

PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS

In this Purchase Order (unless the context otherwise requires):

- 1.1 **Agreement** means this Purchase Order Terms and Conditions effective from date of purchase order.
- 1.2 **Authority** means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.
- 1.3 **Customer** means the Discovery entity named as such in this Purchase Order;
- 1.4 **Supplier** means the party or parties named as such in this Purchase Order.
- 1.5 **Supplier Reference Document** means a delivery document, dispatch note, time sheet, claim form or such other document which evidences the delivery of the Goods or the performance of the Services.
- 1.6 **Defect** means any aspect of the Goods or Services not in accordance with this Purchase Order, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Goods or Services.
- 1.7 **Defect Correction Period** means the period of 24 months from the date of delivery of the Goods and/or 12 months from the date on which a Service is last performed. If Goods are supplied for any installation, by a third party or manufacturer, the Manufacturer's warranty shall apply to the specific Goods provided that the Supplier informed the Customer of the terms of such warranty and such terms are accepted in writing by the Customer.
- 1.8 **Delivery Date** means the delivery date specified as such in this Purchase Order or Supplier Reference Document.
- 1.9 **Delivery Point** means the place for delivery of the Goods or performance of the Services specified in this Purchase Order or Supplier Reference Document.
- 1.10 **Discovery Group** means Discovery Limited including its affiliates and subsidiaries.
- 1.11 **Goods** means the goods, if any, specified as such in this Purchase Order (including any part of the goods specified)
- 1.12 **Intellectual Property** means all copyrights, patents, trade marks, know-how, designs models, trade patterns, trade names, images and any other type of intellectual property and any rights to them (including applications for and rights to obtain or use same) which are used and/or held, whether or not currently used, by any person in connection with their business and any other rights to intellectual property;
- 1.13 **Invoice** means a tax invoice as defined in the Value Added Tax Act, 89 of 1991 where the supplier is a VAT vendor, and where it is not, a commercial invoice;
- 1.14 **Law** means all legislation including regulations, by-laws, orders awards and proclamations with which a party is legally required to comply, together with all Authority requirements, guidelines, consents, certificates, licenses, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) with which a party is legally required to comply.
- 1.15 **Parties** means Discovery Central Services (Pty) Limited, a company with registration number 2016/054628/07, which is a subsidiary of the Discovery Group, with address at 1 Discovery Place, Sandton, Johannesburg ("Discovery") or any other subsidiary of the Discovery Group, and the Supplier.
- 1.16 **Personnel** means directors, employees, agents, Suppliers or sub-Contractors, but a reference to the Customer's Personnel excludes the Supplier.
- 1.17 **POPIA** means the Protection of Personal Information Act 4 of 2013.
- 1.18 **Price** means the price or rates specified as such in this Purchase Order.
- 1.19 **Purchase Order** means this purchase order for Goods and/or Services issued by the Customer to the Supplier from time to time containing, amongst other things, a description of the Goods and/or Services and/or any other supporting documentation or communication relating to the Goods and/or Services between the Customer and the Supplier.
- 1.20 **Services** means the services, if any, specified as such in this Purchase Order (including any part of the specified services and any ancillary services).

- 1.21 **Site** means the place described as such in this Purchase Order as the place for the use or storage of the Goods by the Customer or for the performance of the Services.
- 1.22 **Tax** (a) includes all present or future taxes, fees, levies, duties, tariffs, fees and charges imposed or assessed in respect of this Purchase Order by all Authorities including contributions, sales tax, customs duty, excise, and stamp duty, as well as interest, penalties and additions thereto; but, (b) does not include VAT;
- 1.23 **VAT** means value added tax charged or payable in terms of the Value Added Tax Act, 89 of 1991.

2. BOOKS AND RECORDS

2.1 The Supplier represents, warrants and agrees that it will:

- (a) keep and maintain accurate and reasonably detailed books and financial records of expenses and receipts in connection with its performance under, and payments made or received in connection with, this Purchase Order; and
- (b) upon request, as soon as reasonably practicable but no later than 7 calendar days, provide any information and reasonable assistance to the Customer to audit any books and financial records to verify compliance with the Supplier's representations, warranties and undertakings under this Purchase Order, and otherwise reasonably co-operate with the Customer's investigation of any related matters.

