



## STANDARD TERMS OF PURCHASE OF GOODS OR SERVICES

Between

### TONGAAT HULETT LIMITED (in business rescue)

which shall be deemed to include all of its subsidiaries and affiliated entities (collectively, the "Company")  
and

The person or entity supplying the Goods or rendering the Services to the Company ("Supplier")

(collectively the "Parties" and individually a "Party")

#### 1. BACKGROUND AND SCOPE AND PURPOSE OF THIS DOCUMENT

- 1.1. As an approved or potential supplier of the Company, the Supplier will supply goods and/or perform services from time to time to the Company (the "Goods or Services").
- 1.2. The nature, quantity and specifications of the Goods and/or Services shall be agreed upon between the Company and the Supplier in writing from time to time (the "Specifications").
- 1.3. These Standard Terms of Purchase (the "Terms") shall govern the supply of Goods and/or performance of Services by the Supplier to the Company and shall take precedence over any other conditions/terms which may be contained in the Supplier's documentation.
- 1.4. The Parties acknowledge that the Company is in business rescue. The Company confirms that the appointed joint Business Rescue Practitioners currently believe that there is a reasonable prospect of success with regard to the business rescue, and it is with this understanding that a Purchase Order is placed by the Company.

#### 2. SITE RULES

- 2.1. In supplying the Goods and/or performance of Services, the Supplier shall ensure adherence by its employees/agents to (i) Occupational Health and Safety Act 85 of 1993 and regulations, as amended and where applicable; and (ii) Tongaat Hulett SHE Supplier Management Guideline, SHE 005, Effective 01/12/2018, as amended (iii) or the Company's then current supplier site rules as applicable to the Company's site being supplied (collectively referred to as the "Site Rules"), which will be made available on request.
- 2.2. In accordance with the Company's duty of care, health and safety obligations and operational requirements, it is a mandatory requirement that employees of the Supplier who supplies Goods/performs Services at the Company site be vaccinated against COVID-19 and show proof of COVID-19 vaccination to the THL representative prior to attending on the Company site. Failure to adhere to the foregoing requirement shall constitute a material breach of the Terms.
- 2.3. The Site Rules shall not apply if the Supplier is required only to supply Goods and/or perform Services in circumstances where no presence of the Supplier is required on the Company's premises.

#### 3. ORDER PROCEDURE

- 3.1. the Company shall place a written Purchase Order with the Supplier (the "Purchase Order"). The Purchase Order constitutes an offer by the Company to purchase Goods and/or Services from the Supplier in accordance with these Terms read together with the Specifications (if any).
- 3.2. The Purchase Order shall be deemed to be accepted on the earlier of: (i) the Supplier issuing written acceptance of the Purchase Order; or (ii) any act by the Supplier consistent with fulfilling the Purchase Order, or (ii) within 7 (seven) days from dispatch of the Purchase Order should there be no reply from the Supplier.

- 3.3. Once the Purchase Order has been deemed to have been accepted, the whole agreement between the Company and the Supplier shall constitute the Purchase Order, these Terms and the Specifications (if any) and shall apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.4. All of these Terms shall apply to the supply of the Goods and the performance of the Services, except where the application to one or the other is specified.
- 3.5. The Company shall not be obliged to pay for all or any part of the supply of the Goods or the rendering of the Services, unless such Goods or Services are supplied and performed (as the case may be) in accordance with the Purchase Order, these Terms and the Specifications (if any).

#### 4. PRICING AND CURRENCY FLUCTUATIONS

- 4.1. Unless specified to the contrary by the Company, the price of the Goods or Services specified in the Purchase Orders shall be the full and exclusive remuneration of the Supplier in respect of the Purchase Order and shall therefore:
  - 4.2. be fixed and not subject to any adjustments due to:
    - 4.2.1. favourable or unfavourable exchange rate fluctuations;
    - 4.2.2. fluctuations in the cost of parts, materials or consumables;
    - 4.2.3. any other fluctuation, which may impact on the price of the Goods or Services; and
  - 4.3. include:
    - 4.3.1. all charges and costs required to effect delivery of the Goods to the Company or the performance of the Services in accordance with the Purchase Order and the Specifications (if any) and the requirements of **clause 9**;
    - 4.3.2. all taxes, custom duties, clearance, other charges, packaging, delivery, off-loading and insurance costs, unless otherwise specified by the Company in the Purchase Order; and
    - 4.3.3. Value Added Tax.

