



**BATELEUR DESIGN & PROJECT MANAGEMENT SOLUTIONS CC
(Hereinafter referred to as Bateleur)**

1. Interpretation and Definitions

1.1 In these Conditions:

1.1.1 **"Company"** means Bateleur Design & Project Management Solutions CC or the subsidiary of Bateleur that places the order with the supplier;

1.1.2 **"Conditions"** means these standard trading conditions;

1.1.3 **"Contract"** MEANS THE ORDER, THESE conditions and any other terms and conditions agreed upon between the Parties in writing;

1.1.4 **"In Writing/Written"** includes by letter, facsimile, SMS or E-Mail;

1.1.5 **"Order"** means a written order placed by the Company with the Supplier for the supply of products or Services and which contains a unique order number;

1.1.6 **"Party/ies"** means either or both, as the contract requires, of the parties referred to in Clause 1.1.1. and Clause 1.1.9;

1.1.7 **"Products"** means any goods supplied or to be supplied by the Supplier to the Company;

1.1.8 **"Services"** means and services rendered or to be rendered by the Supplier to the Company;

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- 1.1.9 **"Supplier"** means any person, whether an agent or a principle, that supplies Products or renders Services to the Company;
- 1.1.10 **"Supply"** or "Supplies" means the supply of Products or Services by the Supplier to the Company;
- 1.1.11 **"Working Hours"** means between 09h00 and 16h55 on any day except Saturdays, Sundays and Public Holidays in the Republic of South Africa.
- 1.2 The construction, validity and performance of the Order, these Conditions and any other terms and/or conditions agreed between the Parties and the determination of any other dispute between the Parties arising out of the alleged improper or non-performance thereof based on any cause of action whatsoever shall be governed in all respects by the law of the Republic Of South Africa.
- 1.3 The clause headings in these Conditions are inserted for convenience only and shall not be relevant for the purpose of interpretation.
- 1.4 Unless inconsistent with the context, and expression which denotes:
- 1.4.1 The singular includes the plural, and *vice versa*;
- 1.4.2 Any gender includes the other genders;
- 1.4.3 A natural person includes an artificial person, and *vice versa*.

2. Application of Conditions

- 2.1 All Supplies to the Company shall be made subject to these Conditions, which shall be deemed to be incorporated in and be part of any agreement concluded between the Company and the Supplier.
- 2.2 Notwithstanding any other provision of these Conditions, the Supplier shall not be entitled to vary, exclude or limit the application of these Conditions to any Supplies to the Company unless the Company specifically agrees to such variation, exclusion or limitation of these Conditions, and such agreement is reduced to writing and signed by the Parties.
- 2.3 Unless the Parties agree in writing specifically to the contrary, these conditions shall apply to the exclusion of any standard trading conditions of the Supplier, even if the latter conditions are apparently incorporated after these Conditions.
- 2.4 In the event of a conflict between the provisions of these Conditions and provisions of the Order, the provisions of the Order shall prevail.

3. No Exclusivity

- 3.1 Nothing contained in these Conditions shall imply that the Supplier is an exclusive supplier to the Company of the Products or Services, or Products/ Services of a similar nature.

4. Order Specific to Named Supplier

- 4.1 Any Orders placed by the Company shall be open for acceptance for the period set out in the Order only.
- 4.2 The Order is only capable of being accepted by the Supplier named in the Order, irrespective of who actually receives such Order. Should a person who is not the intended recipient receive the Order, for any reason whatsoever,

such recipient shall not be entitled to accept the Order, and also shall have no right or claim against the Company.

- 4.3 The Supplier shall not be entitled to novate, cede or assign its rights and/or obligations under the Order to any other person, nor to subcontract its obligations to any other person, without the prior written consent of the Company.

