

IMPALA BAFOKENG RESOURCES (PTY) LTD

PURCHASE TERMS AND CONDITIONS

IBR 18
SUPPLY AND DELIVERY ORDERS

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TERMS AND CONDITIONS OF PURCHASE

1.0 DEFINITIONS

The following expressions shall, unless the context otherwise requires, have the meanings hereby assigned to them:

- 1.1. **“Company” or “Employer”** means the Company named in the Order.
- 1.2. **“Company’s Components”** means any components, material or other tangible items supplied by the Company at the Company’s cost to the Contractor as “free issue”.
- 1.3. **“Contractor”** means the person who has undertaken to carry out the Order.
- 1.4. **“Delivery”** means delivery in compliance with the terms of the Order and on or before the due date at the point of delivery specified in the Order.
- 1.5. **“Due Date of Delivery”** means the date stipulated in the Order for delivery of the goods.
- 1.6. **“Engineer”** means the Engineering Manager of Impala Bafokeng Resources (Pty) Ltd., or any other Engineer appointed from time to time by the Company and notified in place of the Engineer designated.
- 1.7. **“Goods”** means whatever is purchased, and includes work to be done, in terms of the Order.
- 1.8. **“Manager Procurement”** means the Manager Procurement of Impala Bafokeng Resources (Pty) Ltd, or its nominated representative appointed from time to time by the Company and notified in writing to the Contractor.
- 1.9. **“Order”** means and includes the contents of the Order as amplified by these instructions and all documents attached to the Order. If there should be any conflict between any such documents, then the typewritten contents of the Order shall prevail.
- 1.10. **“Person”** includes incorporated or unincorporated bodies of persons, and the singular shall include the plural and vice versa.
- 1.11. **“Product”** means an item manufactured by the Contractor from the Company’s components and the Contractor’s material and includes any item partially manufactured.
- 1.12. **“Purchase Price”** means the price stated in the Order.
- 1.13. **“Impala Bafokeng”** means Impala Bafokeng Resources (Pty) Ltd acting on its own behalf for and on behalf of the Company.
- 1.14. **“Successful Tenderer”** means the person whose tender has been accepted by the Company and who on acceptance of the Order becomes the “Contractor”.

- 1.15. **“Successful Tenderer’s Material”** means any components, material, or other tangible items supplied by the Successful Tenderer at the Successful Tenderer’s cost.
- 1.16. **“Tenderer”** means the person who submits a tender in response to the Company’s Invitation to Tender.

2.0 CONTENT OF TENDER

- 2.1 The tender will include itemized net prices, specifications, and drawings, together with a proposed detailed programme for design, manufacture, and delivery.
- 2.2 The Tenderer should include suitable packing to withstand transit conditions to the site and multiple handling at the site within his ex-works price.
- 2.3 The separate sections where applicable forming the Order shall have the precedence as enumerated hereunder:
- 2.3.1 The Company’s Order
 - 2.3.2 Special Conditions of Contract
 - 2.3.3 General Conditions of Contract
 - 2.3.4 Drawings
 - 2.3.5 Technical Specifications
 - 2.3.6 Applicable Standard Specifications
 - 2.3.7 Pricing Schedule
 - 2.3.8 Information Supplied by the Contractor

3.0 CONTRACTOR’S DOCUMENTATION

- 3.1 Tenderers for the supply of items, having moving parts and/or requiring foundations should make provision within their pricing for such of the following as are relevant if they become the successful Tenderer. One transparency of their general arrangement drawing, details for maintenance purposes, power and utilities schematics, equipment outline loading and anchor bolt setting for civil design purposes, assembly/erection detail, and “as manufactured” drawings. Further, they should make provision for the supply of documentation comprising three (3) prints each of details, monthly progress reports, spare parts lists, maintenance instruction manuals, and operating instructions. All such documentation is to be certified as correct for end use.
- 3.2 Should the equipment being purchased require connecting to any other equipment: i.e., ducts, pipes, foundations, bases, etc., the Contractor shall, within fourteen (14) days of the date of the order, supply to the Company a general arrangement dimension drawing of the equipment being purchased to enable the Company to establish the necessary connections prior to equipment delivery. Failure on the part of the Contractor to supply the required drawings timeously will be considered a breach of contract and may result in the order being cancelled.

