

2 BK S SUP General Terms and Conditions of Purchase Order - South Africa

Revision: 1.0

Date: 30/09/2019

Document Id No.: 75614

Authorised by: Chief Procurement Officer



1. Definitions

- 1.1 "Bradken" means Bradken Resources S.A. (Proprietary) Limited (Reg 2010/008130/07, VAT 4490 257229), a wholly owned subsidiary of Bradken Pty Limited.
- 1.2 "Deliverables" means the goods or services to be supplied by the Supplier to Bradken as identified in the Purchase Order.
- 1.3 "Goods" means all goods, materials, equipment, parts and any other ancillary activity provided by the Supplier to Bradken as identified in the Purchase Order.
- 1.4 "VAT" means the Value Added Tax as defined in Value Added Tax Act No. 89 of 1991.
- 1.5 "Services" means the services to be provided by the Supplier to Bradken as identified in the Purchase Order.
- 1.6 "Supplier" means the person supplying the goods or performing the services as identified in the Purchase Order.

2. Entire Agreement

- 2.1 The Purchase Order, incorporating these terms and conditions, comprises the entire agreement between Bradken and the Supplier and supersedes all prior agreements, representations, warranties or arrangements.

3. Precedence of Documents

- 3.1 Unless otherwise stated, the order of precedence of the following documents shall apply:
 - a) the Purchase Order;
 - b) these General Terms and Conditions; and
 - c) any other attached drawings and/or documents.

4. Alterations/ Variations

- 4.1 Alterations or variations to the Purchase Order, these Terms and Conditions or any other attached drawings or documents shall not be legally binding upon Bradken or the Supplier unless agreed in writing and signed by the duly authorised representatives of the parties.

5. Price

- 5.1 The price of the Deliverables shall be specified in the Purchase Order and cannot be varied without written agreement of Bradken and the Supplier. Unless otherwise stated in the Purchase Order, the price is fixed and not subject to variation and includes all expenses incurred by the Supplier in relation to provision of the Deliverables. The price is exclusive of any applicable VAT.

6. Payment

- 6.1 Unless otherwise stated in the Purchase Order, the terms of payment are forty-five (45) days from the end of month of receipt of a correctly rendered Supplier's invoice by Bradken and receipt and acceptance of the Deliverables by Bradken.
- 6.2 A correctly rendered invoice includes, as a minimum, the Purchase Order number and is a tax invoice for the purposes of VAT.
- 6.3 Bradken reserves the right to return to the Supplier any invoices not deemed to be correctly rendered and retains the right to offset against any moneys payable to the Supplier against any sums owed by the Supplier to Bradken.

7. Packaging, Preservation and Hazardous Goods

- 7.1 All Goods supplied by the Supplier shall be packed as specified in the Purchase Order and if not specified shall be packed so as to avoid being damaged during transportation, loading, unloading and storage.
- 7.2 The Supplier shall ensure that the Goods shall comply with the requirements of all applicable law and, to the extent that if they contain toxic, corrosive or hazardous materials, the Supplier shall ensure that a notice to that effect accompanies each consignment, together with appropriate care, handling and storage instructions. The Supplier also warrants that they have the requisite permits to transport dangerous or hazardous goods, and they adhere to the provisions of the Road Traffic Act, specifically with regards to proper Insurance and all other related responsibilities.
- 7.3 In addition to the indemnity set out in Clause 12 hereof, the Supplier herewith irrevocably indemnifies Bradken against all losses or damage, whether it be injury, death or material damage, caused by any spillage, within Bradken premises, travelling to Bradken or travelling from Bradken Premises.

8. Quality, Inspection and Testing

- 8.1 The Supplier shall operate and maintain an effective quality management system appropriate to the type of goods and services offered and/or in accordance with that specified in the Order. The Supplier shall provide Bradken, its principal or authorised representatives, access to the Supplier's premises or working area for the purpose of quality surveillance and audit.
- 8.2 Bradken is entitled to expedite, inspect and witness tests on the Goods at the Supplier's and any subcontractor's premises. The Supplier must allow Bradken access at any time to the Supplier's and any subcontractor's premises for this purpose. The Supplier must make this a condition of any subcontract.

