

## CCII Systems (Pty) Ltd

### Standard Terms and Conditions of Sale and Repair

Unless otherwise agreed to in writing by CCII Systems (Pty) Ltd (hereinafter called "Seller"), the following terms and conditions shall apply to the supply of goods and services (hereinafter called "the Goods") by Seller to Buyer and shall take precedence over Buyer's Terms and Conditions of Purchase.

#### 1. Obligation

A quotation represents no obligation on Seller until Seller formally and in writing accepts Buyer's official Purchase Order or Supply Agreement.

#### 2. Instructions

Verbal instructions will not be accepted by Seller under any circumstances. All instructions shall be in writing.

#### 3. Specification

3.1 The Goods delivered shall be in accordance with the specification in terms of the quotation as well as relevant specifications in the public domain. Seller shall not be liable for non-compliance with any other specification. It is Buyer's responsibility to ensure that its Request for Quotation and its Purchase Order are correct and in accordance with the relevant drawings and/or specifications.

3.2 Should Buyer operate the products outside of or beyond Seller's specifications or any relevant public domain specifications, the responsibility therefore shall be solely that of Buyer.

3.3 Changes to the drawings and/or specifications by Buyer will be undertaken only by agreement in writing with Seller. If any such changes cause an increase in the cost or time required for contractual performance, Seller shall be entitled to an equitable adjustment in the selling price and the delivery schedule.

3.4 The order of precedence for all Purchase Orders shall be the :

- 3.4.1 Seller's drawings and/or specifications;
- 3.4.2 Public domain specifications relevant to the product;
- 3.4.3 Purchase Order;
- 3.4.4 Buyer's drawings and/or specifications;
- 3.4.5 Seller's Quotation; and
- 3.4.6 Buyer's Request for Quotation.

#### 4. Quotation

4.1 Unless otherwise stipulated in terms of a written quotation, no quotation shall have a validity period of greater than 7 (seven) days.

4.2 After the expiry of the validity period of any quotation, the quotation shall have no further force nor effect.

4.3 Any quotation not provided in writing by Seller to Buyer shall be considered only as a rough order of magnitude quotation and subject to the request by Buyer to Seller of a formal written quotation and the provision of such formal written quotation to Buyer from Seller.

#### 5. Applicable Law

The Quotation, Proposal or Offer and any consequent Purchase Order and any Supply Agreement that shall result therefrom shall be governed by the laws of the Republic of South Africa.

#### 6. Payment

6.1 Unless otherwise stipulated in the quotation or offer and Seller offers Buyer credit, Buyer shall effect payment for the Goods within thirty (30) days from date of invoice.

6.2 If Seller declines Buyer credit, Buyer shall effect payment for the Goods prior to shipment of Goods.

6.3 In general, for first time purchases, Seller will not offer Buyer credit and Buyer shall effect payment for the Goods prior to shipment of Goods.

- 6.4 All prices quoted are inclusive of VAT unless otherwise stated.
- 6.5 In the event of Buyer failing to effect payment of the purchase price within seven (7) days from date of demand, Seller shall be entitled, at its option and notwithstanding any indulgence or relaxation granted to Buyer without prejudice to any other rights Seller may have in terms of this agreement or common law, to cancel the contract in terms of the Purchase or Supply Agreement and repossess the Goods and/or claim the balance thereof. Seller shall be entitled to re-sell such Goods either by auction or by private treaty.
- 6.6 Buyer shall be liable for any shortfall for all amounts received that are less than the expenses of recovery and resale.
- 6.7 Buyer shall be passed a credit note for all amounts received in excess of the expenses of recovery and resale.
- 6.8 Buyer shall be liable for all legal costs, including collection charges, incurred by Seller in the recovery of such debt on the Attorney and Own Client Scale.
- 6.9 Buyer shall pay all accounts in full and may not set-off nor counterclaim against invoices submitted.
- 6.10 Seller shall not ship any Goods to Buyer, whether new or under RMA, unless Buyer's account is fully settled at that time.
- 6.11 Unless otherwise agreed and stipulated in the Purchase Order accepted by Seller, all payments shall be by electronic funds transfer (EFT) into Seller's stipulated bank account. Buyer shall be responsible for payment of all relevant banking charges.
- 6.12 Buyer shall advise Seller as having made any payment and shall furnish the relevant international banking transaction reference to Seller within two (2) business days of having made such payment.

