contractor and all correspondence shall be in English. If any manuals supplied with the Goods are not in English, the Contractor is obliged to procure a suitable and accurate translation of such manuals, and deliver the translation and the original foreign language manuals to Rand Refinery.

8.2 Documentation

Prior to, or at the time of delivery of the Goods, the Contractor shall provide Rand Refinery with Documentation as required in terms of the Purchase Order Contract Such Documentation shall comprise but may not be limited to operating and maintenance instructions, drawings of the Goods (in sufficient detail to enable Rand Refinery to maintain, dismantle, reassemble and adjust all parts of the Goods) and spares lists. The Contractor shall present all relevant Documentation to Rand Refinery.

8.3 Technical Information

Where applicable, Rand Refinery shall provide the Contractor with the Technical Information necessary to enable him to deliver the Goods in accordance with the provisions of the Purchase Order Contract. All Technical Information provided to the contractor shall be, and remain, the property of Rand Refinery and shall be handed over to the buyer on demand.

8.4 Mistakes in Documentation

The Contractor shall be responsible for all discrepancies, errors, or omissions including faulty design and/or detailing in any of the Documentation whether or not such Documentation has been approved by Rand Refinery, provided that such discrepancies, errors, or omissions including faulty design and/or detailing are not due to discrepancies, errors or omissions in the Technical Information.

9.0 DEFECTIVE GOODS

Should an authorised Rand Refinery Representative decide that such Goods or part thereof are defective or not in accordance with the purchase Order Contract, the Rand Refinery Representative may reject the said Goods or part thereof and the Contractor shall replace such goods or part thereof at own cost.

10.0 UNFORSEEN CONDITIONS AND CIRCUMSTANCES

The contractor shall inform Rand Refinery about all unforeseen conditions and circumstances which relate to the supply and delivery of the Goods/Services, and which may affect the Purchase Order Contract Price. The Contractor shall not be entitled to claim any increase in the Purchase Order Contract Price caused by such unforeseen conditions without authorisation of the Buyer.



11.0 TAXES

- 11.1 The Purchase Order Contract Price shall include all Value Added Tax applicable to the Goods in terms of the Republic of South Africa's Value Added Tax ACT of 1991, as amended. Such Value Added Tax shall be shown as a separate component of the Purchase Order Contract Price.
- 11.2 The Contractor shall be responsible for the payment to the relevant authorities of any customs duties, statutory levies, taxes and any other costs incurred by the Contractor in respect of the execution of the Purchase Order Contract.

12.0 PACKING

The Contractor shall ensure that all packing and coverings are adequate for the safe transportation, handling and storage of the goods.

13.0 DELIVERY

- 13.1 The Contractor shall, at own costs, replace any Goods lost or damaged in transit, howsoever caused.
- 13.2 Should the Contractor fail to deliver the goods by the Delivery Date, then without prejudice to any other rights, Rand Refinery shall have the right to instruct the Contractor to make such alternative delivery arrangements, as it may deem necessary. All additional costs incurred by Rand Refinery or the Contractor as a result of such instruction shall be for the Contractor's account.
- 13.3 The Contractor shall be responsible for all costs arising from damage to property and/or injury to persons caused by the personnel and/or transport vehicles engaged in and upon the transportation of the Goods and/or empty containers, irrespective of whether such damage and/or injury is caused within the boundaries of the area(s) owned, leased or occupied by Rand Refinery or outside of such boundaries. The Contractor hereby indemnifies Rand Refinery against any claims, which might be made against Rand Refinery in respect of such damage and/or injury.

14.0 CONTRACTOR'S DEFAULT

Should it become apparent that the Goods or any part thereof shall not be delivered on or before the Delivery Date(s), or should the Contractor default or commit any breach of a Rand Refinery Purchase Order Contract other than provided for in the Force Majeure Clause, then Rand Refinery may give notice in Writing to the Contractor to make good the failure, neglect, refusal or breach. Should the Contractor fail to demonstrate compliance with the notice within 7 (seven) days from the date of receipt of such notice, Rand Refinery shall be entitled to terminate the Purchase Order Contract or part thereof forthwith by giving written notice to the Contractor.