4.0 TERMS OF PAYMENT

4.1 Provided that invoices, together with full supporting documentation are submitted in triplicate and received not later than the 23rd day of the month, The standard terms of payment shall be:

4.2 Supply and delivery orders

4.2.1 Ninety percent (90%) of the Purchase Price is payable thirty (30) days after when the Company accepts that final delivery has been made and an approved invoice has been delivered.

4.2.2 A further ten percent (10%) of the Purchase Price not later than three (3) months from the date of payment under 4.2.1. Retention must be applied for in writing and be authorized by the Company for release.

5.0 INVOICING

5.1 To effect timely payment and to assist the Company's accounts payable staff with the verification process of ensuring that only valid tax invoices are processed original tax invoices for the supply of goods must be addressed and delivered to the Accounts Department clearly stating the following:

- The word 'Tax Invoice' to be reflected at the top of the document.
- The registered name, address, VAT number, and registration number of the Contractor
- The name and address of the Company
- A serial number of the invoice
- The date must be stipulated on the invoice.
- The order numbers.
- A description and quantity of the goods
- The amount paid for the goods.
- The amount of VAT and the VAT rate

5.2 Proforma invoices are not valid Tax Invoices.

5.3 All the above must appear clearly on the tax invoice as legal requirements stipulated by the Receiver of Revenue.

5.4 No changes are permitted to be made to tax invoices i.e., change of quantities or value on invoices.

5.5 Invoices must be supported by delivery notes endorsed by the relevant responsible person of the Company and/or other relevant supporting documentation.

5.6 Failure to comply with this instruction may result in no payment or delay in payment for which the Company will not be held responsible.

5.7 ENSURE that the “bill to party”, legal address, and VAT number are correct as follows:

IMPALA BAFOKENG RESOURCES
[Insert Business Area]

VAT Number: 4220204772

5.8 Once invoices have been approved, they will be processed in the project offices and forwarded to Impala Bafokeng Resources offices in Rustenburg for financial processing and payment.

6.0 TERMS AND CONDITIONS OF ORDER

The further terms and conditions which shall apply, when the Successful Tenderer becomes the Contractor, are:

6.1 Assignment

The Contractor shall not assign or make over the Order or any part thereof, or any share or interest therein, or entrust the performance of any work relating thereto, to any other person without the prior written consent of the Company which may be refused without any reason being assigned, therefore.

6.2 Discrepancies in Documentation

Should there appear to be any discordance or want of agreement in description, dimension, or quantities in the Order, the matter shall be referred by the Contractor to the Company for decision before proceeding to execute the Order or the part thereof in respect of which the said discordance or want of agreement appears to exist.

6.3 Concessions or Waiver of Actions

Any extension, concession, waiver, or relaxation of any action in the conditions of order given by either party is strictly construed as related to only the matter in respect of which it is given.

6.4 Delivery Delay Penalties

6.4.1 Should the goods or any portion thereof not be delivered on or before the due date specified in the Order, the Company shall be at liberty, without prejudice to any other remedy for breach of contract, to determine the Order either wholly or to the extent of such default.

6.4.2 The Company shall be at liberty to purchase other goods of the same or similar description or order goods to be manufactured as deemed fit, to make good (i) such default, (ii) in the event of this order being wholly determined, the balance of the goods remaining to be delivered thereunder.

6.4.3 Any excess of the Purchase Price appropriate to such default or balance shall be recoverable from the Contractor by the Company in addition to any damages due to late delivery.

6.4.4 The liability imposed upon the Contractor under this clause shall be deemed to be in addition to and not in substitution of any other liability which the Contractor may incur under these conditions.

6.5 Risk

Goods will be accepted at the place of delivery only as regards 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. Rejected Goods will be held at the risk and expense of the Contractor, who, before such Goods are released, shall refund the Purchase Price and all charges incurred by the Company in respect of such Goods. Rejected Goods shall, if required by the Company, be replaced by the Contractor immediately upon receipt of notification of rejection. Should the Contractor fail immediately to replace the Goods the Company shall be entitled to the remedy set out in clause 6.4.

