

# TERMS AND CONDITIONS OF PURCHASE ORDERS

Definition COMPANY shall mean Racec (Pty) Ltd.

## 1. Price Adjustments:

Unless otherwise stated, all prices include for delivery to the Company. Delivery to the Company shall only be completed when the goods have been received and signed for by the Company at the address shown in the Delivery Instructions.

Unless, otherwise stipulated in the order all prices shall be deemed to be firm and inclusive of the cost of delivery to the Company, if being understood and agreed that:

- a) Where the prices in the order are stated to be subject to adjustment, or
- b) Where the prices are firm, but an adjustment to such prices is necessitated by amendments to the official railway tariff book of the South African Transport Services or
- c) Where the goods covered by the order are to be imported and an adjustment to the prices in the order (not occasioned by fault or negligence on the part of the supplier) is necessitated by variations in the rate of exchange between the currency of the country of manufacture and South African currency, ocean/air freight and insurances, customs clearing charges, and/or where applicable South African customs duties any claim for price adjustments shall be submitted prior to delivery of the goods to the Company Buyer, Racec (Pty) Ltd and shall be supported by such documentary evidence as may be required by the Company Buyer, Racec (Pty) Ltd. No price adjustments shall be effective unless authorised by means of an official modification to the order.

Notwithstanding the provisions of the preceding paragraph, Racec (Pty) Ltd shall have the right to reject any proposed price adjustment and instead, at the company's absolute discretion to cancel and determine the order forthwith without any liability for compensation to the supplier for any damages whatsoever including loss of business and/or profits resulting from such cancellation.

## 2. Packing and Containers:

The Supplier shall adequately and securely pack all goods in such a manner so as to prevent damage in transit and all packages are to be clearly marked and addressed by means of waterproof paint or suitable labels. All packing materials used shall upon delivery become the property of the Company.

## 3. Deliveries:

The time of the delivery of the goods is of the essence of the Order and should such delivery be delayed for any reason whatsoever beyond the delivery period stated in the Order, the Company shall be entitled, without prejudice to any other rights they may have, to cancel the Order without notice to the Supplier. The Buyer of Racec (Pty) Ltd may however, at his discretion, grant an extension to the delivery period, provided that such extension will not be of any effect unless reduced to writing and signed by him.

## 4. Loss and / or Damage

All goods supplied in terms of the Order shall be and remain at the sole risk of the supplier who shall bear all costs whatsoever arising from or in respect of, all losses and/or destruction of the goods until such time as the goods have been delivered to the Company. The Supplier alone shall be responsible that they do not in any way invalidate any claims which the Supplier may have against any carrier and will, if requested to do so give the Supplier cession of their rights against third parties arising from such losses, damages or destruction.

## 5. Waybills, Invoices and Statements:

Waybills shall accompany every consignment and shall include the Order Number, and the number of units supplied, invoices bearing the Order Number shall be sent in duplicate direct to the Company not later than on the day on which the goods are despatched. Accounts shall be made up monthly, as at the close of

business on the 27<sup>th</sup> day of each month and a monthly statement in duplicate, recording the total amount due at that date, shall be forwarded so as to reach the Company by no later than the 30<sup>th</sup> day of each month.

## **6. Payment**

Payment will without prejudice to the rights of the Company be made in South African currency on or about the 30<sup>th</sup> day of the month following that in which the goods are delivered in good order provided that invoices and statements are received on due date, and provide further that the Company shall be entitled to deduct any sum or sums of money which may be due and/or payable to them by the Supplier, unless an alternative arrangement has been made, the terms of which must appear on the order or subsequent written amendment.

## **7. Indemnity**

The Supplier hereby indemnifies the Company against all claims which may be made against them for the unauthorised use or infringement of patent rights, trade marks or protected rights shall be payable by the Supplier.

## **8. Transfer of Order:**

The Supplier shall not cede, assign, transfer or sub-let any of its rights or obligations in terms of the Order without the consent of the Buyer, Racec (Pty) Ltd provided that such consent will not be of any force of effect unless reduced to writing and signed by him. Racec (Pty) Ltd shall not be bound to give such consent, but may withhold same without assigning any reason therefore, or grant such consent subject to such terms and conditions as Racec (Pty) Ltd may in its absolute discretion deem fit.

## **9. Specification, inspection and Tests:**

All materials used in the manufacture of the goods called for, in terms of the Order, shall comply in all respect with the specifications of quality laid down in the Order and shall in so far as there are no specifications be of a quality composition and strength suitable for the purpose for which they are required. The finish shall be of a standard commensurate with the quality of all goods supplied. All technicians, artisans and other labour employed in the manufacture of the goods called for in terms of the Order, shall be adequately qualified to undertake such work.