15.0 GUARANTEE OF THE GOODS

- 15.1 The Contractor shall make good, at own costs, and within such period Rand Refinery may stipulate, any defects in the Goods arising from defective design, materials or workmanship, or from any act or omission of the Contractor that may develop under proper use during the period of 6 (six) months from the actual date of operational usage or 24 months from date of delivery, whichever is the earlier.
- 15.2 If the Contractor repairs or replaces any part of the Goods, the terms of the said Clause 11.1 hereof shall apply to such repairs or replacements from the date so repaired or replaced.
- 15.3 If any defects are not remedied by the Contractor within the time stipulated by Rand Refinery, Rand Refinery may proceed to have the work done at the Contractors risk and expense, without prejudice to any other rights which Rand Refinery may have, to repair x such defects.

16.0 INTELLECTUAL PROPERTY RIGHTS

- 16.1 The Contractor indemnifies and shall keep indemnified Rand Refinery against all losses and costs (including legal costs between attorney and client) and all other expenses whatsoever that Rand Refinery may incur as a result of any action, proceeding or claim made against Rand Refinery arising from the acquisition, use, reproduction or adaptation of Goods provided by the Contractor or any process associated therewith, or of any documents appertaining to such Goods or process constituting an infringement of patent rights, registered designs, registered trade marks, copyright or other protected rights in respect of the said Goods or process. The indemnity shall not apply to any infringement which is due to the Contractor having followed in its entirety a design or drawing stipulated by Rand Refinery and which is not at the time of completion of the Purchase Order Contract known by the Contractor to be an infringement of intellectual property rights as aforesaid.
- 16.2 Rand Refinery shall give the Contractor prompt notice of any action, proceeding, claim or threat instituted or made against it. Thereafter Rand Refinery may, at its option, either:
 - 18.2.1 permit the Contractor, at his expense, to conduct any litigation that may ensue and all negotiations for a settlement of such litigation or claim, with the proviso that the Contractor shall keep Rand Refinery informed of all steps that are taken and of the outcome
 - 18.5.2 conduct any litigation that may ensue and all negotiations for settlement in consultation with the Contractor.
- 16.3 The Contractor hereby authorises Rand Refinery to reproduce any Documentation other than restricted information as defined in the Definitions hereof, which is made available by the Contractor to Rand Refinery in connection with the Purchase Order Contract, and to publish such reproduction.



- 16.4 The Contractor shall keep Rand Refinery informed of any demands or claims made in respect of the infringement of patent or other exclusive rights by virtue of the Contractor's obligations undertaken in terms of the Contract.
- 16.5 The rights and obligations of this Intellectual Property Rights Clause shall survive the termination of any Purchase Order Contract and shall continue in full force and effect for a period of 10 (ten) years from the date of which the Goods are delivered to the Rand Refinery.
- 16.6 The Contractor shall pay all royalties and expenses and be liable for all costs in respect of the use of patent rights, trade marks or other protected rights, in the Republic of South Africa or the rest of the world, for all or any of the Contractor's obligations undertaken in terms of any Rand Refinery Purchase Order Contract.

17.0 RESTRICTED INFORMATION

- 17.1 Technical Information and other information, whether written or oral, which is communicated to the Contractor or and that part of the Documentation which is submitted by the Contractor and, at the time of submission, notified to Rand Refinery that such is not for publication, shall be treated as restricted information.
- 17.2 The Contractor shall not, without the prior written consent of Rand Refinery, use, publish or disclose to any person, nor cause nor permit any of his sub-contractors, servants or agents to use, publish or disclose any restricted information as defined in this hereof otherwise than for the performance of the Purchasing Order Contract. The Contractor shall ensure that his subcontractors, servants or agents comply with the provisions of this Clause.
- 17.3 The Company shall not, without the prior written consent of the Contractor publish any restricted information, as defined in the Restricted Information Clause, received from the Contractor.
- 17.4 The Contractor shall not, without prior written approval of Rand Refinery;
 - 17.4.1 take or permit to be taken any photograph of the Company's property or any portion thereof;
 - 17.4.2 publish, cause or permit to be published any article, story or other material having any references whatsoever to any Rand Refinery Purchase Order Contract;
 - 17.4.3 display any advertisements in connection with any Rand Refinery Purchase Order Contract
- 17.5 The rights and obligations in this Restricted Information Clause shall survive the termination of the Contract and shall continue in full force and effect for a period of 10 (ten) years from the date on which the Goods were delivered to the Company.