9. Delivery, Risk and Title

- 9.1 The Supplier is responsible for the delivery and all costs associated with the delivery of the Goods to Bradken's premises or such other location that is specified in the Purchase Order.
- 9.2 The Supplier warrants that the Goods shall be free from any security interest or other lien or encumbrance.
- 9.3 Title to and property in the Goods immediately passes to Bradken upon payment or delivery, whichever occurs first, and the Goods must be appropriately marked and identified as the property of Bradken.
- 9.4 Risk in the Goods remains with the Supplier until delivery to Bradken unless otherwise stated in the Purchase Order.
- 9.5 The Supplier acknowledges:
 - a) the Goods delivered to Bradken are accepted subject to Bradken's inspection and the signing of a delivery docket as evidence of receipt of the Goods or payment in part or in full does not constitute acceptance of the Goods by Bradken
 - b) the Goods shall, notwithstanding payment or part payment or confirmation of receipt, be subject to rejection by Bradken and may be rejected by Bradken after inspection if they do not strictly comply with the Order.

- c) Goods returned to the Supplier as defective or otherwise outside the Order for rework, replacement or credit are at the risk of the Supplier and all handling, insurance and transportation costs (including Bradken's costs of inspection) both from the initial point of delivery of the Goods and return will be borne by the Supplier and the Supplier shall forthwith pay to Bradken any such costs and refund any payment or part payment made by Bradken in respect of the Goods.

10. Delays

- 10.1 Time is of the essence in the Supplier's performance of the Purchase Order. If it ever appears that the provision of Deliverables will not be met within the time specified, the Supplier must immediately notify Bradken of any anticipated delay, with complete information regarding the cause and the earliest possible delivery date. In such event, Bradken may (without prejudice to any other rights) do whatever is necessary to expedite the provision of the Deliverables at the Supplier's expense, including terminating the Purchase Order.

11. Warranty

- 11.1 The Supplier warrants that the Deliverables shall be free from faulty design, defects and workmanship, suitable for the purpose intended and conform to the Purchase Order requirements and any applicable laws and regulations. The Supplier further warrants that the Goods are new and are of the specified quality.
- 11.2 These warranties are in addition to any statutory warranties applicable to the Deliverables.
- 11.3 If any part or aspect of the Goods fail or becomes defective within twelve (12) months (unless otherwise specified in the Purchase Order) from the date the Goods were supplied to Bradken, the Supplier must without delay and at no cost to Bradken do all things necessary to remedy the defect or failure in the Goods. This can be by way of repair, replacement, modification or other means acceptable to Bradken. If the Supplier does not do so, within a reasonable period following notice of the defect from Bradken, then Bradken will have the right to remedy the defect and recover costs so incurred from the Supplier.
- 11.4 If, during the term of the Purchase Order, and a further term of twelve (12) months following completion of Services, Bradken is of the view that the Services do not comply with the requirements of the Purchase Order then Bradken may require the Supplier to re-perform the Services at the Supplier's cost within such time as Bradken reasonably may request.

12. Liability and Indemnity

- 12.1 The Supplier must indemnify and keep indemnified, Bradken, and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered by Bradken and its officers, employees and agents arising as a result from any act, neglect or fault of the Supplier, its officers, employees and agents related to its obligations under the Purchase Order.
- 12.2 Bradken will not be liable to the Supplier for any indirect or consequential loss or damage under the Purchase Order.
- 12.3 The maximum sum, for which Bradken may be liable to the Supplier under the Purchase Order, is limited to the Purchase Order value.

13. Insurances

- 13.1 In relation to Deliverables, the Supplier shall take out and maintain:
 - a) comprehensive public and product liability insurance with a limit of not less than USD\$8,000,000 per claim;
 - b) workers compensation insurance as required by law;
 - c) motor vehicle third party liability insurance as required by law (where Supplier Vehicles are taken onto Bradken sites);
 - d) insurance covering the Suppliers own property, equipment, materials owned, hired leased or used by the Supplier for the purpose of this Purchase Order;
 - e) where professional goods or services are provided, Professional Indemnity insurance cover for a minimum of ten (10) years following the date of acceptance of the equipment by Bradken; and
 - f) any additional insurance required by any applicable law or specified in the Purchase Order.
- 13.2 The Supplier will at the request of Bradken provide copies of all certificates of currency in respect of the insurances required to be taken out by Supplier.

14. Force Majeure

- 14.1 Neither Bradken nor the Supplier shall be liable to the other for default or delay in performing its obligations in respect of this Purchase Order caused by any occurrence beyond its reasonable control including, without limitation, fire, strike, disturbance, riot, war, Act of God and government order or regulation, provided that the party affected by such occurrence notifies the other party in writing within seven (7) days of the commencement of that occurrence. When the party ceases to be affected by the force majeure event it must immediately recommence performing its obligations under the Purchase Order and notify the other party accordingly. However, if as a result of any such force majeure event, supply of all or part of the Deliverables is delayed more than thirty (30) days after the delivery date specified in the Purchase Order Bradken may, without penalty, cancel this Purchase Order to the extent it relates to such delayed Deliverables.

