

# **STANDARD TERMS AND CONDITIONS OF PURCHASE**

## **1. DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Purchase Order.
- 1.2 "Buyer" means Continental Africa Power Supplies (Pty) Ltd
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable.
- 1.4 "Purchase Order" means the standard Buyer document which includes or is attached to a statement of work describing the goods and/or services to be provided by the Seller and which provides a maximum value payable by the Buyer to the Supplier. It may be a written or electronic document and may also include particular shipping instructions and/or other specifications required by the Buyer for the Materials.
- 1.5 "Supplier and Seller" means the organization or person who supplies goods and/or services to the Buyer.
- 1.6 "Supplier Personnel" means any employee or contractor supplied by the Supplier to provide services.
- 1.7 "Materials" means all the products and/or services to be supplied by the Seller under the Purchase Order.

## **2. GENERAL**

- 2.1 These Terms and Conditions shall apply to the supply of goods and/or services by the Supplier pursuant to one or more Purchase Order.
- 2.2 Where it is agreed that the Supplier shall supply goods and/or services, the goods and/or services to be supplied, the price payable and any other special terms agreed between the parties shall be set out in the Purchase Order. All Purchase Orders shall be subject to these Terms and Conditions
- 2.3 This offer shall become an "agreement" upon acceptance by Seller. Seller shall be deemed to have accepted this offer by commencement of performance called for in the Order, by delivery of the Materials to the Buyer, by written acceptance or confirmation of this Agreement, or by any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein. Buyer hereby expressly objects to and rejects any such additional or different provisions, and none of such provisions shall be deemed to be a part of this Agreement unless specifically agreed to in writing by the Buyer.
- 2.4 No changes or variations to these Terms and Conditions or any Purchase Order shall be effective unless agreed in writing between the parties.

### 3. SALE OF MATERIALS

- 3.1 Seller agrees to sell, transfer or deliver the Materials to the Buyer for the purchase price set forth in the Purchase Order, subject to all of the covenants, terms and conditions hereof.
- 3.2 Buyer agrees to purchase the Materials, subject to all of the covenants, terms and conditions hereof, and to pay the Seller the purchase price set forth in the Purchase Order. Typographical and other clerical errors in the Purchase Order are subject to correction. Buyer reserves the right at any time to modify the Purchase Order upon notice to the Seller. Upon such notice, Buyer and Seller shall negotiate an equitable adjustment in price and/or time of performance. Buyer shall have the right to stop all or part of the work under the Purchase Order or cancel any future delivery of any Materials upon notice to Seller.
- 3.3 Seller agrees to obtain from the Buyer a Purchase Order number for any and all purchase orders of goods and/or services. Seller further agrees it will clearly reference the Purchase Order number on all applicable invoice(s). Seller acknowledges that any invoice submitted to Buyer that does not clearly reference Buyer's corresponding purchase order number may be considered invalid by Buyer and may result in delayed payment.

### 4. PURCHASE PRICE AND TERMS OF PAYMENT

- 4.1 Materials shipped against this Agreement shall be invoiced at the price set forth in the Purchase Order.
- 4.2 The purchase price for the Materials shall include all taxes, customs duties, customs fees or other governmental charges due with respect to the Materials. Buyer shall, however, pay for any taxes that is statutorily required to pay. Seller shall provide Buyer with documentation satisfactory to Buyer that establishes Buyer's statutory liability to pay such taxes. If Seller fails to provide such documentation, Buyer shall not be obliged to pay any such taxes.
- 4.3 An invoice shall be produced by the Supplier to the Buyer in accordance with the terms set out in the Purchase Order. The Buyer shall pay for the goods and/or services at the end of the month following the month in which the goods and/or services are supplied or in which the invoice is received, whichever is the later. In no circumstances shall the time for payment be of the essence of the Agreement.
- 4.4 The Buyer shall not be responsible for any expenses, charges or price other than those set out in the Purchase Order.
- 4.5 If the parties agree that the Supplier is to provide goods and/or services or resources in addition to those specified in a Purchase Order, then such agreement will be reflected in a further Purchase Order, which will be deemed incorporated into this Agreement.
- 4.6 Once a Purchase order has been agreed by the Buyer the price for the goods and/or services shall be fixed.
- 4.7 Seller agrees that it will take no adverse action against Buyer for any invoices not paid resulting from Seller's failure to obtain or clearly reference purchase order numbers on the applicable invoices or accurately invoice Buyer.
- 4.8 All credit notes will be brought forward to the following invoice cycle.