#### 5. PAYMENT

- 5.1. Unless specified to the contrary in the Purchase Order, payment in respect of the Goods or Services shall be effected following final delivery of the Goods or performance of the Services in accordance with these Terms and the Specifications (if any).
- 5.2. Payment due by the Company in respect of the Goods or Services (the "Payment") shall be effected, in the currency specified in the Purchase Order:
  - 5.2.1. As per the standard payment terms of Tongaat Hulett (63 days from date of statement) or as outlined in the Purchase Order, when the Goods are received by the Company and/or the Services are fully performed by the Supplier, and upon receipt of a valid tax invoice in respect of the Goods or Services; or
  - 5.2.2. if applicable, in accordance with the agreed payment terms or intervals specified in the Purchase Order.
- 5.3. Goods delivered and/or Services performed prior to the

delivery or performance date specified in the Purchase Order shall, for purposes of these Terms, be deemed to have been delivered or performed on the date specified in the Purchase Order, unless the deviation was requested and/or approved in writing by the Company.

- 5.4. The Supplier agrees that no purported onward/further cession of the Payment payable to the Supplier shall be of any force or effect unless the Company shall have agreed, in writing, to process/pay same to a third party on behalf of the Supplier.

## 6. DEDUCTION OR SET-OFF & RETENTION

- 6.1. The Company shall be entitled to deduct or set-off any amounts owing by the Supplier to the Company, against any amounts to be paid by the Company to the Supplier in respect of the Goods supplied or Services performed.
- 6.2. The Company shall be entitled to withhold an amount, not exceeding 10% (ten percent) of the Payment, in respect of any Goods supplied or Services performed, or which are to be supplied or performed, until the expiry of the Supplier's liability as defined in **clause 12.1** (the "**Retention**").

## 7. DELIVERY AND PERFORMANCE

- 7.1. The Supplier shall ensure that, at all times, it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations in these Terms.
- 7.2. The date for delivery of the Goods or the performance of the Services shall be the date specified in the Purchase Order or as agreed between the Parties, in writing, from time to time.
- 7.3. In respect of the delivery of the Goods the Parties agree to apply the terms of Incoterms 2020, being the official rules for the interpretation of trade terms issued by the International Chamber of Commerce and the Purchase Order will set out the relevant Incoterms that are applicable.
- 7.4. Goods shall be delivered and/or Services performed during the Company's normal business hours at the stipulated place of delivery or the stipulated site of performance (as the case may be).
- 7.5. Against delivery of Goods to the Company by the Supplier, the Company shall issue the Supplier with a written delivery receipt signed by an authorised representative of the Company, against which ownership of, and all risk in and to, the Goods shall pass to the Company.
- 7.6. Acceptance of delivery shall only amount to an acknowledgment by the Company that the Goods of the quantity and nature stated in the Purchase Order were received and shall not amount to an acknowledgement that the Goods met the quality and/or Specifications.
- 7.7. Without prejudice to any of the Company's other rights under these Terms or its remaining rights in law, if Goods delivered do not substantially comply with the Purchase Order and/or Specifications (if any), the Company shall be entitled to tender the return of the Goods to the Supplier, within 30 (thirty) days of delivery, in which event:
- 7.7.1. the Company shall not be liable for payment in respect of the Goods returned;
- 7.7.2. the Goods shall be returned at the cost of the Supplier;
- 7.7.3. all risk in respect of Goods returned shall pass to the Supplier, upon notice by the Company to the Supplier that the Goods have been rejected and are available for collection at the premises to which they were delivered by the Supplier; and
- 7.7.4. ownership of the rejected Goods shall pass from the Company to the Supplier upon collection of those Goods.

