

**General Conditions of Purchase of  
African Oxygen Limited**  
(Registration no: 1927/000089/06)  
( VAT no: 4120110541)

**1. DEFINITIONS:**

For the purpose of these General Conditions of Purchase the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them.

- 1.1. "Conditions" means these General Conditions of Purchase;
- 1.2. "Delivery Date" shall mean the date stipulated in the Order for delivery of goods;
- 1.3. "Goods" means the Goods to be supplied and any work or service to be performed by the Supplier in terms of the Order;
- 1.4. "Order" means a written request on the Purchaser's official purchase order issued by the Purchaser to the Supplier to supply the Goods, and shall be deemed to include at all times the Conditions and any drawings, Specifications, and schedules attached thereto;
- 1.5. "Price" means the price for the Goods as stated on the Order;
- 1.6. "Purchaser" shall mean African Oxygen Limited acting on its own behalf, or as an agent for and on behalf of a principal;
- 1.7. "Specification" means the specifications for the Goods as set out or referenced in the Order or any other specification agreed in writing between the parties from time to time;
- 1.8. "Supplier" means the entity or person to whom the Order is addressed and who has undertaken to supply the Goods.

**2. ACCEPTANCE OF GENERAL CONDITIONS OF PURCHASE**

- 2.1. Any of the following acts shall constitute conclusive acceptance by the Supplier of the Order:
  - 2.1.1. signing and returning a copy of the Order;
  - 2.1.2. any other written acceptance by the Supplier;
  - 2.1.3. commencement with the execution of the Order;
  - 2.1.4. delivery of the Goods;
  - 2.1.5. informing the Purchaser in any manner of delivery of the Goods or commencement of performance of the Order.
- 2.2. Unless otherwise agreed in writing by the Purchaser, no other terms or conditions, including without limitation any terms or conditions endorsed upon, delivered with, or contained in any invoice, acceptance or acknowledgement of order or other document delivered by the Supplier to the Purchaser nor any previous correspondence shall form part of or amend the Order nor be deemed to constitute a counter offer. To the extent that the Order is deemed in any way to be an acceptance of a quotation or other offer by Supplier, any such acceptance by the Purchaser is expressly conditional to the acceptance by Supplier of the Conditions.
- 2.3. Should Afrox sign or acknowledge receipt of any document received from the Supplier which contains terms contrary to the terms of these Conditions, such signature or acknowledgement shall serve only as an acknowledgement of receipt of such document and not as any acceptance of the terms therein contained and these Conditions shall prevail.

**3. ASSIGNMENT AND VENDOR FORMS**

- 3.1. The Order is personal to the Supplier and the Supplier shall not sub-contract, assign or make over the Order or any part thereof, or any share thereof or interest therein, to any other person except with the written consent of the Purchaser and on such conditions as the Purchaser may require.
- 3.2. The Supplier shall complete all details on the Purchaser's vendor add form and hereby agrees to notify the Purchaser in writing, within 7 days of any change of ownership of the Supplier's business or, should the Supplier be a company, any share transaction where the majority shareholding of the Supplier is affected, or where the Supplier effects any other change to its legal identity, structure or nature.

**4. DISCREPANCIES AND DELAY**

- 4.1. Should there appear to be any conflict, inconsistency, discordance or want of agreement between descriptions, dimensions, specifications or quantities specified in the Order, the matter shall be referred by the Supplier to the Purchaser for a decision before proceeding to execute the Order or any part thereof. The Purchaser's decision shall be final and binding.

- 4.2. Any anticipated or actual delay or any circumstances which may result in a delay in the execution of the Order shall immediately be communicated to the Purchaser.

## **5. QUALITY**

- 5.1. All Goods supplied shall be equal in all respects to the Specifications or to any samples, patterns, drawings where such are provided.
- 5.2. The Purchaser reserves the right to call for certificates of raw materials and test certificates for materials and equipment used in the manufacture of the Goods.
- 5.3. The Supplier shall not make any changes to the Goods that will impact on the performance, safety, quality, appearance or brand image of the Goods without the prior approval of Afrox.

## **6. PACKAGING**

- 6.1. All Goods shall be crated, packed or battened securely in such manner as to prevent damage during loading, transport and off-loading. The Purchaser shall be entitled to recover from the Supplier all loss and damage which the Purchaser has suffered due to the Suppliers failure to comply with the provisions of this clause.
- 6.2. Unless otherwise specified, packing cases and packing materials are included in the Order price, and shall remain the property of the Purchaser.
- 6.3. The Supplier shall identify each and every package, container, bundle or article, by means of either suitable labels securely attached thereto or indelible painting thereon, with the following information:-
  - 6.3.1. Description of goods – net mass and volume or quantity;
  - 6.3.2. Name of Supplier;
  - 6.3.3. Order Number.
- 6.4. The Supplier shall comply with all package specifications issued by the Purchaser from time to time.

