

SHRA PURCHASE ORDER TERMS AND CONDITIONS

By accepting a Purchase Order, the Service Provider agrees to the following terms and conditions:

1. DEFINITIONS

All defined terms used in the Purchase Order have the following meaning unless the contrary appears:

- a. **Day** means calendar day.
- b. **Delivery** means delivery in compliance of the conditions of the purchase order.
- c. **Goods** mean all of the equipment, machinery, and/or other materials that the supplier (Service Provider) is required to supply to the purchaser (SHRA) under the contract.
- d. **Services** means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- e. **Service Provider** means the party identified as the Service Provider specified in the Purchase Order, the main agreement (if any) and these terms and conditions.
- f. **Price** means the price (including VAT) specified in the SHRA's Purchase Order form for the goods described in the form.
- g. **Purchase Order** means (in order of priority):
 - i. The SHRA's Purchase Order form for the Goods described in the form;
 - ii. These terms and conditions; and
 - iii. Any specifications, drawings and other documents referred to or attached to the Purchase Order.
- h. **SHRA** means:
 - i. a party identified as the SHRA in the Purchase Order, the main agreement (if any) and these terms and conditions and/or
 - ii. The Social Housing Regulatory Authority established in terms of section 7 of the Social Housing Act 16 of 2008.
- i. **Representative** means a representative of the SHRA, or a representative of the Service Provider, designated for the purpose of resolving any Dispute under clause 20;

2. SERVICE PROVIDER DUTIES

- a. The Service Provider must supply the goods/services to the SHRA in accordance with the Purchase Order.
- b. In supplying the goods/service, the Service Provider must:

- i. Use a high degree of skill, care and diligence;
- ii. Make all reasonable enquiries to ascertain the Purchaser's and/or SHRA's requirements;
- iii. Work in accordance with any directions, instructions, schedules or budgets provided by the SHRA;
- iv. Keep confidential any information disclosed by the SHRA or of which the Service Provider becomes aware relating to the goods or the project for which the goods are to be used; and
- v. Ensure the goods comply with any applicable standards and laws.

3. ENTIRE AGREEMENT

- a. The Purchase Order and the main agreement will become binding between the parties upon either party's acknowledgment and/or acceptance of the Purchase Order and/or commencing performance of the Purchase Order, whichever occurs first.
- b. The SHRA's Purchase Order document, together with the main agreement and these terms and conditions, constitute the entire agreement between the parties, and all prior negotiations, proposals, and writings pertaining to the Purchase Order or the subject matter of the Purchase Order are superseded.
- c. The Service Provider's terms and conditions will not apply to the supply of goods/services to the SHRA.

4. CORRESPONDENCE AND DOCUMENTS

- a. The purchase order number shown on the face of the Purchase Order must be shown on all documentation relating to the goods/ services procured.
- b. All documentation must be sent to the Purchaser specified in the Purchase Order document.

5. INVOICES AND PAYMENT

- a. The Service Provider must issue a valid tax invoice for the supply of goods/services to the SHRA.
- b. The SHRA must make payment of all such valid tax invoice(s) in accordance with the provisions of the said Purchase Order.
- c. The SHRA will not be required to pay for any goods/services not delivered in accordance with the Purchase Order.
- d. Unless the Purchase Order provides otherwise, the price is inclusive of VAT (Value Added Tax), all charges for packaging, packing, insurance and delivery of the goods.
- e. If the Service Provider is late in providing its invoices or supporting documentation thereon, for the supply of goods/services to the satisfaction of the SHRA or if the invoices

and packing/delivery lists do not reconcile in all respects, the SHRA may withhold payment without penalty or loss of discount, if any.

- f. Unless otherwise specified in a Purchase Order, Payment for goods/services will be made within 30 days from the date of receipt of a correctly rendered invoice.

6. TITLE

The Service Provider warrants that full title will be given to the SHRA for all goods/services supplied by the Service Provider in performance of the Purchase Order, free and clear of any and all liens, restrictions, reservations, security interests, charges and/or encumbrances.