Racec (Pty) Ltd shall have the right to arrange for inspection of the goods at any time during the process of or upon completion of manufacture and to reject any goods which do not comply with the specification without prejudice to any other rights which Racec (Pty) Ltd may have in terms of the Order or in law.

Should any dispute arise as to whether or not goods rejected by Racec (Pty) Ltd comply with the specification the supplier may within seven days of such rejection arrange for tests and/or analyses to be undertaken by a recognised public authority to be nominated by Racec Rail (Pty) Ltd and the result of such tests and/or analyses shall be final and binding. The costs of such tests and/or analyses shall initially be borne by the supplier, but in event of the tests and/or analyses proving that such goods do comply with the specification, failing to arrange for such tests and/or analyses to be undertaken, the supplier shall be bound by the provisions of the preceding paragraph.

In addition Racec (Pty) Ltd shall have the right to arrange for tests and/or analyses of such of the goods delivered to the Company as Racec (Pty) Ltd may deem necessary. Such tests and/or analyses shall be undertaken by a recognised public authority. The cost of such tests and/or analyses shall initially be borne by Racec (Pty) Ltd but in the event of the tests and/or analyses proving that the goods do not comply with the specification, the company shall, without prejudice to any of Racec (Pty) Ltd other rights under the order and irrespective of any other remedy which might be available to Racec (Pty) Ltd under any of the provisions of the order or in law be entitled to recover such costs from the supplier.

## **10. Remedies in Case of Default in Performance:**

- A. Should any goods supplied in terms of the Order have any defects capable of being rectified on site, the Company shall, without prejudice to any other rights they may have be entitled to require at the Supplier's own cost, to cause such defects to be rectified promptly and without delay.
- B. In the event of any latent defects manifesting themselves within a period of 36 months from the date of delivery of the goods to the Company, the Company shall be entitled without prejudice to any rights they may have, to call upon the Supplier to replace at the Supplier's own costs, such defective goods promptly and without delay.
- C. Should the supplier deliver any goods which do not conform to the Order, Racec (Pty) Ltd, shall be entitled without prejudice to any other rights they may have to refuse to take delivery or after delivery to reject the said goods. In the event of such refusal or rejection, the company shall be entitled without prejudice to any other rights they may have.
  - a) to request the supplier, at the Suppliers own cost, to replace promptly and without delay, the goods so refused or rejected with goods conforming to the Order, or
  - b) to cancel the Order without notice to the Supplier, in which case the Supplier shall remove the goods so refused or rejected.

## **11. Rights in Law**

Any rights which may accrue to Racec (Pty) Ltd under any of the terms and conditions of the Order shall be without prejudice to any other rights which the Company might have.

## **12. Law to apply:**

The Order shall be read, construed and performed according to the law of South Africa.

## **13. Variation:**

The aforesaid provisions of the Order constitute the whole agreement between the parties and no express or implied warranties given or presentations made, before or after the date of the Order, shall be of any force of effect unless specifically set out herein. No alternative or variation of the parties agreement, or addition there to will be of any force or effect unless reduced to writing and signed by the buyer.

## **14. Acceptance of Order**

The Order is placed subject at the aforesaid terms and conditions and unless it has previously otherwise accepted the same the Supplier's despatch of goods against the Order shall be deemed to signify its acceptance of the said terms and conditions.

## **15. Force Majeure:**

Save as otherwise provided for in the Order, Racec (Pty) Ltd and/or the supplier shall be discharged from obligations in terms of the Order and released from all liability in respect thereof whether for damages or otherwise, during such time that the Company and/or the Supplier are prevented from fulfilling obligations in terms of the Order by reason of acts of God, force majeure, strikes, riots, interference by civil or military authorities, compliance with Government, provincial or municipal regulations requests of policy, inability to secure Governmental provincial or municipal permission or any other circumstance beyond the control to the Company and/or the Supplier without fault or negligence.

It is however understood and agreed that if, as a result of any of the circumstances set out in the preceding paragraph, delivery of the goods is delayed beyond the period stated in the order to such extent as the company may deem fit any such extension to the delivery period being authorised by means of an official modification to the Order or alternatively and at the Company's absolute discretion, cancel and determine the Order forthwith without any liability for compensation to the Supplier for any damages whatsoever including loss of business and/or resulting from such cancellation.

It shall be incumbent upon Racec (Pty) Ltd or the Supplier whichever be so affected immediately to notify in writing of any inability to fulfil obligations in terms of the Order by reason on any of the circumstances set out in Clause No. 15 'Force Majeure' cancellation in terms of No. 15 'Force Majeure' shall be confirmed by means of an official modification to the Order.

**16. Cession:**

The Supplier shall not cede his right to receive payment.