## **7. DELIVERY**

- 7.1. Delivery of the Goods or, where applicable, performance of any work or service in connection with the Goods shall be made in terms of the Order. If no Delivery Date is stated the Supplier shall offer its best delivery dates.
- 7.2. It shall be incumbent upon the Supplier to ensure that where Goods are delivered by road, all legislation applicable to such road transportation is at all times complied with, and the Supplier indemnifies the Purchaser against any loss suffered, including confiscation of the goods arising from delivery of the Goods by the Supplier or a carrier without such authority.
- 7.3. The Supplier shall be responsible for any loss or damage to property and/or injury to persons caused by the Supplier or any of its agents, servants or contractors when transporting, delivering or loading the Goods. The Supplier shall provide all labour for the unloading of Goods.
- 7.4. Delivery notes shall accompany every delivery and shall include the following information, Order number, item number, where specified in the Order, volume or quantity and, number of bags, cartons, or other containers.
- 7.5. The Purchaser shall be entitled to cancel any Order to the extent that delivery of the Goods has not yet been effected and in such event the Purchaser shall not be liable for the price of the undelivered Goods or for any direct or consequential loss or damages suffered by the Supplier in consequence of such cancellation.

## **8. OWNERSHIP AND RISK**

- 8.1. Title to all or any part of the Goods shall pass to the Purchaser on the earlier of (i) payment for such Goods or part thereof; and (ii) delivery of such Goods in accordance with clause 7. Where title to all or any part of the Goods has passed to the Purchaser but the Goods remain in possession of the Supplier, the Supplier shall clearly label the Goods as the property of the Purchaser and store the Goods separately from all other goods.
- 8.2. Risk in the Goods shall remain with the Supplier until such time as the Goods have been received by the Purchaser and signed for on behalf of the Purchaser.

## **9. INSPECTION AND REJECTION**

- 9.1. The Supplier grants the Purchaser the right to inspect any Goods at any time prior to delivery at Supplier's premises or elsewhere. Inspection by the Purchaser of any Goods shall not relieve the Supplier of responsibility or liability for those Goods and shall not imply acceptance thereof. The Purchaser shall be entitled to waive such right of inspection prior to delivery, without prejudice to its right to reject Goods after delivery.

- 9.2. Goods will be accepted at the place of delivery, only with regard to number and condition of packages, and notwithstanding any receipt that may have been given, the Goods shall remain liable to rejection if not in accordance with the Order.
- 9.3. Without prejudice to any other rights that the Purchaser may have, if the Supplier fails to deliver the Goods in accordance with the terms of the Order and by the specified date or the Purchaser rejects the Goods pursuant to Clause 9.1, then the Purchaser shall be entitled, at its option, to:
  - 9.3.1. require the Supplier to remove such Goods at the cost and expense of the Supplier, which Goods shall be held at the risk of the Supplier;
  - 9.3.2. require the Supplier to repair or replace the undelivered or rejected Goods, in either case free of charge and as expeditiously as reasonably practicable;
  - 9.3.3. obtain goods from a third party and be reimbursed by the Supplier for all additional reasonable costs and expenses thereby incurred; and/or
  - 9.3.4. terminate the Order forthwith and refuse to accept any further consignment of Goods under the Order.
- 9.4. The Supplier shall on demand refund the Purchaser the purchase price, if paid, and all other costs and disbursements incurred by the Purchaser in respect of or as a result of the Goods being refused or rejected.
- 9.5. The Supplier shall be liable for all damages suffered by the Purchaser as a result of defective or delayed delivery or resulting from the Goods not complying with the Specifications.

## 10. WARRANTIES

- 10.1. The Supplier warrants that the Goods and any parts or materials used in the performance of any work or services related to the Goods shall:
  - 10.1.1. be fit for the purpose, for which they have been manufactured and shall remain so under normal working conditions;
  - 10.1.2. conform to the Specifications;
  - 10.1.3. be new and unused, of sound materials and workmanship and free from any defects;
  - 10.1.4. conform to all laws and regulations affecting the manufacture, sale, use packaging and labeling of the Goods, which are in force and effect on the date of delivery, and that each Good has attached or is accompanied by appropriate instructions, warnings and/or labeling in relation to transporting, storing, operating, using, consuming or disposing of the Goods.
- 10.2. In addition the Supplier shall:
  - 10.2.1. specify full details regarding the extent of immediate and long term potential hazards or dangers, including but not limited to, toxicity, flammability, harmful effect due to inhalation or direct contact or due to direct or indirect use thereof;
  - 10.2.2. furnish full details and specifications regarding the most appropriate safety precautions to be taken in respect of the Goods or the use and handling thereof;
  - 10.2.3. label all packages/receptacles containing the Goods in order to protect those who handle them or who are exposed to them.
- 10.3. The Supplier agrees to the assignment to any subsequent user or purchaser of any warranty or guarantee to which Afrox is entitled hereunder and the Supplier agrees to enter into such documents as may be necessary to achieve this.