7. DELIVERY OF PROPERTY AND PASSING RISK

- a. The risk in any goods/ services or part of the goods/services will pass to the SHRA upon delivery to the specified delivery point.
- b. Goods which remain in the possession of the Service Provider after payment will be at the risk of the Service Provider (or the Service Provider's vendors).
- c. Risk will pass to the SHRA upon receipt of such goods at the specified delivery point.

8. QUALITY ASSURANCE

- a. Where the SHRA requires any aspect of the goods/services to be designed, manufactured, tested, installed, or delivered to a specific standard, the Service Provider must provide such information to the SHRA as in order to verify compliance with the specified standard.
- b. The information must be provided on or before the date and time of delivery of the goods.

9. PACKAGING

The Service Provider must ensure all goods are properly packaged and protected so that they will reach the SHRA's and/or their ultimate destination without damage and in good working order.

10. ORDER MODIFICATIONS

- a. The SHRA reserves the right at any time to make changes to the Purchase Order or any part thereof.
- b. If such changes cause an increase or decrease in the Service Providers cost or an alteration in the delivery time, an equitable adjustment must be agreed upon in writing by the SHRA and the Service Provider.
- c. The Service Provider must not substitute any alternative goods without the prior written consent of the SHRA.

11. OWNERSHIP OF DRAWINGS AND OTHER TECHNICAL DOCUMENTATION

- a. Drawings, other technical documentation (as well as drawings prepared from such documentation) and all intellectual property therein supplied by the SHRA to the Service Provider, will be the exclusive property of the SHRA and must not be used, copied, or disclosed to a third party for any other purpose without the SHRA's prior written consent.
- b. The Service Provider is liable for, and must indemnify the SHRA for any loss suffered by the SHRA in consequence of failure to observe this clause.

12. INTELLECTUAL PROPERTY RIGHTS

- a. Without limiting Clause 13:
 - i. The Service Provider indemnifies the SHRA, and must keep the SHRA indemnified against any liabilities incurred or sustained by the SHRA to a third party resulting from any actual or alleged infringement of any patent, copyrights, trademark or proprietary rights of the third party arising out of or cause by the supply or use of the goods/services;
 - ii. Subject to paragraph (b) below, the SHRA will allow the Service Provider to conduct any litigation that may arise from a Claim and all negotiations for settlement of that Claim. However, the Service Provider must not make any settlement or consent to any judgement, order or verdict against the SHRA without the SHRA's prior written consent.
 - iii. The SHRA may, at the Service Providers expense, conduct its own defence of any litigation that arises from a Claim.
- b. If the goods are held in any legal proceedings to constitute infringement of any proprietary rights of a third party, the Service Provider must, at its own expense, either provide the SHRA the right to sell and use the goods; or replace or modify the same with equal but non-infringing goods; or if approved by the SHRA remove the goods and refund the purchase price and the transportation and installation costs of the goods.

13. WARRANTY

- a. The Service Provider warrants to the SHRA that all goods/services covered by the Purchase Order will:
 - i. Conform to the standards, specifications, drawing and other description supplied or adopted by the SHRA.
 - ii. Be new, fit for purpose and free from any defects, and of best material, design and workmanship; and
 - iii. Be sufficient for the purpose for which they are intended and capable of operating satisfactorily in the environment to which they are to be exposed including without limitation conditions of weather, locality, altitude and

operational conditions such as exposure to dust, corrosive chemicals and fluids and rough handling.

- b. At the request of the SHRA, the Service Provider must promptly, at no cost to the SHRA, either repair or replace (including prepayment of all packing and transportation costs) any goods which within one year after being placed in regular use, must, in normal use and service and under proper operations, fail to conform with the above warranties of the Service Provider or the requirements of the Purchase Order.
- c. If any goods repaired or replaced, or associated services performed, fail to conform with the above warranties of the Service Provider or the requirements of the Purchase Order within one year after the date of completion of repair, replacement or re-performance, the Service Provider must promptly, at the request of the SHRA and at no cost to the SHRA, repair, replace or perform any associated services in relation to the goods to rectify the defect or failure.
- d. If the Service Provider has been given a written notice by the SHRA to rectify any defect or failure in relation to the goods but has failed to take prompt and effective action to correct the defect or failure, the SHRA may rectify the defect or failure at its own cost and the Service Provider must indemnify the SHRA in relation to all such costs incurred by the SHRA.
- e. Nothing contained in the Purchase Order will be deemed to exclude, restrict or modify any condition, warranty, right or remedy which applies to the Purchase Order or is conferred upon the SHRA under any law, including without limitations, under the *Consumer Protection Act 68 of 2008* or equivalent legislation applicable in the Republic of South Africa.