## **7. Late Payment**

Unless otherwise agreed in writing, interest shall be paid on all overdue amounts at the rate of 1,5% per month or part thereof.

## **8. Price Fluctuations**

Unless otherwise stated the price quoted in the Quotation, Proposal or Offer, the price is in South African Rands and is based as at the date thereof and the applicable delivery basis.

If after the date of Seller's Quotation, Proposal or Offer (whether before or after the placing of the Purchase Order or entering into a Supply Agreement), there is any increase in respect of the cost to Seller due to any of the criteria stated herein, then such increase will be for Buyer's account.

## **9. Delivery Basis**

The delivery basis shall be quoted in the Quotation, Proposal or Offer and unless otherwise stipulated shall be in accordance with Incoterms 2010.

## **10. Delivery**

- 10.1 Seller undertakes to make every effort to meet the delivery period as quoted, but does not guarantee to do so. Seller will not under any circumstances accept responsibility for delivery delays due to causes beyond its control, including, but not limited to, outbreaks of war, perils of the sea, piracy on the high seas, acts of God, fire, flood, mudslides, explosion, earthquake, tsunami, volcano, volcanic ash clouds, strikes, lockouts, inability to obtain components, delays by sub-contractors, actions by government, or losses and delays in transit. A reasonable extension of time shall be granted to Seller in event of any delays that are beyond its control.
- 10.2 The place of delivery shall be as specified on the quotation.
- 10.3 Where the Goods are not delivered by Seller or collected by Buyer, but are delivered to an independent carrier, delivery to the carrier shall be deemed to constitute sale and delivery by Seller to Buyer.

## **11. Risk and Ownership**

- 11.1 Where the Goods have been delivered to a carrier on behalf of Buyer, Buyer shall be fully responsible for materials lost or damaged in transit.
- 11.2 The ownership in the Goods shall not pass to Buyer until all amounts due by Buyer to Seller in respect of Goods sold, delivered or made available in any other way to Buyer have been paid for in full.
- 11.3 Seller shall have the right at any time to give notice of its continued ownership in the Goods to every possessor and every landlord of premises in which the Goods are stored or may be placed, whether for sale, repair, assembly or otherwise.

11.4 Without prejudice to any of its rights in terms of law, Seller reserves the right to enter Buyer's premises and to repossess the Goods in the event of Buyer failing to make any payments on the due date or at all.

## **12. Force Majeure**

12.1 **Force Majeure** shall mean any circumstance which could not reasonably have been overcome and which prevent performance of the Supply Agreement by the affected Party and includes, but is not limited to, acts of God, fire, flood, tempest, lightning, earthquake, volcano, volcanic ash and tsunami, as well as acts of Government (including failure to grant or revocation of necessary governmental approvals of any government in its sovereign capacity, but excluding enforcement by any Government of any of its laws which have been breached by the relevant Party), strikes and lockouts (for which the relevant Party is not responsible), restrictions due to quarantines, blockades, riots, civil commotion, accidents, war whether declared or not, sabotage, perils of the sea, unusual severe weather conditions, unavailability of components, faulty components beyond the control of the Party.

12.2 If either Party is unable to perform any of its material obligations in terms of the Supply Agreement due to an event of Force Majeure which affects the performance of the Supply Agreement directly the following shall apply :

12.2.1 the Party suffering the Force Majeure shall notify the other Party within 20 (twenty) Business Days of the date upon which they could reasonably have been expected to become aware of the Force Majeure situation commencing, of the nature, extent and anticipated duration of the instance of Force Majeure;

12.2.2 the Party suffering the Force Majeure shall use its best endeavours to recommence performing the affected obligations in the shortest time practicable and shall, in any event, continue to perform those of its obligations which are not affected by the instance of Force Majeure; and

12.2.3 if the period of the delay due to the Force Majeure exceeds 4 (four) Months, the Party not affected by the Force Majeure may terminate the relevant purchase order(s) by giving 2 (two) Months notice to that effect to the affected Party.