6.6 Packing

In the absence of any special agreement to the contrary packing cases and packing materials shall be deemed to be included in the Purchase Price and shall remain the property of the Company. Packing and covering to ensure the safe transport and delivery of the Goods shall be as is customary in the trade, the Contractor being responsible for packing the Goods in such a manner as to ensure freedom from loss or injury in transit due to faulty packing. The Company shall be entitled to recover from the Contractor any loss or damage which he has suffered arising from failure to comply with this clause.

6.7 Law to Apply

The Order shall in all respects be construed in accordance with the Law of the Republic of South Africa, and any difference that may arise between the Company and the Contractor in regard to the Order shall be settled in the Republic of South Africa, and both parties submit to the tribunal of Arbitration. The Arbitration procedure shall be in terms of the Arbitration Foundation of Southern Africa (AFSA) conducted in the language of English. The place where Arbitration is to be held is Johannesburg, Republic of South Africa.

6.8 Regulations to Apply

6.8.1 The Contractor shall, in the execution of the Order, comply with all relevant statutes, bye-laws and regulations, especially the Minerals Act No 50 of 1991 read together with the Mines Health and Safety Act No 29 of 1996 and the Occupational Health and Safety Act No 85 of 1993, including all amendments and re-enactments thereof and other provisions having the force of law and shall ensure that the machinery plant, equipment apparatus, materials or services to be supplied comply therewith and with any local and domestic regulations.

6.8.2 If after the date of the Contractor's tender, there shall be enacted or promulgated any statute, bye-law, regulation, or other provision having the force of law and if compliance therewith shall unavoidably cause a change in the cost to the Contractor in performing any part of the Order which would not otherwise have

occurred, and for which no provision is made in the Purchase Price, then the Purchase Price shall be increased or decreased by the amount of such a change in cost.

6.8.3 Notwithstanding anything contained in this clause, all taxes, etc. assessed on the Contractor which are not directly related to the machinery, plant, equipment, apparatus, materials, or services, and all taxes, withholdings, or the like on or calculated by reference to the Contractor's profits shall be for the Contractor's account.

6.9 Loss and Damage to Goods

All responsibility for any loss or damage to the Goods whether direct or indirect from whatsoever cause arising and whether or not in contemplation of the Contractor shall be with the Contractor until full and complete delivery in terms of the Order shall have been made by the Contractor.

6.10 Contractor's Liability

The Contractor shall be liable for and hereby indemnifies the Company against all claims, demands, proceedings, damages, costs, charges, and expenses arising in consequence of death or injury to any person, or damage to property happening due to or in the course of, or caused by the execution of this Order, unless and to the extent that such claims, demands, proceedings, damages, costs, charges and expenses are due to any act or neglect of the Company, their servants or agents (not being the Contractor's servants, agents or sub-contractors).

6.11 Terms and Conditions to apply

Impala Bafokeng Resources (Pty) Ltd Terms and Conditions shall apply. Impala Bafokeng Resources (Pty) Ltd does not accept or acknowledge any other terms, conditions, or agreements unless such have been agreed in writing and incorporated in the Order.

6.12 Marking of Documents and Packages

All documents, cases, crates, packages, etc., must be clearly marked or labelled with the Order Number and gross/net mass.

6.13 Guarantees and Warranties

The Contractor warrants and guarantees that he will provide materials and workmanship of the highest standards prevailing in the Contractor's type of business in every aspect and in accordance with the Order. The goods shall be described and equal in all respects to the specifications, patterns, samples, and drawings specified in the Order and in all documents attached to the Order. Should there be no such description or pattern or sample, the goods shall be to the standards stated above and be the best of their respective kinds and to the satisfaction of the Company.