5. Acceptance of Order

- 5.1 The Supplier must accept the Order in writing within the time period provided by the Order, or, if none is provided or specified, with 48 hours after receiving the Order. By accepting the order in such manner, or by performing the Order, the Supplier agrees to be bound by these Conditions and terms of the Order.
- 5.2 An acceptance of the Order by the Supplier must be on the basis that the whole of the Order is accepted. Any partial acceptance of any order will constitute a new quote by the Supplier to the Company, which will require a new Order to be issued by the Company, if such new quote is acceptable to the Company, unless otherwise agreed to in writing between the Parties.
- 5.3 The price quoted in the Order shall be inclusive of any escalation or adjustment to which the Supplier is entitled in terms of any supply agreement concluded between the Supplier and the Company, and shall be fixed and not subject to any adjustments whatsoever, unless otherwise agreed to in writing between the Parties.

6. Conclusion of Contract

- 6.1 The Company shall issue the Supplier with an Order, upon which event a contract upon the terms set forth in these conditions shall be deemed to have been concluded between the Supplier and the Company in respect of the Supply.
- 6.2 Each Order that is issued by the Company shall constitute a separate and distinct contract in respect of the Products or Services forming the subject matter of such Order.

7. Quality and Verification

- 7.1 The Products shall;
- 7.1.1 Comprise of New and Sound Materials;
- 7.1.2 Be of Good Workmanship and the Product shall be fit for its purpose;
- 7.1.3 Conform as to quality, quantity, description and in all other respects with any agreed samples and with the particulars stated in the Order and any applicable and relevant specification and / or document, whether referred to in the Order or not.
- 7.1.4 Be provided with due care and skill; and;
- 7.1.5 Include all the requisite materials, accompanying drawings, test certificates, installation and operations manuals and spare parts if so ordered.
- 7.2 The Product or Services shall be provided with due care and skill and any work done shall be of good quality and fit for its purpose.

7.3 The Company, through its authorized representative/s shall be entitled to attend at the place of manufacture or source of the Products to investigate whether the Products conform to the specifications and other requirements of the Order and these Conditions. Such investigation shall not under any circumstance relieve the Supplier from any of its responsibilities under the Contract or at law, nor constitute an acceptance by the Company of the quality of the Products.

8. Delivery, Title and Risk

8.1 Upon receipt of a request from the Company, the Supplier will provide the Company with all the details relating to the status of the Order, including the anticipated delivery date.

8.2 The Supplier, at its own risk and expense, shall deliver the Products during Working Hours (unless otherwise agreed in writing or site and/or Statutory Conditions demand otherwise) properly packed, secured and sealed, at the place specified in the Order, or such other place as may subsequently be agreed upon the Parties in writing. Each package must be clearly and plainly marked with the Suppliers name and the delivery address stated on the face of the package and must specifically display the unique Order Number. Any Products that are delivered to the Company without a unique Order number from the Company shall, at the Companies discretion, be held by the Company at the Suppliers risk and expense, or will be returned to the Supplier by the Company at the Suppliers risk and expense.

8.3 The Supplier shall accept all responsibility for damage or loss of whatsoever nature at the delivery point to roads, tracks, manholes, and covers, mains, pipes, bridges, weigh-bridges or approaches, and anything of a like nature, leading to the loading or unloading point, due to weight or nature of the vehicle, rail truck or its load.

8.4 The Supplier warrants the suitability and safety of every vehicle and/or rail truck used to deliver the Products.

8.5 The Supplier warrants that all Products have been properly and sufficiently packed and/ or prepared in a manner adequate to withstand normal handling and storage, and in compliance with all laws, regulations and requirements that may be applicable.

8.6 The Supplier warrants that all Products have been properly and sufficiently marked and labeled, and indemnifies the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission in that respect.

8.7 The Supplier indemnifies the Company against all liability for the cost of repairing such damage that may be caused by the passage of the Products over private property, unless such damage is directly attributed to the Company's negligence.