12.3 If the relevant Purchase Order or Supply Agreement is terminated by Buyer in terms of this Clause 12, then :

12.3.1 Seller shall prepare an audited account ("the Audited Account") reflecting all purchases made and expenses incurred by it in respect of its performance under the relevant purchase order(s) at the cost price thereof. For the purposes hereof "cost price" shall exclude any profit or indirect overhead recovery;

12.3.2 the Audited Account shall include the cost price of any purchases relating to any deliverables which Seller ordered before receiving notice of termination in terms of Clause 12.2.3, but which had not been delivered at the date of such notice;

12.3.3 the Audited Account shall also reflect all payments made by Buyer to Seller in terms of the relevant Purchase Order or Supply Agreement.

12.4 Buyer may audit the Audited Account and all supporting documentation and vouchers. Seller may audit any costs claimed by Buyer and all relevant supporting documentation and vouchers.

12.5 If ownership of any of the deliverables taken into account in the Audited Account and returned to Seller by Buyer has passed to Buyer, then, provided that Seller timeously pays any amount which it owes to Buyer in terms of the Audited Account, Buyer shall transfer ownership of the returned Deliverables to Seller.

12.6 Save for the rights provided for in this Clause 12, neither Party shall have any claim against the other arising out of or in connection with the termination of the relevant Purchase Order or Supply Agreement.

12.7 The onus of proving whether circumstances of Force Majeure exist shall be borne by the Party alleging that such circumstances exist.

## **13. Packaging, Packing and Shipment**

13.1 Packing will be in accordance with Seller's standards, unless otherwise specified in writing.

13.2 Any special packing required by Buyer will be charged for as an extra item.

## **14. Acceptance by Buyer**

Buyer shall accept the delivered items within 14 calendar days of receiving them by acceptance testing or its own acceptance methods. If Buyer rejects the delivered items it shall inform Seller in writing of such rejection within 3 business days thereof. If Buyer fails to either perform acceptance or to notify Seller of rejection of the delivered items, it may not return the goods to Seller for any reason.

## **15. Suspension and Cancellation**

- 15.1 In the event of cancellation by Buyer of the Purchase Order or Supply Agreement or part thereof, or in the event of Seller cancelling the Purchase Order or Supply Agreement as a result of a breach by Buyer of any of these conditions, then :
- 15.2 Seller shall be entitled to payment of a standard cancellation fee not less than 40% of the value of the contract so cancelled.
- 15.3 The cancellation shall generally be determined as follows :
- 15.3.1 40% the product is a standard company product and has not received any rework;
- 15.3.2 60% the product is a standard company product and has received some rework;
- 15.3.3 70% the product is a standard company product and has received substantial rework;
- 15.3.4 70% the product is a non-standard company product and has not received any rework;
- 15.3.5 80% the product is a non-standard company product and has received some rework;
- 15.3.6 90% the product is a non-standard company product and has received substantial rework;
- 15.4 The cancellation fee shall include :
- 15.4.1 the sales value of all Goods delivered;
- 15.4.2 the sales value of all Goods finished and not delivered at the time of such cancellation;
- 15.4.3 the sales value of all materials ordered by Seller specially for such Purchase Order or Supply Agreement whether such materials have been received or not;
- 15.4.4 the cost of all labour accumulated on any unfinished Goods in process of manufacture; and
- 15.4.5 the sales value of any special engineering and other costs incurred up to the time of cancellation.
- 15.5 Seller shall be entitled to suspend or cancel further deliveries and to suspend or cancel work under this or any other contract between Seller and Buyer if any payment is overdue.
- 15.6 If Buyer suspends the Purchase Order or Supply Agreement in any way then the delivery time shall extend by at least the period of suspension.
- 15.7 If Buyer suspends the Purchase Order or Supply Agreement in any way and for a period of longer than thirty (30) days, then Seller shall have the right to cancel the Purchase Order or Supply Agreement and claim the applicable cancellation fee.
- 15.8 Seller may, by notice in writing, cancel the Purchase Order or Supply Agreement if Buyer becomes insolvent or makes an arrangement with its creditors or goes into voluntary liquidation or is placed under a provisional or final order of sequestration or judicial management.