## 11. INSURANCE AND INDEMNITY

- 11.1. The Supplier shall hold harmless and indemnify the Purchaser from and against any liability, loss, costs (including legal fees), expense, damage or injury in consequence of a defect in design, parts or materials or workmanship of Goods or any breach by the Supplier of the Order (including any late delivery of Goods) or any negligence, willful default or wrongful act or omission of the Supplier, its employees, sub-contractors or agents, save to the extent that such liability, loss, cost, expense, damage or injury is due to the negligence of the Purchaser.
- 11.2. The Supplier agrees to indemnify Afrox from any and all losses sustained by Afrox by reason of any third party claim for injury, death or other damage caused by breach of the above mentioned warranties or by defects in the Goods (including recall costs validly incurred by Afrox as a consequence of finding defective Goods).
- 11.3. Without limiting its responsibilities under these Conditions, the Supplier shall arrange and maintain, at its own cost, all necessary insurance, in particular insurance must be effected for public liability, and product liability. The Supplier shall produce evidence of these insurances upon request.
- 11.4. The Supplier shall at all times comply with the Compensation for Occupational Injuries and Diseases Act and The Unemployment Insurance Act as amended.

11.5. Neither party shall be liable for any consequential or indirect loss , harm or damage.

## **12. BREACH AND TERMINATION**

12.1. If in the opinion of the Purchaser the Supplier:

- 12.1.1. continually fails to execute the Order in accordance with the true meaning and intent thereof; or
- 12.1.2. is delaying unduly in executing it or is not carrying out the work at such a rate as will ensure delivery of the Goods by the Delivery Date; or
- 12.1.3. has committed or is committing a breach of any other provision of the Order, and if (the default being one which is capable of being remedied) the Supplier fails to remedy his default within 7 (seven) days of receipt of a notice in writing from the Purchaser calling upon him to do so; or
- 12.1.4. has contravened any of the Purchasers rules, regulations, Code of Conduct, or any other Regulations, laws or safety standards; or
- 12.1.5. has breached any warrantee; or
- 12.1.6. is placed in liquidation, under judicial management, or if the Supplier's estate is sequestrated, if the Supplier commits any act of insolvency, or if there is a change of control of the Supplier;

then the Purchaser shall be entitled, without prejudice to any other rights which may be available to it, to cancel the Order and to recover from the Supplier all losses and expenses incurred by it in consequence of such default, breach or failure including losses and expenses incurred as a result of the Purchaser having to make other arrangements for the execution of the Order or the supply of the Goods in question.

## **13. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 13.1. All intellectual property rights including patents, trade marks, service marks, design rights (whether registered or unregistered), copyright (including any future copyright) and any application for any of the foregoing, arising from work conducted or prepared by the Supplier for the Purchaser shall belong to the Purchaser.
- 13.2. Property in all goods and materials supplied to the Supplier by or on behalf of the Purchaser, or prepared manufactured or procured by the Supplier specifically for or in connection with the performance of the Order for the Purchaser shall belong to the Purchaser.
- 13.3. All information and documents provided to the Supplier by the Purchaser, or otherwise acquired by the Supplier relating to the Purchaser's business, or created or produced by or on behalf of the Supplier specifically for or in connection with the performance of the Order for the Purchaser shall be kept confidential by the Supplier and shall not be used or caused to be used by the Supplier other than for the purposes of the Order.
- 13.4. The provisions of clause 13.3 shall continue in force notwithstanding termination, however caused, or completion, of the Order. The provisions of clause 13.3 above shall not apply to any information or document in the public domain or coming into the public domain other than through the default of the Supplier.
- 13.5. The Supplier warrants that the sale, possession, resale or use of the Goods do not infringe any third party intellectual property rights and undertakes to indemnify and hold harmless the Purchaser ("the Indemnified Parties") against all royalties or license fees (to the extent not specifically provided for) and against all damages, expenses, losses or costs suffered by the Indemnified Parties or which the Indemnified Parties may be liable in respect of any breach of this warranty.
- 13.6. The Supplier shall make no reference to the Purchaser in its advertising, literature or correspondence without the Purchaser's prior written agreement. Nothing in this Order shall entitle the Supplier to use any name, trademark or logo of the Purchaser.