3. CONDITIONS AS TO QUALITY OF THE GOODS AND THE SERVICES

3.1 The Supplier must ensure that:

- (a) the Goods and Services supplied by the Supplier match the description of the Goods and Services in this Purchase Order;
- (b) if the Supplier gave the Customer a sample of the Goods before the Customer issued this Purchase Order, the Goods correspond with the sample and any agreed to modifications by the Parties;
- (c) if the Supplier provided the Customer with a demonstration of the Services before the Customer issued this Purchase Order, the Services correspond in nature and quality with the Services demonstrated and any agreed to modifications by the Parties;
- (d) if the Supplier showed the Customer a result achieved by the Services before the Customer issued this Purchase Order, the Services correspond in nature and quality with the services that achieved that result;
- (e) the Services are performed with the professional skill, care and diligence expected of a skilled and experienced professional Supplier;
- (f) the Goods and Services are fit for the purposes set out herein, or which an experienced professional Supplier would reasonably infer from, the Purchase Order;
- (g) the Goods are new and of merchantable quality;
- (h) to the extent that the Services are design and/or development Services, the works being designed and/or developed will be fit for their intended purpose as described in this Purchase Order;
- (i) any items which the Supplier uses or supplies in conjunction with the Services are of merchantable quality and comply with any standards specified in this Purchase Order and are fit for their usual purpose and any purpose described in this Purchase Order; and
- (j) the Customer has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must pursue any manufacturer's warranties on the Customer's behalf if the Customer so requests).

4. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- (a) The Supplier acknowledges that all material and information which has or will come into its possession in connection with this Agreement or the performance of the obligations hereunder consists of Confidential Information which, if disclosed to third parties, might be damaging to the Customer.
- (b) The Supplier agrees and undertakes -
- (i) not to use the Confidential Information for any purpose other than in connection with the Goods and Services and then on a "need to know" basis only;
 - (ii) not to use the Confidential Information, whether directly or indirectly, for its benefit;
 - (iii) to treat and safeguard Confidential Information as strictly private and Confidential;
 - (iv) except as permitted by this Agreement, not to use, disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Customer which consent may be withheld in the sole and absolute discretion of the Customer;

- (v) to take all such steps as may be reasonably necessary to prevent Confidential Information from falling into the hands of unauthorised third parties;
 - (vi) to restrict the dissemination of the Confidential Information to only those of its Staff members who are actively involved in the Goods and Services, then only on a “need to know” basis and the Supplier shall initiate, maintain and monitor internal security procedures to prevent any unauthorized disclosure;
 - (vii) to take all practical steps, both before and after disclosure, to impress upon its Staff members who are given access to Confidential Information the secret and confidential nature thereof.
- (c) The Supplier shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting his or her own Confidential Information. In no event shall the Supplier use less than reasonable efforts to protect the confidentiality of the Confidential Information. Specifically, the Supplier may not utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever.
- (d) The Supplier hereby warrants in favour of the Customer that it shall at all times strictly comply with all applicable Laws and with all the provisions and requirements of the Customer’s Data protection policies and procedures, as may be updated from time to time, and any further reasonable requirements of which the Customer may, from time to time, advise the Supplier in writing, including the provisions of POPIA for the durations of this Agreement.
- (e) This clause 4 is severable from the rest of the Agreement and shall remain valid and binding on the Supplier notwithstanding any termination or expiration of this Agreement.
- (f) The Parties agree that nothing in this Agreement will be construed to grant either party any rights, title or interest in the Intellectual Property rights, whether registered or not, of the other, unless otherwise agreed in writing by the Parties.

5. DEFECTS

5.1 If, during the Defect Correction Period, the Customer finds any Defects in the Goods or Services (other than a Defect caused by the negligence of the Customer), the Customer may:

- (a) reject the Goods with the Defect and return them to the Supplier, in which case the Supplier must replace the Goods free of charge and reimburse the Customer for any expenses incurred;
- (b) reject the Services with the Defect, in which case the Supplier must re-perform the Services free of charge; or
- (c) make good or engage another Supplier to make good the Defect, in which case the Supplier must reimburse the Customer for any expenses incurred.

5.2 If the Supplier does not replace the Goods pursuant to clause 5.1(a) or re-perform the Services pursuant to clause 5.1(b) and:

- (a) the Customer has already paid the Supplier for the Goods or Services with the Defect, the Supplier must refund the Customer the Price for those Goods or Services; or
- (b) the Customer has not already paid the Supplier for the Goods or Services with the Defect, the Customer will not be liable to pay the Supplier for those Goods or Services.

5.3 The acceptance of any Goods or Services with a Defect by the Customer will not bind the Customer to accept any other Goods or Services with a Defect and does not affect any of the Customer’s other rights under this Purchase Order or at Law.

5.4 Where the Supplier has made good any Defect under this clause, those Goods or Services will be subject to the same Defect Correction Period as the original Goods or Services, from the date the Supplier made good the Defect.

6. DELIVERY

6.1 The Supplier must deliver the Goods to the Delivery Point by the Delivery Date failing which the Customer, may in its sole discretion, cancel the Purchase Order and will not be liable for the Price set out in the Purchase Order.

6.2 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable Laws.