## **16. Warranty**

- 16.1 Unless otherwise agreed in writing, Seller warrants that in the event of any defect occurring within a period of one year or any other period as agreed to in writing from the date of delivery to Buyer, as a result of faulty material or workmanship which can be attributed to Seller, Seller will repair, or refund the cost of the Goods at its option provided that :
- 16.1.1 the Goods have not been misused, inadequately stored, neglected or used for other than their intended purpose, or if their operating instructions have not been adhered to;
- 16.1.2 the Goods have been serviced by any person who has not been authorised to do so by Seller;
- 16.1.3 the Goods have been handled by any person unqualified to do so;
- 16.1.4 Seller is notified in writing within the warranty period and, except where Seller elects to repair onsite, the Goods or faulty components thereof are sent to Seller's designated address at Buyer's expense and risk.
- 16.2 Should any parts, materials or components forming part of the Goods sold by Seller to Buyer, be manufactured by anyone other than Seller, then the manufacturer's normal warranty in respect of those parts, materials or components shall apply and no further warranties in this regard will be given by Seller. Seller's liability will not extend beyond that of the manufacturer's liability.

## **17. Return of Goods**

- 17.1 Buyer shall not be entitled to return any Goods to Seller without Seller's express consent.
- 17.2 Unless otherwise agreed in writing, Seller's normal express consent for the return of Goods shall be by means of a Return Material Authorisation (RMA) in terms of Seller's published RMA Procedure as amended from time to time.
- 17.3 The RMA request form shall be completed and signed by Buyer's Test and Quality authorities and shall provide the required product information including part number, serial number, fault description, Buyer's Purchase Order number and Seller's invoice number and date.
- 17.4 No claim regarding material defects will be entertained by Seller unless made in writing and delivered to Seller within the warranty period from the date of delivery of the Goods.
- 17.5 In the event of material defects or shortages in the Goods proved to Seller's satisfaction and upon being properly notified, as well as being within the warranty period, Seller shall at its option :
- 17.5.1 either exchange the Goods for similar Goods; or
- 17.5.2 repair the Goods.
- 17.6 The RMA shall not be approved by Seller nor shall become valid until payment has been made in full and the payment receipt is issued by Seller to Buyer.
- 17.7 If goods are returned by Buyer to Seller without an RMA approved by Seller, then this shall constitute cancellation by Buyer in terms of Clause 13 above.
- 17.8 If no material faults are found with the Goods, then Seller will charge a minimum handling fee of the lesser of USD500,00 or 50% of the sales price of the Goods.

## **18. Repair of Items**

- 18.1 All repairs to items shall be undertaken on a best effort basis.
- 18.2 Where an item is a candidate for repair, except where such a repair is under warranty, or as otherwise agreed in writing, Seller shall provide to Buyer a quotation for the repair of the item.
- 18.3 Buyer shall provide a written Fault Report describing the fault of the item and include any special requirements for demonstration and acceptance of the repair.
- 18.4 Explicit acceptance of the quotation or authorisation by Buyer to proceed with the repair shall be acceptance of Seller's quotation.
- 18.5 After effecting such repair Seller shall demonstrate the success of repair using its available facilities and test equipment, as well as taking into account Buyer's special requirements if so stipulated in its Fault Report.
- 18.6 Successful repair and demonstration thereof shall be cause for payment by Buyer to Seller in full of the quoted amount.
- 18.7 Should repair be unsuccessful and unless otherwise quoted, no payment shall be required.
- 18.8 Should Buyer fail to make full payment and without derogating from any of its other rights, Seller shall be entitled to keep and take ownership of any items given to it for repair and not paid for in full by Buyer.
- 18.9 Unless grossly negligent, which gross negligence shall be the onus of Buyer to prove, if any items given to Seller for repair are damaged in the repair process, there shall be no liability on Seller to make good or provide compensation of any kind to Buyer.