## **14. PRICE AND PAYMENT**

- 14.1. The price(s) for the Goods shall be specified in the Order. Prices shall remain fixed against upwards movements and shall not be subject to any increase or escalation whatsoever for the duration of the Order.
- 14.2. Unless otherwise stated in the Contract the price payable for the Goods shall be:
  - 14.2.1. exclusive of value added or other sales tax; and
  - 14.2.2. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods and all duties, licenses, permits and taxes (other than VAT) as may be payable in respect of Goods from time to time.
- 14.3. Unless otherwise agreed by the parties and specified in the Order, and subject to the Supplier carrying out all his obligations in terms of the Order, and provided that the Purchaser receives the original invoice before the 25<sup>th</sup> of the month, the Purchaser shall make payment to the Supplier at end of 3 months after invoice date. (eg if invoice is dated 15 January, payment will be at the end of April).

- 14.4. The Purchaser may withhold payments of any disputed or insufficiently documented amounts included in any invoice. The Purchaser is entitled to deduct from or set-off against any money due or which becomes due from the Purchaser to Supplier any sum(s) due to the Purchaser.
- 14.5. Any application for price adjustments must be made in writing to the Purchaser and shall be supported by such documentary evidence as may be required by the Purchaser. No price adjustments shall be effective until accepted in writing by the Purchaser and it shall be in the absolute discretion of the Purchaser to accept or reject any proposed price adjustment.
- 14.6. The official Order number and the Afrox VAT number must accompany all invoices, credit notes and statements. Invoices not reflecting an official order number or an incorrect number shall result in payment delays.

## **15. THE PURCHASER'S CODE OF CONDUCT FOR SUPPLIERS**

- 15.1. The Supplier acknowledges that the Purchaser has a Code of Conduct for Suppliers, covering areas such as health and safety, human rights and labour standards, legal compliance and integrity and environmental protection. Copies of the Code of Conduct for Suppliers may be viewed on [www.afrox.co.za](http://www.afrox.co.za) and are available from the Purchaser on request. The Purchaser expects the Supplier to maintain a consistently high standard of integrity in all its business relationships with the Purchaser and to foster the highest possible standards of professional competence in all its activities. To this end, in supplying Goods to the Purchaser, the Supplier agrees that it shall not knowingly take any action which violates the Code of Conduct for Suppliers. Further, no employee of the Purchaser is authorised to propose to the Supplier or approve conduct inconsistent with the Code of Conduct for Suppliers.
- 15.2. The Purchaser shall have the right to terminate its business relationship and any associated agreements with the Supplier if the Supplier is in material breach of the Code of Conduct for Suppliers and, in the case of breaches which are capable of remedy, the Supplier fails to remedy such breach, after written notification by the Purchaser of such breach.

## **16. LAWS, STANDARDS AND INSTRUCTIONS**

- 16.1. The Supplier, his agents, employees and contractors shall strictly comply with all rules, regulations, standards and instructions of whatever nature of the Purchaser applicable at the Purchaser's premises where the Goods are delivered or the work performed.
- 16.2. The Supplier shall comply with all other Laws and Regulations in place at the time, and the prevention of accidents, safety performance and adherence to sound and safe work standards and practices are essential requirements of this Order.
- 16.3. The Order and any supply in terms thereof shall be governed by the Law of South Africa and adjudicated in the relevant South African Court.

## **17. GENERAL**

- 17.1. No failure or delay on the part of the Purchaser to exercise any power, right or remedy under the Order shall operate as a waiver thereof nor shall any single or partial exercise by the Purchaser of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. No waiver by the Purchaser of any breach of any of the terms and conditions of the Order shall be construed as a waiver of any subsequent breach whether of the same or of any other term or condition hereof. No waiver by the Purchaser shall be validly made unless made in writing.
- 17.2. The Contract constitutes the entire agreement between the Purchaser and the Supplier relating to the sale and purchase of Goods. No amendment to or a variation of the Order shall be effective unless it is expressly agreed in writing by the Purchaser.
- 17.3. All correspondence by the Supplier relating to the Order shall be addressed to the person representing Afrox as stated on the Order under the space "for and on behalf of AFRICAN OXYGEN LIMITED". Should either party be prevented by a vis major from meeting its contractual obligations then the party affected thereby shall as soon as possible notify the other party of the circumstances constituting the vis major, and the period for which it anticipates such vis major will continue. The party thus affected will be excused from compliance with its obligations for the duration of the vis major. Should the vis major endure for a continuous period of longer than 30 days the party not relying thereon shall be entitled to terminate the Order, without payment to the other of any damages whatsoever.