6.14 Warranty Period

- 6.14.1 For a period of twelve (12) months after the Goods have been commissioned and taken into service by the Company, the Contractor will be responsible, as provided in this clause, for any defects in the equipment, material, and workmanship that may develop under normal and proper working conditions. The Contractor shall remedy such defects at his own cost when called upon to do so by the Company.
- 6.14.2 Should it become necessary for the Contractor to replace or renew any defective portions of the Goods in terms of this clause, the provisions of this clause shall apply to the portions of the Goods so replaced or renewed until the expiration of twelve (12) months from the date on which such replaced or renewed portions have been taken into service by the Company.
- 6.14.3 The Contractor shall respond to and initiate the necessary corrective action arising from all reports concerning defects within twenty-four (24) hours of receipt of the report.
- 6.14.4 Should the Contractor not respond within twenty-four (24) hours to any reports concerning defects or fail to take immediate effective steps to keep the Company's plant in operation, the Company shall thereupon have the right to proceed immediately and take such action as he deems to be advisable, at the Contractor's risk and expense.

6.15 Ownership of the Company's Components

The Successful Tenderer shall at no time become the owner of the Company's components and accordingly:

- 6.15.1 Prior to the accession thereof to the Successful Tenderer's material, the Company shall at all times be and remain the owner of the Company's components.
- 6.15.2 Immediately on accession of the Company's components to the Successful Tenderer's material, the Company shall be deemed to be the owner of the resultant product whether such product has been completed or not. The Company shall accordingly be entitled to demand and obtain delivery of the product against payment to the Successful Tenderer of the product's purchase price or such part thereof to which the Successful Tenderer may be entitled by virtue of the Successful Tenderer's material and labour.

7.0 DEMURRAGE AND RELATED CHARGES

Unless otherwise provided in the Order all charges at sending stations, such as weighing, loading, storage and demurrage must be borne by the Contractor.

8.0 SAMPLES

In the event of any samples required by the Company not being claimed within a period of one (1) month from the date of submission, the Company shall not be liable for payment of the cost of any such samples.

9.0 BREACH OF ORDER CONDITIONS

Should the Contractor commit any breach of the terms of this Order or go into liquidation or be placed under judicial management or become insolvent, the Company shall be entitled to cancel the Order, in which event the Company shall, *inter alia*, be entitled to the remedies in law and the Contractor shall be liable to pay the Company all damages, direct or indirect, which the Company may suffer due to the Order not being carried out. Any amount that may have been set aside by way of retention against eventual delivery shall be retained by the Company and set off against any such damages when determined.

10.0 CANCELLATION

Should the Company temporarily suspend work on or cancel the Order, the Company and the Contractor shall agree upon any payments to be made to the Contractor for the work carried out before the event causing cancellation or suspension and, failing agreement, that amount shall be determined by arbitration in accordance with the South African Arbitration Act No 42 of 1965, and the award arbitrator, arbitrators or umpire appointed in terms of the said Act shall be final and binding on the parties.

11.0 ACKNOWLEDGEMENT OF ORDER

These terms and conditions are automatically accepted by the Contractor should a statement to the contrary not be received within fourteen (14) days of the Order dispatch date. The Contractor's attention is drawn to the acknowledgement of the Order annexure enclosed with the Order which must be returned to the Company.

12.0 INSPECTION AND EXPEDITING

All work covered by the Order is subject to or liable to inspection and expediting by the Company's representative during the course of manufacture or on completion.

13.0 FOREIGN EXCHANGE FORWARD COVER

Any liability on the part of the Company for variation in foreign exchange rates is excluded. This risk is for the Contractor's account and must be carried or covered by a forward exchange contract unless otherwise stated in the Order.

14.0 INFRINGEMENT OF PATENT, REGISTERED DESIGN OR COPYRIGHT

14.1 The Contractor shall hold the Company harmless and undertake that it will keep the Company indemnified and held harmless against:

14.1.1 Any actions, claims, or proceedings which may be instituted or made by any third party for infringement or alleged infringement of any patent, registered design, or copyright, in any way arising out of or attributable to the execution or proposed execution of this Order or the subsequent use or proposed use by the Company of the equipment, materials, processes, works or other goods supplied, commissioned or erected, or to be supplied, commissioned or erected.

14.1.2 All or any liability, damages, losses, expenses, or costs (including costs as between attorney and client) incurred or suffered by the Company before or after completion of the Order in relation to or resulting from the aforementioned actions, claims, or proceedings or infringement or alleged infringement of patent, registered design, or copyright.