## 8. PENALTY

- 8.1. The Supplier accepts that the time stated (the "**Due Date**") for the delivery of the Goods or the performance of the Services to the Company is:
- 8.1.1. a material and essential term of these Terms; and
- 8.1.2. a material inducement for the Company to have placed the Purchase Order.

- 8.2. If delivery of Goods or the performance of the Services is delayed beyond the Due Date, or if the Company has reasonable grounds to believe that the Supplier will be unable to deliver the Goods or perform the Services on or before the Due Date, the Company may, in its sole discretion and without prejudice to any of its other rights under these Terms or its remaining rights in law, elect to recover penalties for the delay at the rates specified in **clause 8.3**, or as varied in accordance with the Terms.

- 8.3. Unless specified to the contrary in these Terms, if the Supplier delivers, installs or commissions Goods or performs the Services after the Due Date, the Company shall be entitled to deduct from the Payment and/or recover from the Supplier a penalty equal to 2% (two per cent) of the total value of the Purchase Order for each week, or part thereof, following the Due Date ("**the Penalty**"). In cases where the late delivery of the Goods and/or Service negatively impacts the operations or operational performance, the Company may in its sole discretion seek an alternative solution and reserve the right to negotiate the late delivery of the Goods and/or Services should the need still arise.

## 9. PACKAGING AND SHIPPING

- Subject to any contrary provisions of the Specifications (if any):
- 9.1. all Goods delivered by the Supplier to the Company shall be suitably packed or otherwise prepared for shipment by the Supplier to secure the lowest transportation and insurance rates and comply with the carriers' requirements, while ensuring that the Goods reach their destination in good condition; and
- 9.2. without derogating from the provisions of **clause 9.1**, the Company reserves the right to specify the method of dispatch and type of transportation and/or packaging to be used and to alter the Company's requirements in respect thereof from time to time, at the Company's discretion.

## 10. INSPECTION

- 10.1. Without derogating from the provisions of **clause 7.7**, the Company shall at all reasonable times, both prior to and upon delivery of the Goods or the performance of the Services, have the right to inspect the Goods and/or Services and shall be entitled to reject the Goods and/or Services that do not conform to the Purchase Order and/or the Specifications (if any).
- 10.2. Notwithstanding any such inspection, the Supplier shall remain fully responsible for the Goods and/or Services and any such inspection or testing shall not reduce, relieve or otherwise affect the Supplier's obligations in terms of the Purchase Order and/or Specifications (if any). The Supplier shall have no right to rely on the failure of the Company to identify defects during such inspection.
- 10.3. Notwithstanding acceptance by the Company of the Goods and/or Services upon delivery or performance thereof, the Company shall be entitled to reject the Goods and/or Services in accordance with the provisions of these Terms but without prejudice to its remaining rights in law, if they are subsequently found not to conform to the Purchase Order and/or Specifications (if any).
- 10.4. Rejected Goods will be held at the risk and expense of the Supplier, and unless otherwise directed by the Company, shall be replaced, at the sole expense of the Supplier, by those that conform to the Purchase Order.

## 11. WARRANTIES AND UNDERTAKINGS

- 11.1. The Supplier gives the following warranties, representations and undertakings in respect of the Goods and/or Services, as the case may be:
- 11.1.1. any Service shall be performed with the best care, skill and diligence in accordance with the best practice in the Supplier's trade, industry or profession by personnel who are suitably experienced, qualified and skilled to perform the tasks assigned to the service;
- 11.1.2. the Goods shall be free of any defect (latent or patent) in material or workmanship and shall be fit for the purpose designed or manufactured;