6.3 Packages must be marked with the Purchase Order number, Delivery Point, contents, quantity, date and method of dispatch of each package.

6.4 The Supplier must perform the Services at the Delivery Point by the Delivery Date failing which the Customer, may in its sole discretion, cancel the Purchase Order and will not be liable for the Price set out in the Purchase Order.

7. INVOICING AND PAYMENT

7.1 On delivery of the Goods and/or completion of the Services, the Supplier must provide to the Customer:

- (a) a Supplier Reference Document;
- (b) if the Customer directs, an Invoice which meets all the requirements of a valid invoice, which must include the information set out in clause 7.2.

7.2 Any Supplier Reference Document or Invoice must include the following details:

- (a) a reference to this Purchase Order and the relevant contract (if any);
- (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
- (c) an individual reference number for the Customer to quote with remittance of payment;
- (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on this Purchase Order, including the amount of any applicable Tax; and
- (e) Customer operation, Site and Customer contact name.

7.3 If the Customer requests, the Supplier must provide the Customer with all relevant records to calculate and verify the amount set out in any Supplier Reference Document or any Invoice.

7.4 The Customer must pay all Invoices that comply with clause 7.2 within 30 days (or such other period as the Customer's Representative and Supplier's Representative agree) of the date on which the relevant invoice is generated (in the case of a recipient created tax Invoice) or the date on which the relevant invoice is received from the Supplier (in all other cases), except where the Customer:

- (a) is required by Law to pay within a shorter time frame, in which case the Customer must pay within that time frame;
- (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Supplier;
- (c) disputes the Supplier Reference Document or Invoice, in which case:
 - (i) to the extent permitted by Law, the Customer may withhold payment of the disputed part of the Supplier Reference Document or Invoice pending resolution of the dispute; and
 - (ii) if the resolution of the dispute determines that the Customer must pay an amount to the Supplier, the Customer must pay that amount upon resolution of that dispute; or
- (d) is required by Law to withhold a portion of payment for services rendered by a foreign Supplier.

7.5 Notwithstanding the above, any payment by the Customer to the Supplier in terms of this Purchase Order may be subject to the prior written approval of the South African Reserve Bank. Any delay in payment of an amount due to the Supplier as a result of the Customer obtaining the necessary approval from the South African Reserve Bank will not be considered a breach by the Customer of its obligation to pay such amount within the time specified in these terms and condition or the Purchase Order.

8. PRICE

8.1 The Customer must pay the Supplier the Price for the Goods and/or Services at the time set out in this Purchase Order (subject to the requirements of clause 7 having been satisfied).

8.2 The Price is inclusive of:

- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Purchase Order;
- (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services;
- (c) the Supplier's compliance with its obligations under this Purchase Order; and
- (d) all Taxes.

9. SUPPLY OF GOODS AND/OR SERVICES

9.1 In consideration or payment of the Price by the Customer, the Supplier must supply the Goods and/or provide the Services to the Customer in accordance with, and as specified in, this Purchase Order (which includes these Purchase Order Terms and Conditions).

9.2 To the extent permitted by Law and to the extent the Supplier's terms and conditions are supplied to the Customer in respect of the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any representative of the Customer signs those terms and conditions or annexes the terms and conditions to this Purchase Order).

9.3 Where this Purchase Order relates to Goods and/or Services the subject of a substantive written contract between the Supplier and the Customer, the terms of that contract apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.

9.4 The Supplier must, in supplying the Goods or performing the Services:

(a) be aware of and comply with, and ensure that the Supplier's Personnel are aware of and comply with all applicable Laws, Site Standards and Procedures and the Code of Conduct, to the extent that these documents are applicable to the supply of the Goods or the performance of the Services by the Supplier; and;

(b) on request by the Customer, provide to the Customer and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by Law in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under this Purchase Order.

9.5 The Parties agree that where this Purchase Order relates to a proof of concept exercise, no obligation is created for Customer to place future Purchase Orders for Goods and/or Services with the Supplier following the Proof of Concept.

10. TIME FOR PERFORMANCE OF THE SERVICE

10.1 The Supplier must perform the Services by the date specified in the Purchase Order.

11. TITLE AND RISK

11.1 The Customer will have title to the Goods when the Customer pays for those Goods.

11.2 The Customer will bear risk in the Goods when the Customer takes delivery of those Goods at the Delivery Point.

12. INDEMNIFICATION AND LIABILITY

12.1 The Supplier indemnifies the Customer against any loss or damages resulting from the Supplier's negligence, intentional misconduct or breach of these Purchase Order Terms and Conditions and any additional documentation in relation thereto.

12.2 No limitation of liability shall apply in respect of a breach of these Purchase Order Terms and Conditions and/or any additional documentation in relation thereto.