15. Disputes

- 15.1 Save in respect of those provisions of the Agreement which provide for their own remedies which would be incompatible with the procedure set out below, in the event of any disputes or claims arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction, then any Party may give written notice to the other Parties to initiate the procedure set out below ("Dispute Notice").
- 15.2 The Parties (or their respective chief executive officers if applicable) shall first endeavour to settle the dispute by negotiating with each other in good faith. If such negotiations fail or do not occur within ten (10) Business Days of the Dispute Notice (or such longer period of time as the Parties may agree to in writing), the dispute shall be settled by mediation by a person and process agreed upon by the Supplier and Bradken or, failing such agreement or resolution by or through that process, shall be submitted to arbitration.

2 BK S SUP General Terms and Conditions of Purchase Order - South Africa

Revision: 1.0

Date: 30/09/2019

Document Id No.: 75614

- 15.3 It is the intention that the arbitration shall, where possible, be held and concluded as soon as reasonably possible after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 15.4 The nomination of the arbitrator shall be agreed upon between the Parties in writing or, failing agreement by the Parties within five (5) Business Days after the arbitration has been demanded, at the request of any of the Parties shall be nominated by the Chairman for the time being of AFSA who, in making his nomination, shall have regard to the nature of the dispute. Upon the aforesaid nomination, the Parties shall forthwith appoint such person as the arbitrator. If the aforesaid Chairman fails or refuses to make the nomination, any Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 15.5 The Arbitration shall be conducted in a location agreed by both parties, or failing agreement nominated by Bradken, in accordance with the AFSA Rules for Arbitration which are operating at the time the dispute is referred to AFSA and which terms are hereby deemed incorporated into this agreement.
- 15.6 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 15.7 The Parties irrevocably agree that the decision of the arbitrator shall be final and binding on the Parties to the dispute, shall be carried into effect and may be made an order of any court of competent jurisdiction.
- 15.8 The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated or declared invalid for any reason.
- 16. Termination**
- 16.1 If Goods have been offered by the Supplier as, or if they are, standard or stock items Bradken can, by notice to the Supplier, at any time up to delivery cancel the commitment to buy them. Any other commitment of Bradken to receive and pay for Deliverables may be cancelled by Bradken and in such instances Bradken will reimburse the Supplier for all demonstrable irrecoverable costs incurred, or unavoidably committed, by the Supplier up to the point of cancellation.
- 16.2 Bradken may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Purchase Order without any liability to the Supplier if it breach its terms, or if the Supplier's business fails. The Supplier's business will be treated for this purpose as having failed if:
- the Supplier makes any voluntary or official arrangement with its creditors;
 - (being an individual or firm) the Supplier become insolvent;
 - (being a company) the Supplier becomes subject to an administration order or goes into liquidation;
 - any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security;
 - the Supplier stops or threatens to stop carrying on business;
 - the Supplier suffers any process equivalent to any of these, in any jurisdiction;
 - the Supplier commences business rescue proceedings in terms of the Companies Act, 2008; or
 - Bradken reasonably believes that any of the events mentioned above is about to occur and Bradken notifies the Supplier accordingly.
- 16.3 Any right of cancellation or suspension under this section is additional to any rights available to Bradken under the law of any relevant jurisdiction.
- 17. Confidentiality**
- 17.1 All information provided by Bradken to the Supplier must not be disclosed to any third party by the Supplier without the prior written consent of Bradken. The parties agree that this obligation shall survive termination or expiration of the Purchase Order.
- 18. Intellectual Property**
- 18.1 The title to all intellectual property rights in or in relation to providing the Services shall vest upon its creation with Bradken. Any intellectual property owned by the Supplier prior to execution of the Services will remain the property of the Supplier.
- 18.2 The Supplier indemnifies and holds harmless Bradken, its successors, administrators and assigns at all times after such acceptance from and against all costs including legal fees on a full indemnity basis, loss, damages, liability, claims, demands and suits at law or in equity for or in respect of the actual or alleged infringement of any patent, trade mark or corresponding intellectual property right to or in respect of materials used by the Supplier in the execution of the Order.
- 19. Waiver**
- 19.1 No failure or delay on the part of Bradken in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.
- 20. Governing Law**
- 20.1 Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the law of the South Africa and the parties submit to the exclusive jurisdiction of the courts of South Africa.
- 21. Subcontracting and Assignment**
- 21.1 The Supplier is not permitted to assign or sub-contract all or any part of its obligations under the Purchase Order without the prior written consent of Bradken.
- 22. Compliance with Laws**