## **19. Indemnity**

Buyer shall indemnify Seller against all damages, penalties, costs, charges and expenses, whether direct or indirect, to which Seller may become liable as a result of work done in accordance with Buyer's drawings and/or specifications.

## **20. Liability**

- 20.1 These terms set out Seller's entire liability in respect of the Goods and Seller's liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities expressed or implied, statutory or otherwise, in respect of the quality or the fitness for any particular purpose of the Goods.

20.2 Seller shall not, under any circumstances, be liable for :

20.2.1 any loss or injury whatsoever (including indirect or consequential loss including loss of business, loss of operations) arising from the supply of the Goods, including any loss or injury (whether direct, indirect or consequential) attributed to any negligent act of Seller or Seller's servants or agents;

20.2.2 any representations or warranties as to the Goods given by any of Seller's servants or agents.

## 21. Intellectual Property Rights

21.1 Any patent, copyright or other intellectual property rights owned by Seller shall remain those of Seller whether or not the selling price under that transaction has been paid by Buyer. Any information obtained by Buyer from Seller which is identified as confidential and/or proprietary or is confidential and/or proprietary in nature, may not be disclosed to any third party without the prior written approval of Seller.

21.2 Seller shall not be required to disclose any technical information about its products to Buyer other than that included in the standard published technical and user documentation.

## 22. Export/Import

The acceptance of any Purchase Order or Supply Agreement for export is subject to Seller obtaining the necessary Export Licence from Buyer and it is Buyer's responsibility to obtain the necessary Export Permit and Import Permit as may apply. Any costs which Seller may have incurred through the non-availability of the Import Permit on the date on which the Goods are ready for despatch shall be for Buyer's account and in the event of the Import Permit not being available within thirty (30) days after the Goods are ready for despatch Seller shall be entitled to cancel the Purchase Order or Supply Agreement and apply the applicable cancellation fee. Alternatively, any Goods held pending the availability of an Import Permit may be invoiced by Seller thirty (30) days after they become ready for despatch and must be paid for within thirty (30) days thereafter. In such instances, Delivery Notes certified by Seller's Quality Assurance Manager, shall be acceptable proof that the Goods were available for despatch.

## 23. Configuration Control

23.1 Unless otherwise stipulated in the Quotation, Proposal or Offer or otherwise agreed by Seller and Buyer, the Goods offered by Seller are Commercial-Off-the-Shelf items, whether modified or enhanced for any specific usage by Buyer, its customers and end users.

23.2 Seller's shall use its best efforts to advise the relevant and current customers of its specific products of significant changes to the product as well as possible future discontinuation of the availability of the product. However, it shall not be contractually obligated to do so in terms of these standard terms and conditions of sale.

## 24. General

24.1 Until superseded by a valid Purchase Order or Supply Agreement this document constitutes the sole and entire agreement between the parties.

24.2 The terms and conditions specified herein, as well as Seller's specific terms and conditions stipulated in the Quotation, Proposal or Offer, shall take precedence over any of Buyer's terms and conditions and shall not be superseded unless agreed in writing and signed by the Managing Director of Seller.

24.3 Seller shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

24.4 No addition to, variation of, nor agreed cancellation of this contract shall be of any force or effect unless reduced to writing and signed by both parties.

24.5 No indulgence which Seller may grant to Buyer shall constitute a waiver of any of the rights of Seller, which shall not thereby be precluded from exercising any rights against Buyer which may have arisen in the past or which might arise in the future.

## 25. Purchase Order Confirmation

Purchase Order confirmation shall be subject to item availability at date of placement thereof as quoted items can be subject to prior sale.

## 26. Notices

All notices or demands to either party shall be in writing and may be served by hand delivery, registered mail, ordinary email or facsimile at the address of the receiving party as set forth in the Request for Quotation, Quotation, Proposal, Offer, Purchase Order or Supply Agreement as applicable. All notices and demands by registered mail or ordinary shall be deemed to have been received within seven (7) days of postage, unless proved otherwise by the receiving party All notices and demands by facsimile and email shall be deemed to have been received within two (2) days of transmission, unless proved otherwise by the receiving party.