14.2 The Contractor shall have the right, to avoid such actions, claims, or proceedings, and in all cases at its own expense, to substitute non-infringing equipment, materials, or processes, to modify such infringing equipment, materials, or processes, or to obtain the necessary licenses to use the infringing equipment, materials or processes; provided that such substitutions or modifications satisfy all criteria of the contract and remain subject to all provisions of the contract, and provided further that the Company's written consent shall be first hand and obtained, which consent shall not be unreasonably withheld.

15.0 INSURANCE

15.1 Insurance Effected by the Company

15.1.1 The Contractor's attention is drawn to the Company Insurance Policy statement which is available on request. Notwithstanding anything elsewhere contained in the Order and without limiting the obligations, liabilities, or responsibilities of the Contractor in any way whatsoever (including but not limited to the requirement of the provision by the Contractor of any other insurances) the Company shall effect and maintain, subject to the terms, limits, exceptions and conditions of the policy, for the duration of the order from commencement until the expiry of the warranty period in terms of the contract terms and conditions.

- a. Contract Works Insurance
- b. Public Liability Insurance

15.1.2 The Company will pay all premiums in connection with the insurance effected by the Company.

15.1.3 The Contractor may affect at his own cost any insurance additional to that effected by the Company which he deems necessary in his own interests. The Company reserves the right to call for full information regarding insurance costs included by the Contractor.

15.1.4 The Contractor will be liable for the Deductible (First Amount Payable) in respect of each claim made by or against the Contractor or his Sub-contractors in terms of the policies effected by the Company in accordance with his responsibilities in terms of the Order.

15.1.5 Where more than one Contractor is involved in the same claim the Deductible will be borne in pro-rata amounts by each Contractor in proportion to the extent of each Contractor's liability, as determined by the Company.

15.2 Amount payable as a result of a claim to be paid to the Company

Any amount which becomes payable to the Contractor or any of his Sub-contractors as a result of a claim under the Contract Works Insurance shall, if required by the Company, be paid net of the Deductible to the Company, who shall pay the Contractor from the proceeds of such payment upon rectification, repair, or reinstatement of the loss or damage. This provision shall not in any way affect the Contractor's obligations, liabilities, or responsibilities in terms of the Order.

15.3 Insurance to be Arranged by the Contractor

The Contractor and all Sub-contractors shall provide AS A MINIMUM, the following:

- a. Insurance in terms of the provision of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.
- b. Insurance in terms of the provisions of the Unemployment Insurance Act of 1966 as amended.
- c. Employers Liability Insurance with a limit of indemnity of not less than R5,000,000 unless a lesser limit is agreed.
- d. Motor Vehicle Liability Insurance comprising "Balance of Third Party" Risks including passenger liability indemnity with a limit of indemnity not less than R5,000,000 for all owned, non-owned, leased and hired vehicles.
- e. All Risks insurance in respect of Contractor's Equipment being all constructional Plant including mobile cranes and allied equipment, site huts and temporary accommodation, his own or whether leased, hired, loaned, or lent (except for those intended for incorporation into the Works) for its full replacement value from commencement of loading and whilst in transit to the site, and thereafter the final removal from the Site. The Company shall be included as a joint insured on such policies.
- f. Where the order involves manufacturing and/or fabrication of the Works or part thereof at premises other than the site, the Contractor shall satisfy the Company that all materials and equipment for incorporation in the Works are adequately insured during manufacture and/or fabrication. Because the Company has an insurable interest in such Works during manufacture and/or fabrication, the Company shall be noted as a joint insured on the Contractor's Policies of Insurance.
- g. Imported equipment or component parts or materials to be supplied in terms of the Order which require any process of assembly or finishing in South Africa prior to delivery to the Site are to be insured by the Contractor up to the commencement of transit to site of the assembled or finished equipment component parts or materials unless special arrangements are made with the Company.

16.0 SUBMISSION OF FORMAL NOTICES

- 16.1 Copies of all formal notices pertaining to claims and/or disputes as sent to the Company for additional time and/or additional compensation, shall **simultaneously** be sent to the Procurement Manager.
- 16.2 The Procurement Manager shall at all times be fully advised on all matters associated with the proper contractual and financial control of the Order.
- 16.3 Non-compliance with the above requirements shall render claims for additional compensation null and void.