14. INDEMNITY AND INSURANCE

- a. The Service Provider indemnifies the SHRA against any loss, damage, cost, expense suffered by, or liability for injuries (including death) to any person, and/or damage to and/or destruction of the property of any person, arising out of or in connection with:
 - i. Any acts or omissions of the Service Provider or its employees, contractors or agents, the goods supplied by the Service Provider pursuant to the Purchase Order, a breach of the Purchase Order by the Service Provider, or the use by any third party of the goods, whether suffered in contract or under any statute or the relevant legislation applicable, and
 - ii. Force majeure.
- b. The Service Provider must effect and maintain adequate insurance to cover its liability under this clause 13 arising out of or in connection with the supply of goods, including the following insurance:

- i. All risks property insurance for the goods and specialised plant and equipment used in relation to the supply of goods against the risk of loss, damage or destruction caused by insurable risks including theft, malicious damage, fire, lightning, storm and tempest for their full reinstatement or replacement value and including cover whilst the goods and specialised plant and equipment are in transit or, in temporary storage during the course of transit.
- c. The Service Provider must provide evidence of such insurance to the SHRA on request.

15. TERMINATION FOR DEFAULT

- a. In the event the Service Provider is bankrupt, makes a general assignment for the benefit of its creditors or being a company goes into liquidation (whether voluntary or otherwise), or if a Receiver is appointed on account of the Service Provider's insolvency, or any other act of insolvency occurs in relation to the Service Provider, or in the event that the Service Provider does not correct or, if immediate correction is not possible, commence and diligently continue action to correct, any default of the Service Provider to comply with any of the provisions or requirements of the Purchase Order within 14 days after being notified in writing of such default by the SHRA, the SHRA may, by written notice to the Service Provider, without prejudice to any other rights or remedies which the SHRA may have, terminate any further performance by the Service Provider of the Purchase Order.
- b. In the event of such termination, the SHRA may complete the performance of the Purchase Order by such means as the SHRA selects and the Service Provider will be responsible for any additional costs incurred by the SHRA in doing so.
- c. Any amounts due to the Service Provider for goods delivered by the Service Provider in full compliance with the terms of the Purchase Order prior to such termination will be subject to set-off against the SHRA's additional costs of completing the Purchase Order and other damages incurred by the SHRA as a result of the Service Provider's defaults.

16. CANCELLATION FOR CONVENIENCE

- a. The SHRA will have the right to cancel for its convenience, any further performance of all or any separable part of the Purchase Order at any time by written notice to the Service Provider.
- b. On the date of such cancellation stated in the notice, the Service Provider must discontinue all work pertaining to the Purchase Order, place no additional orders, and preserve and protect materials on hand purchased for or committed to the Purchase Order, work in progress, and completed work both in its own and in the Service Provider's plants pending the SHRA's instructions and must dispose of the same in accordance with the SHRA's instructions.

- c. The parties must promptly agree the amount of any payment to the Service Provider which is to be cancelled or amount to be refunded to the SHRA, based on that portion of the goods satisfactorily supplied to the date of cancellation plus reasonable and necessary expenses resulting from the cancellation as substantiated by documentation satisfactory to and verified by the SHRA, less amounts previously paid by the SHRA or entitled to be withheld by the SHRA under the terms of the Purchase Order, the Service Provider will not be entitled to any prospective damages because of cancellation.
- d. The amount paid by the SHRA under this clause will in no event exceed the amount specified in the Purchase Order as payable for the goods.

17. NOTIFICATION

- a. The Service Provider must, as soon as it becomes aware of any circumstances that would prevent it being able to fulfill its obligations under the Purchase Order, promptly notify the SHRA in writing and provide details in the notice of those circumstances and the impact on the Purchase Order. Upon receipt of the notice, the SHRA, at its sole discretion, may:
 - i. Cancel all or any part of the Purchase Order ,
 - ii. Vary the Purchase Order, at no cost to the SHRA to enable the Service Provider to fulfill the Purchase Order,
 - iii. Specify to the Service Provider a future date on which performance is to take place.