- 11.1.3. the Supplier has reviewed and understands the Specifications (if any) and will ensure that the Goods are supplied and/or the Services performed in accordance with such Specifications and otherwise in accordance with the provisions of these Terms and the Purchase Order and any proposed deviation or change in Specification is submitted to the Company in writing for acceptance;
- 11.1.4. the Goods shall, upon delivery to the Company, have been fully paid for by the Supplier, be fully owned by the Supplier, not be subject to any encumbrance or restriction and the Supplier shall be entitled to pass ownership of the Goods to the Company;
- 11.1.5. in respect of consumable or perishable Goods:
- 11.1.5.1. the Goods shall have an adequate remaining shelf-life, measured from date of delivery to the Company, to enable the Company to utilise the Goods prior to their stated expiry date, during the normal course of business of the Company;
- 11.1.5.2. the Goods shall remain free of defect in design, material or workmanship and good for consumption in accordance with their intended use until either their stated expiry date or the end of the defect liability period specified in **clause 12.1**, whichever is applicable;
- 11.1.6. all potentially hazardous substances, products or chemicals shall:
- 11.1.6.1. be clearly identified and marked with appropriate warnings;
- 11.1.6.2. be properly sealed or secured;
- 11.1.6.3. be delivered in a good and stable condition;
- 11.1.6.4. comply with all statutory and regulatory provisions regarding the manufacture, packaging, labelling, storage, handling, delivery and safety (including environmental safety).
- 11.2. Unless agreed to the contrary in writing by the Company, the warranties shall:
- 11.2.1. be in addition to, and not limited by reference to, any other warranties made by the Supplier in any other documentation accepted by the Company; and;
- 11.2.2. not detract from any other warranties implied by law in respect of Goods and/or Services, regard being had to the Specification (if any) of and functions in respect of which the Goods and/or Services are purchased.
- 11.3. The Parties acknowledge that in terms of section 61 of the Consumer Protection Act, 68 of 2008, as amended ("**the CPA Act**") and/or any similar consumer protection legislation the Company and the Supplier may be jointly and severally liable to a consumer (as defined in the Act) for any harm caused wholly or partly as a consequence of:
- 11.3.1. supplying any unsafe goods; or
- 11.3.2. a product failure, defect or hazard in any goods; or
- 11.3.3. inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods,
- irrespective of whether the harm resulted from any negligence on the part of the Company or the Supplier, as the case may be.
- 11.4. Each Party ("**Indemnifying Party**") hereby indemnifies and holds harmless the other Party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other Party as a result of or arising out of any harm alleged or proven by a consumer himself or herself, or other person contemplated in section 4(1) of the CPA Act, to the extent such harm is attributable to the negligent or intentional conduct of the Indemnifying Party or any contravention by the Indemnifying Party of any applicable law.
- 11.5. This **clause 11** shall survive termination of these Terms.
- 12. SUPPLIER'S LIABILITY**
- 12.1. Liability for Defects
- 12.1.1. If the Goods and/or Services manifest any defects (whether patent or latent) within the earlier of a period of 18 (eighteen) months from the delivery date or the date of performance or such other periods as may be stipulated in the Purchase Order or these Terms, the Supplier shall, at its cost and expense and within a reasonable time frame:
- 12.1.1.1. repair, replace any defective Goods or remedy or reperform any of the Services; and
- 12.1.1.2. refund to the Company all costs, damages or expenses (excluding consequential loss) suffered by the Company as a result of such defects.
- 12.1.2. The obligations of the Supplier in terms of **clause 12.1.1** in respect of all repaired, replaced or remedied or reperformed Goods and/or Services shall be extended for a further period of 12 (twelve) months (or such other period as may be agreed in writing) from the date of completion of such repair, replacement, or remedy or reperformance.
- 12.1.3. the Company shall be entitled to withhold any Payment due to the Supplier and claim against the Retention for the recovery of any amount due by the Supplier to the Company in terms of **clause 12.1**.
- 12.2. Insurance for Loss, Accidents or Damage
- 12.2.1. For the duration of these Terms and a period of 6 months thereafter, the Supplier shall maintain, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with these Terms.
- 12.3. This **clause 12** shall survive termination of these Terms.
- 13. INDEMNITY**
- 13.1. The Supplier indemnifies and holds the Company harmless against any claims, costs, damages, expenses, judgments, losses, liabilities, obligations and/or penalties, which the Company may incur, suffer or sustain during or arising out of, or in connection with, the use of the Goods or the performance and/or use of the Services for their intended purpose, to the extent that such claims, costs, damages, expenses, judgments, losses, liabilities, obligations and/or penalties result from:
- 13.1.1. a defect in, or failure of, the Goods or Services; the incorrect manufacture of the Goods or performance of the Services by the Supplier;
- 13.1.2. a breach of any of these Terms and/or the Specifications (if any) including without limiting the generality of the foregoing a breach of the warranties and undertakings in **clause 11**; and/or
- 13.1.3. any claim for infringement of any intellectual property rights ("**Indemnified Loss**").
- 13.2. The Supplier shall be obliged to pay the Company the amount of Indemnified Loss incurred, suffered or sustained by the Company as soon as the Company is obliged to pay the amount thereof (in the case of any Indemnified Loss that involves a payment by the Company) or as soon as the Company suffers the Indemnified Loss (in the case of an Indemnified Loss that does not involve a payment by the Company).
- 13.3. This **clause 13** shall survive termination of these Terms.
- 14. FORCE MAJEURE**
- 14.1. Neither the Supplier nor the Company shall be liable for any failure to perform its obligations under the Conditions where such performance has been delayed, hindered or prevented by any circumstance beyond the control of that Party, including but not limited to acts of God, strikes, lock outs, trade disputes, fire, government directions and/or war.
- 14.2. Where such circumstances beyond the control of the Parties prevent performance; the obligations of the Party shall be suspended until the termination of such circumstances, provided that should any suspension continue for more than 45 (forty five) continuous days either Party shall be entitled, on giving 7 (seven) days' notice to the other, to terminate the Purchase Order.
- 14.3. The Company for the period of Force Majeure reserves the right to procure the Goods and Services from a third party without liability to the Supplier
- 15. TERMINATION CONSEQUENT OF BREACH OF ANCILLARY AGREEMENT**
- 15.1. If the Supplier –
- 15.1.1. commits a breach of any other agreement between