8.8 The Supplier must ensure that delivery notes/ signed job cards accompany all deliveries of Products and that the signature of a duly authorized officer of the Company acknowledges delivery of Products on such delivery date. Notwithstanding anything to the contrary stated on the delivery note, such acknowledgement shall not under any circumstances constitute an acknowledgement that the Products or the delivery thereof complies with the terms of the Contract. The Supplier must ensure that products are off-loaded only in accordance with the instructions of the authorized officer of the Company.

- 8.9 The Company shall not be responsible for the costs of returning any packaging relating to the Supply of the Products, including without limitation packing cases or empties ("Packaging"). If the Supplier notifies the Company in its quotation and on its invoices that Packaging is returnable and gives the address to which such Packaging should be sent, the Company shall use its best efforts to return such items at the Suppliers Sole Risk and Expense. If the Supplier does not give such instructions for the return of Packaging to the Company, the Company may, without notice to the Supplier, dispose of the Packaging in any way the Company sees fit, without consultation nor liability to the Supplier in respect thereof.
- 8.10 Save as is otherwise provided herein, title in and to, and the risk in respect of, the Products shall pass to the Company on acceptance of delivery of the Products.
- 8.11 One copy of an advice note or waybill showing the unique Order number, the number of Packages, the combined Volume of the Packages, the net and gross masses and quantities of the Products and the method and route of transport shall be sent to the Company by the Supplier, by the method in which the order was received to the address from which the Order originates on the date of dispatch of the products from the Suppliers premises. The Supplier must ensure that a further copy of the advice note accompanies the Products and the Supplier should give a third copy to any third party carrier.
- 8.12 The Supplier warrants that "Goods in Transit" insurance is in place, at the sole expense of the Supplier, to a value equal or more than 125% of the highest value single order for the pre-ceding calendar year. The Company reserves the right to call for sight of such Goods In Transit policy at any time. The Supplier agrees to ensure that the policy is valid and in-force throughout the nature of the relationship with the Company.
- 8.13 The Supplier expressly agrees that the removal of all and any packaging, rubble, refuse, remnants, offcuts, or waste caused through either the delivery of the Order or the installation thereof is the responsibility of the Supplier, unless otherwise agreed to in writing between the Company and the Supplier. The Suppliers failing to remove said packaging, rubble, refuse, remnants, off cuts or waste will result in the company effecting the removal of same and contra-charging the Supplier on a cost recovery basis plus 25%.

9. Time of Delivery and Performance of the Products and Services

- 9.1 The Supplier shall deliver the Products to perform the Services at the time/s specified in the Order or as confirmed in writing by the Company. The company shall be entitled to reject any Products delivered or Services performed later than the specified and agreed dates.
- 9.2 Should the Supplier have accepted the Order, but not be in a position to supply within the specified dates, or such reasonable time as may be agreed in writing by the Parties thereafter, for any reason, the Company shall be entitled to source the Products or Services from other Suppliers and if applicable, the cost differential will be for the account of the default Supplier.

10. Warranty

- 10.1 In addition to any liability for Product defects or non-conformity that the Supplier may have under any law, the Supplier warrants that the Products and/or Services will be free and will remain free from any defect and will conform to the specifications of the Contract for a period of 6 (six) months

from date of delivery of the Products in terms of clause 8 (“the Warranty Period”).

- 10.2 Without prejudice to any of its other remedies in terms of these conditions or in law, in the event of a breach of the warranty in Clause 10.1, the Company may give notice to the Supplier of such breach and require the Supplier to repair or replace the Products at the Suppliers costs (including transportation costs). If the Supplier fails to replace or repair the Product, the company may itself do so, and claim the costs on a recovery basis plus 25%.