- 22.1 The Supplier, when providing the Deliverables, must have regard to and use best endeavours to ensure that it complies with all relevant and applicable laws, regulations and policies.
- 23. VAT**
- 23.1 VAT is payable on certain supplies of goods and/or services.
- 23.2 Words defined in the VAT Law have the same meaning in these terms and conditions unless specifically defined in this clause.
- 23.3 All charges and amounts payable by one party to another under the Purchase Order are stated exclusive of VAT.
- 23.4 For each taxable supply under or in connection with the Purchase Order:
- The Supplier will be entitled to charge Bradken for any VAT payable by the Supplier in respect of the taxable supply.
 - Bradken must pay to the supplier the amount of the VAT at the same time as the relevant charge applicable to the supply becomes payable under the Purchase Order.
 - The Supplier must provide a valid tax invoice (or a valid adjustment note) to Bradken in respect of the taxable supply.
- 24. Non-exclusivity**
- 24.1 The Purchase Order, or these terms and conditions, do not confer on the Supplier any right to be a sole or exclusive supplier of the Deliverables.
- 25. Independent Supplier**
- 25.1 The Supplier is an independent contractor and must exercise independent control, management and supervision in the performance of the Purchase Order. The Supplier is not Bradken's agent in any way. The Suppliers' personnel will not under any circumstances be considered employees of Bradken for any purpose.
- 26. Notices**
- 26.1 A notice is treated as having been duly given and received when delivered, in writing, to the other party's address. The addresses of the parties are as stipulated in the Purchase Order. Any notice to a Party -
- delivered by hand to a responsible person during ordinary business hours at the physical address chosen in the Purchase Order as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
 - sent by registered post to its chosen physical address, shall be deemed to have been received on the seventh (7th) day following the date on which the notice was posted as recorded by a postal office (unless there is evidence to the contrary that it was delivered on a different day); or
 - sent by telefax to its chosen telefax number stipulated in the Purchase Order, shall be deemed to have been received on the date and at the time recorded by the telefax receiver (unless there is evidence to the contrary that it was delivered on a different date or at a different time); or
 - sent by e-mail to its chosen e-mail address stipulated in the Purchase Order, shall be deemed to have been received on the date and at the time recorded by the sender (unless there is evidence to the contrary that it was delivered on a different date or at a different time).
- 26.2 Notwithstanding anything to the contrary herein contained a written notice or communication (including telefax or e-mail) actually received by the person named in the Purchase Order on behalf of a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.
- 27. Severance**
- 27.1 In the event that the whole or any part or parts of any clause in these terms and conditions is found to be unenforceable by a Court of competent jurisdiction then such clause or part thereof shall be to that extent severed from these terms and conditions without effect to the validity and enforceability of the remainder of these terms and conditions.
- 28. Environment**
- 28.1 Bradken maintains best practice standards for protection of the environment and occupational health and safety. The Supplier must also maintain best practice in those areas and will on Bradken's request disclose and demonstrate to Bradken your policies in that respect.
- 29. Anti-Corruption Compliance**
- 29.1 Neither the Supplier nor any of their affiliates shall take any actions in furtherance of an offer for example, by way of (but not limited to):
- Payment of monies; or
 - A promise to pay monies; or
 - Authorisation of any payment; or
 - Giving of money; or
 - Giving anything else of value; to
- Any person who engages in services for national or local governments;
 - Any person who engages in services for an agency or organization affiliated with a government entity;
 - Any person who engages in services for a public enterprise or state-owned entity;
 - Any person who engages in public services in an international public organization;
 - Any political party, party official, or candidate for political office; or
 - Any person authorized by a government entity to exercise a public function; (together "Public Officers") or to any person other than a Public Officer while knowing (or where the Supplier and/or its affiliates ought reasonably to know) that all or some portion of the money or value was or will be offered, given or promised to a Public Officer for the purposes of obtaining or retaining business or securing any improper advantage or influencing official action.
- 29.2 No part of the payments received by the Supplier from Bradken will be used for any purpose which would cause a violation of laws, including, without limitation, the anti-bribery laws of any country or jurisdiction, by the Supplier.
- 29.3 The Supplier agrees that they will conduct their business in compliance with laws, including, without limitation, the anti-bribery laws of any country or jurisdiction.
- 29.4 Furthermore, the Supplier shall not participate in other forms of misconduct, including, but not limited to:
- Fraud;
 - Collusion; and
 - Coercion in connection with any transaction or matter associated with its relationship to Bradken.
- 29.5 In addition to all other rights and remedies herein, if the Supplier is found or reasonably suspected to be in breach of any of the foregoing compliance provisions, Bradken shall have the right to cancel the purchase order immediately, unconditionally and without penalty, upon serving the Supplier a written notice of cancellation.