the Company and the Supplier (all of which are deemed to be material), and fails to remedy such breach within any remedy period specified in such agreement; or

- 15.1.2. generally does anything which may substantially prejudice the Company's rights in terms of the Purchase Order and/or these Terms, then, the Company shall be entitled to terminate, at its sole discretion, the Purchase Order immediately on giving notice to the Supplier, without prejudice to any other rights in law which may be available to the Company.

## 16. BREACH

- 16.1. If a Party (the "**Breaching Party**") breaches any provisions of these Terms, the Purchase Order and/or the Specifications (if any) and remains in breach for 7 (seven) days after receipt of written notice from the other Party (the "**Innocent Party**") requiring the Defaulting Party to rectify the breach, or if either Party repudiates the Purchase Order, the Innocent Party shall be entitled at its sole election to either:

- 16.1.1. sue for the immediate specific performance of any of the Defaulting Party's obligations under the Purchase Order, Terms and/or Specifications (if any), whether or not such obligation is then due; or
- 16.1.2. (either as an alternative for a claim for specific performance or upon the abandonment of such claim) to cancel the relevant Purchase Order. Written notice of such cancellation shall be given to the Defaulting Party and the cancellation shall take effect on the giving of that notice.

- 16.2. The Innocent Party's remedies in terms of this **clause 16** are without prejudice to any other remedies set out in these Terms or its remaining rights in law.

## 17. SAMPLES

The Supplier shall supply to the Company samples or tests in relation to the Goods if requested to do so by the Company, in such volumes or extent as the Company may reasonably require, at no cost to the Company.