11. Health and Safety

- 11.1 The Supplier warrants that the Products and the Services comply with all applicable laws and regulations. In particular and not by way of limitation, the Supplier shall comply with all relevant health and safety legislation and ensure that Products that are potentially dangerous or pose risks to health or safety are delivered only in suitable protective packaging or containers and that the external surface of such packaging and/or container are clearly labeled so as to indicate any hazards to health and safety involved in handling and using the products and instructions as to the method of safe handling of the Products.
- 11.2 A copy of any information relating to the safety or proper use of the Products should be sent to the Company prior to delivery of the Products and to this end the Supplier expressly agrees to provide Product (Technical) Data Sheets and Material Safety Data Sheets for all Products (or components thereof howsoever made up) within 48 hours of being requested to, in writing, by the Company.
- 11.3 The Supplier shall be responsible for ensuring that any of its employees, agents or subcontractors that enter the company premises or any particular designated site are;
- 11.3.1 Suitably clothed and issued with correct, and sufficient number of, safety gear and Personal Protective Equipment (PPE’s) so as to adequately comply with the requirements of the Product and / or Service being delivered. Such PPE’s are to be clearly branded and identifiable by way of the company’s name and contact details printed/ embossed/ etched or engraved thereon;
- 11.3.2 Duly warned of hazards which they may encounter on the Company’s premises and or designated place of business so determined by the Order;
- 11.3.3 Adhere to the Company’s and / or designated place of business’s health and safety rules;
- 11.3.4 Should a Supplier fail to adhere to the Company’s health and safety rules and regulations, the company shall be entitled to request the Suppliers employees, agents or sub contractors to immediately vacate the premises until compliance has been addressed. The Supplier shall have no right of recourse, claim or right compensation for having to suspend work due to non-compliance with the Company’s rules in this regard.

12. Intellectual Property Rights

- 12.1 The Supplier indemnifies the Company against all liabilities, losses, costs and expenses including but not limited to legal fees, arising from infringement, or alleged infringement, of any patent, copyrights, design, trademark, trade name or other intellectual property right of any third party by the possession, use, sale or other exploitations of the Products.

- 12.2 Supply against any Product Design that originates from the Company renders and validates that design, howsoever modified from time to time, but remaining intrinsically the same, as intellectual property of the Company.

13. Confidentiality

- 13.1 All technical information, advice, know-how, drawings, specifications and other information communicated or supplied by the Company to the Supplier, howsoever modified from time to time but remaining intrinsically the same, including the existence and details of the Order;

13.1.1 Is confidential and shall remain the property of the Company;

13.1.2 Shall not, without the Company's prior written consent, be disclosed to any third party;

13.1.3 Shall be used solely for the purposes of the Supply.

- 13.2 All material supplied by the Company, including without limitation all samples, technical information, drawings, designs, specifications, patterns, tooling dies, must be carriage paid (where appropriate) to the Company on or before the completion of the Supply.

14. Insurance and Indemnities

- 14.1 If the Order requires the Supplier to send its employees to the Company's premises or designated site for any purpose in connection with the fulfillment of the Order, then, notwithstanding any degree of technical supervision exercised by the Company or any instructions issued by the Company, such employees will remain the Suppliers employees. Accordingly, it is an express condition of the Order that the Supplier effects and maintains in force for the benefit of the Company and itself full employers liability insurance in respect of such employees. The Supplier shall provide the Company with written evidence of such insurance at any time on request and shall notify the Company in writing of any changes in such insurance.

- 14.2 This includes but is not limited to valid and paid up Certificates of Compliance in respect of;

14.2.1 First Aid Certification

14.2.2 Workman's Compensation

14.2.3 Unemployment Fund Registration

14.2.4 General All Risks Insurance

14.2.5 Comprehensive Vehicle Insurance

14.2.6 Public Liability Insurance (Minimum Value of ZAR 20m)

- 14.2.7 The Supplier shall maintain insurance cover with registered and reputable insurers for adequate Public Liability Insurance, Product Liability Insurance and Financial Loss Insurance to cover its liabilities and/ or risks arising out of or associated with the fulfillment of the Supply. The Supplier shall upon request provide the Company with written evidence of the existence of such insurance cover at any time, and shall notify the company in writing of any change in the same.