17.6 Information which is already known to the recipient thereof and in respect of which the recipient has a free right of disposal at the date of receipt, or which is already public knowledge at the date of receipt by the recipient, or which becomes public knowledge thereafter otherwise than through default on the part of the recipient, his directors, officers or employees, shall not be regarded as restricted information and shall be excluded from the provisions of this Restricted Information Clause.

18.0 INSOLVENCY

If the Contractor should become insolvent or commit an act of insolvency or pass a resolution for winding up, or be subject to a winding up order of the Court (Local or Overseas), or be placed under provisional or final judicial management, Rand Refinery shall have the right to cancel / terminate the Purchase Order Contract in Writing to the Contractor or the liquidator or judicial manager without any liability to Rand Refinery.

19.0 TERMINATION

The Company may terminate any Purchase Order Contract in whole or part thereof, by giving Written notice to the Contractor. The Contractor shall waive any claims for damages, including loss of anticipated profits. Rand Refinery will pay to the contractor all monies owed up to the time of termination for justified costs.

20.0 OWNERSHIP AND RISK

20.1 Notwithstanding the date on which any payment is made to the Contractor, ownership of the Goods and the risk therein shall remain with the Contractor until such time as the Goods are delivered to Rand Refinery and are properly accepted by Rand Refinery.

20.2 In the event that Rand Refinery provides equipment and materials to the Contractor for incorporation in the Goods, risk in such equipment shall be and remain with the Contractor until such time as the Goods are delivered to Rand Refinery and accepted by Rand Refinery.

21.0 FORCE MAJEURE

21.1 "Force Majeure" shall mean any circumstances beyond the reasonable control of either party concerned and shall include warfare, rebellion, invasion, civil disobedience, riot, gang violence, damage, epidemic, accident, breakdown of equipment or services, denial of the use of any railway, port, airport, shipping service or other means of transport, any other industrial action by workers.

The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances that are themselves Force Majeure.

21.2 Neither the Contractor nor Rand Refinery shall be liable for non performance due to causes beyond reasonable control. Where either Contractor or Rand Refinery claims a reason for non-performance under Force Majeure, it must notify the other party immediately and give confirmation in writing within 2 (two) working days.



22.0 AUDITS

All transactions shall be subject to the scrutiny of Rand Refinery's internal auditors or their representatives. Audits may be carried out at any time when the company considers it necessary. Any contractor refusing to comply with an audit will be removed from the Rand Refinery approved supplier list.

23.0 OUTSTANDING PAYMENTS TO RAND REFINERY

Any costs or expenses, for which the contractor is liable to Rand Refinery, may be deducted from payments due to the contractor. After consultation with the contractor and no agreement is reached about outstanding payments, Rand Refinery may take legal action to recover the costs.

24.0 LAWS

The Contractor shall conform to the provisions of all legal statutes, laws and regulations applicable to the completing of the Purchase Order Contract, and hereby indemnifies Rand Refinery against all penalties and liabilities for breach of such.

25.0 GOVERNING LAW – REPUBLIC OF SOUTH AFRICA

The Purchase Order Contract shall be governed and interpreted in accordance with the laws of the Republic of South Africa.

26.0 DOMICILIUM

Each party chooses domicilium citandi et executandi at its respective registered office or at such alternative address in the Republic of South Africa which it may notify to the other in Writing from time to time; provided that, if the registered address of the Contractor is outside the Republic of South Africa, the Contractor shall choose domicilium citandi et executandi at an address in the Republic of South Africa.