## 18. INTELLECTUAL PROPERTY RIGHTS

- 18.1. All intellectual property rights ("**IPR**") arising in respect of and/or associated with the Services and/or Goods shall vest absolutely in, and be owned by the Company, alternatively are upon delivery or performance licensed to the Company.
- 18.2. The Supplier warrants in favour of the Company that it shall not claim any rights to any of the IPR and shall not do anything which is calculated or likely to undermine or prejudice the Company's right, title or interest in and to the IPR, nor the Company's use thereof.
- 18.3. The Supplier warrants in favour of the Company that the deliverables supplied in terms of this Agreement, shall not infringe any law or third Party IPR.

## 19. DOMICILIUM

The Parties hereby choose their respective *domicilium citandi et executandi* for all purposes at the address specified in the Purchase Order.

## 20. CESSION OR ASSIGNMENT

The Supplier shall not be entitled to cede, assign or subcontract any of its rights or obligations in terms of the Purchase Order and these Terms, without the prior written consent of the Company. The Company may without consent, assign a Purchase Order and these Terms in connection with the transfer or sale of its entire or substantial part of the business to which such Purchase Order pertains, or in the event of its merger or consolidation with another company, or in connection with a transfer to a wholly-owned subsidiary.

## 21. SUPERSESION

The Parties agree that these Terms read together with the Purchase Order, contract/agreement and Specifications (if any) constitute the sole record of the

agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. The Terms read together with the Purchase Order and the Specifications (if any) supersede and replace all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof, including any terms and conditions or agreement proffered by the Supplier.

## 22. CODE OF CONDUCT

- 22.1. The Supplier undertakes that its business operations are, and will continue to be, conducted in accordance with the principles set out in the THL Group Code of Conduct and Business Ethics, a copy of which is available at [www.tongaat.com](http://www.tongaat.com), and which the Supplier confirms that it has read and understood.
- 22.2. The Supplier shall comply with all applicable anti-corruption laws and the Company Anti-Bribery & Corruption Policy available on [www.tongaat.com](http://www.tongaat.com), in connection with the performance of its obligations for the Company. The Supplier will not, directly or indirectly, make any payment, offer or promise to make any payment or transfer of anything of value to:
- 22.4.1. any government official, or to any political party or any candidate for political office, with the purpose of influencing decisions favourable to the Supplier and/or its business in contravention of applicable laws; and/or
- 22.4.2. any employee of the Company, other than bona fide gifts or entertainment in accordance with the conditions laid down in the Company Conflict of Interests Policy and Gifts and Hospitality Policy.
- 22.5. The Company may, in its discretion, acting reasonably, verify a Supplier's compliance with this Supplier Code of Conduct by performing audits or other assessments of the Supplier's facilities, records and business processes, or undertake such through a mutually agreed third party.
- 22.6. Material breaches of this Supplier Code of Conduct may result in disqualification as a Company supplier and the termination of any business relationship with the Company.

## 23. DATA PROTECTION

- 23.1. The Supplier shall –
- 23.1.1. establish and maintain adequate personal data and information security protection for the information that is processed by the Supplier or any third parties acting on its behalf; and
- 23.1.2. operate in a manner that is consistent with applicable data protection/privacy laws and aligned with industry standards for the protection and security of all information, including personal information.

## 24. NON-VARIATION

- 24.1. These Terms shall not be altered other than in writing and upon signature by duly authorised representatives of both Parties.
- 24.2. The Parties shall not be bound to any representation, undertaking or agreement unless accepted in writing by the Parties

## 25. APPLICABLE LAW

All disputes arising in connection with the Terms, the Purchase Order and/or the Specifications (if any) shall be determined in accordance with the laws of the Republic of South Africa.

## 26. LEGAL COSTS

The Supplier shall pay all legal costs, including attorneys and client costs and collection commission, which the Company may incur in taking any steps to enforce its rights, and/or procure performance by the Supplier of its obligations, under these Terms, the Purchase Order and/or the Specifications (if any).