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14.3 The Supplier hereby indemnifies the Company against liability arising from any claim or action in respect of death, illness, or bodily injury to any person caused by or arising out of the Products or Services performed by the Supplier, its employees, agents or sub contractors and the Supplier further indemnifies the Company against any loss of or damage to property arising from the Products or caused by the Supplier or any such employees, agents or sub-contractors.

15 **Cancellation**

15.1 The Company has the right to cancel the order for any reason and without liability, save for any Order in terms of which Supplies have already been delivered or Services performed, by giving the Supplier written notice prior to the time for delivery or performance specified in such Order, or such other notice period as may be specified in such Order. Provided that the Company shall be obliged to compensate the Supplier for any reasonable wasted costs already incurred by the Supplier for the purposes of performing the Supply.

16. **Payment Terms**

16.1 The Supplier shall submit invoices to the Company in respect of the Supply in duplicate, bearing the Order number and the address of origin of the Products or Services. One such invoice is to be sent to the Postal Address as provided in the Order, the other to be sent by way of email to the address provided in the Order on the day on which the Supplies are dispatched, collected, Free on Board (FOB) or installed.

16.2 Provided that the Company has received the invoices as provided for in Clause 16.1 and a copy of the delivery note/ job card accepted in terms of Clause 8.8 and unless otherwise stated in the Order, the Company shall pay to the Supplier, subject to all settlement discounts and or contra-charges being levied, by way of an electronic funds transfer, within 30 (thirty) days after the last day of the month in which the Products were delivered or the Services were performed.

16.3 The Company shall under no circumstances be liable for payment for Products and Services supplied otherwise than in terms of an order.

16.4 The Company shall under no circumstances make payments on the Suppliers behalf to the Suppliers supplier(s), employee(s) agent(s) or sub-contractor (s).

16.5 The Order shall constitute the total cost of the Products or Services to be supplied and as such the Supplier shall be responsible for payment of all taxes and duties that may be in respect of the Supply and for obtaining at its expense any import or export license or Government Consents, which may be necessary for the provisions of the Supply under the Order.

17. **Set-Off**

17.1 It is agreed that set-off shall operate automatically as a matter of law at the moment reciprocal debts between the Supplier and the Company come into existence and independently of the will of the Parties and it shall not be necessary for either the supplier or the Company to specifically raise set-off. Upon the operation of an automatic set-off aforementioned, the debts shall be mutually extinguished to the extent of the lesser debt.

18. **Force Majeure**

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- 18.1 If either party is prevented from fulfilling its obligations in terms of the Contract due to *force majeure* that Party shall be relieved of performance of its obligations to the extent that it is so prevented from doing so for the duration of the intervening circumstance.
- 18.2 The Party wishing to claim relief on the grounds of the said circumstances shall notify the other Party in writing without delay of the intervening circumstance and any cessation thereof.
- 18.3 The Party so prevented from fulfilling its obligations shall use its best endeavors to remove or avoid the impediment as soon as possible.

19. Deliveries to the Company by Post

- 19.1 Notwithstanding any prior dealings between the Company and the Supplier, all documents and other matter (including cash, cheques, bank drafts and other remittances) sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually delivered to the Company or placed in the Company's post office box, if so addressed.

20. Breach

- 20.1 Without prejudice to any other rights which it may have, if the Supplier commits any breach of its obligations or warranties under the Contract, the Company may, without liability, at any time, refuse to accept or return (in the case of Products) at the Suppliers expense, any Products or Services ordered from the Supplier, and the Supplier shall immediately upon receipt of written notice from the Company return any payments made by the Company for the Products or Services so rejected.
- 20.2 Without prejudice to any other rights which it may have, the Company shall be entitled to cancel any agreement between it and the Supplier by written notice if;
- 20.2.1 The Supplier commits any breach of its obligations under the contract;
- 20.2.2 The Supplier commits an act of insolvency in terms of any applicable insolvency legislation;
- 20.2.3 The Supplier is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;
- 20.2.4 The Supplier compromises or attempts to compromise with its creditors;
- 20.2.5 The Supplier fails to satisfy any default or other judgment granted against it, within 10 (ten) days.