18. DELIVERY

All goods and/or Services covered by the Purchase Order must be supplied to the purchaser at:

- a. the purchaser's business address or any other address specified by the purchaser,
- b. by the delivery date and time specified by the purchaser

19. ASSIGNMENT AND SUBCONTRACTING

This Purchase Order must not be assigned by the Service Provider without the prior written consent of the SHRA. The Service Provider must not subcontract all or part of the goods/services without the SHRA's prior written consent.

20. RESERVATION OF RIGHTS

The making of or failure to make any inspection of or payment for the goods must in no way impair the SHRA's right to reject non-conforming or defective goods, or otherwise affect the Service Provider's obligations under the Purchase Order, nor constitute acceptance by the SHRA of the goods, notwithstanding the SHRA's opportunity to inspect the goods.

21. DISPUTE RESOLUTION

- a. Until the SHRA and the Service Provider have complied with this clause 20, neither of them may commence any action, bring any proceedings or seek any relief or remedy in a court, except for seeking interlocutory or equitable relief from a court in relation to a dispute arising out of or in connection with the Purchase Order (“**Dispute**”).
- b. Where any Dispute arises, either the SHRA or the Service Provider may give notice in writing of the Dispute (“**Dispute Notice**”) to the other party’s Representative setting out the material particulars of the Dispute. The Representatives must act in good faith to try to resolve the Dispute quickly.
- c. If the Dispute has not been resolved within 14 days of the date the Dispute Notice is given (or any longer period the Representative may agree), either party may refer the Dispute to mediation or arbitration. In default of such referral, or the parties cannot jointly agree whether to submit the Dispute to mediation or arbitration, within 20 days of the date the Dispute notice is given, the Dispute will be referred to arbitration.
- d. If the Dispute is submitted to mediation and the parties do not, within 14 days (or any longer period the parties agree) after the Dispute is submitted to mediation, agree on:
 - i. A mediator and the mediator’s compensation;
 - ii. The procedure for the mediation;
 - iii. The timetable of each step of the procedure; or
 - iv. The mediation will be conducted in accordance with the South African arbitration guidelines.
 - v. Guidelines in force at the time that the Dispute is referred.
- e. If the Dispute is referred to arbitration, the arbitration will be effected under the *Arbitration Act 42 of 1965 (as amended)* by a single arbitrator agreed upon between the parties to the Dispute or, if in default of agreement on the arbitrator within 10 days after such Dispute was referred to arbitration, then by a single arbitrator appointed in accordance with the *Arbitration Act 42 of 1965(as amended)*.
- f. The venue of the arbitration will be Johannesburg, South Africa or such other place as the parties to the Dispute agree to in writing.
- g. The decision of the arbitrator shall be final and binding on the parties without appeal so far as the law allows.
- h. Unless the Representatives have first attempted to resolve the Dispute by negotiation, the Parties may not commence mediation or arbitration or court proceedings relating to the Dispute.
- i. If a Dispute is not resolved within 30 days after the date the Dispute Notice is given or, where a party has submitted the dispute to mediation or arbitration, 60 days after the date the Dispute Notice is given (or any longer period the Parties agree), either Party who

has complied with this clause 20 may end this dispute resolution process and commence court proceedings in relation to the Dispute.

22. CONSENT TO JURISDICTION

Should any dispute arise, and such dispute cannot be resolved by mutual agreement or through the process outlined in clause 20 herein, then the parties hereby consent to the exclusive jurisdiction exclusive jurisdiction of the Johannesburg Magistrate's court or any other court with jurisdiction therein.

23. GOVERNING LAW

- a. Unless otherwise stated in the Purchase Order all matters arising out of or in connection with the Purchase Order will be governed by the laws of the Republic of South Africa.
- b. Both the Service Provider and SHRA agree to submit to the exclusive jurisdiction of the courts of the Republic of South Africa and the courts of appeal therefrom.