21. Notices and *domicilium* Address

- 21.1.1.1 All notices in terms of these conditions shall be given in writing and delivered by hand or sent by E-Mail.
- 21.1.1.1.1 Any notice served by the Company by E-Mail or by Telefax shall be deemed to have been given on the first business day in the Suppliers country following the day on which it was telefaxed/ emailed to the Suppliers Telefax number/ email address last known to the Company.

- 21.2 The Supplier appoints as its *domicilium citandi et executandi* for all purposes under these Conditions its physical address most recently provided by the Supplier to the Company on any document generated or completed by the Supplier.
- 22 **General**
- 22.1 No agent or employee of the Company, other than a member or an individual authorized thereto by the Sole Member, has the Company's authority to alter or vary these Conditions nor shall any act or omission of the Company be construed as a variation or waiver of these Conditions.
- 22.2 No amendment, variation or addition to the contract shall be of any force or effect unless and until recorded in writing and signed by the Parties.
- 22.3 The person representing the supplier in contracting with the Company warrants that he is duly authorized to do so and the Supplier warrants that persons who deal with the Company relating to the placing of an Order have ostensible authority to represent the Supplier.
- 22.4 The Supplier hereby consents to the assignment by the Company of its rights and obligations under the Contract to an affiliated, associated or subsidiary company which assignment shall be binding upon the Supplier upon receipt by the latter of written notice to that effect.
- 22.5 If any legislation is compulsorily applicable to any Supply undertaken by the Supplier these Conditions shall, as regards such Supply, be read as subject to such legislation which shall be incorporated herein and if any part of these Conditions be repugnant to such legislation such part shall as regards such Supply be void to that extent but no further.
- 22.6 No indulgence or relaxation of rights granted by the Company to the Supplier shall be prejudicial to, or constitute a waiver of, any of the Company's rights under the Contract or at law, and any waiver of rights by the Company shall not be construed as such unless reduced to writing and signed by the Parties.
- 22.7 Each and every undertaking contained in the Contract shall be capable of independent enforcement, thus enabling any court or other competent tribunal to enforce the remainder thereof should it adjudge any particular undertaking/s or portions thereof to be invalid.
- 22.8 The company is entitled to amend these Conditions and to publish supplementary terms and conditions, which amendments and supplements shall take effect upon notification to the Supplier.
- 22.9 The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract (tort) or otherwise.
- 22.10 The Company shall only be deemed to have received electronic data and/or messages when such data and/or messages have been retrieved, processed and read by the addressee.
- 23 **Arbitration**
- 23.1 In the event of any dispute or difference arising between the Parties relating to or arising out of the Order, the Parties shall forthwith meet to

attempt to settle such dispute or difference and, failing such settlement within a period of thirty (30) days, the said dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.

- 23.2 Such arbitration shall be held in Cape Town, South Africa, and conducted under the arbitration laws of South Africa in terms of the Rules of the Association of Arbitrators (Southern Africa) or its successor applicable at the time the dispute arises.
- 23.3 The Parties shall jointly appoint the arbitrator and, if they fail to agree on such appointment, he or she shall be appointed, at the request of either Party, by the Chairman of the Association of Arbitrators (Southern Africa) (or its successor).
- 23.4 The provisions of this arbitration clause will survive any cancellation or termination of any agreement between the Parties.
- 23.5 The provisions of this clause shall not preclude either Party from seeking urgent relief by way of an interdict or otherwise in any court having jurisdiction over the matter.
- 23.6 Nothing in this clause shall prejudice the Company's rights to pursue any claim for amounts due to it by the Supplier through any court of competent jurisdiction, in which event the Supplier shall be liable for costs incurred by the Company on the scale as between attorney and own client, as well as collection commission and tracing agents fees, if any.
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