### 5. SHIPMENT, DELIVERY AND ACCEPTANCE

- 5.1 Seller shall deliver the Materials to the place designated for shipment by Buyer in the Purchase Order. Seller shall follow any shipping instructions provided by Buyer and shall properly and carefully package Materials for shipment. Any loss or damage, whenever occurring, which results from the Seller's improper

packaging or crating shall be borne by Seller. Notwithstanding anything in the foregoing to the contrary, title and risk of loss of the Materials shall pass to Buyer only upon receipt of the same by Buyer, and any rightful rejection or revocation of any Materials by Buyer shall immediately shift the risk of loss of such Materials, wherever located, to Seller.

- 5.2 In the event of breach or non-delivery of products/services, with respect to the terms agreed, the Buyer reserves the right to cancel the purchase agreement.
- 5.3 Where the Buyer cancels the whole or part of the contract in accordance with Clause 5.2
- 5.3.1 All sums payable by the Buyer in relation to the whole or part of the contract cancelled shall cease to become payable.
- 5.3.2 All sums paid by the Buyer in relation to the whole or part of the contract cancelled shall be repaid by the Supplier immediately.
- 5.3.3 The Buyer shall be entitled to recover damages from the Supplier for any loss caused as a result of the Supplier's failure to deliver the goods and/or as a result of the cancellation of the whole or part of the contract.
- 5.4 All items shipped shall be properly identified with Buyer's purchase order number and any purchase order item number or other identification numbers shown.
- 5.5 Notwithstanding anything herein to the contrary, Buyer shall have a reasonable opportunity to inspect the Materials after the same have been delivered to Buyer's premises. Buyer shall not be deemed to have accepted any such Materials until the expiration of such reasonable time for inspection. The parties acknowledge and understand that Buyer may inspect any commercial lot of the Materials consisting of numerous units of the same product by inspecting only a reasonable sampling of such units and that Buyer may revoke acceptance of any other units of such commercial lot which Buyer at a later time discovers to be defective. Upon rejection or revocation of acceptance of any Materials, Seller promptly shall replace or correct, at Buyer's option, any unsatisfactory units at Seller's expense, including all shipping costs. Buyer's failure to inspect or reject Materials, or payment for Materials, shall not relieve Seller of any of its obligations hereunder or constitute a waiver of any of Buyer's rights hereunder.

## 6. WARRANTY PROVISIONS

- 6.1 The Seller warrants and guarantees that all goods and materials supplied under this Agreement shall be free from any defects, patent or latent, in material and workmanship, conform to and perform in accordance with the applicable specifications, drawings, samples and other requirements referred to in the Order and provided by the Seller, and, to the extent that detailed designs were not provided to the Buyer, will be free from design defects and in every aspect suitable for the purposes intended by the Buyer, as to which the Seller hereby acknowledges that it has had due notice. The approval by the Buyer of any designs provided by the Seller shall not relieve the Seller of its obligations under any provision contained in this Clause.
- 6.2 The Seller hereby warrants to the Buyer that the materials: shall be provided in a competent, professional manner in accordance with the highest standards and best practices of Seller's industry; shall be manufactured, produced, labeled, furnished and delivered to the Buyer in full and complete compliance with all applicable laws and regulations. Seller agrees to cooperate with any audit conducted by the Buyer or at the Buyer's direction to confirm that the Materials are being generated without reliance or child labor, slave labor or human trafficking. Furthermore, as requested by Buyer, Seller agrees to execute and provide any and all information, documents and certifications reasonably required by the Buyer pursuant to the above, and use due diligence protocols, standards and procedures in its supply chain as are necessary to comply with its obligations herein.

- 6.3 Seller shall give Buyer reasonable advance written notice of any production change related to the Materials, including but not limited to any change in manufacturing process, formulation, raw materials or production location. For any change that could affect performance of the Materials, Seller shall complete any reasonable qualifications processes of the Buyer and address Buyer's concerns about the change.
- 6.4 The Supplier's obligations under this Clause shall extend to any defects or non-conformity arising or manifesting itself within the manufacturers' warranty period from delivery.
- 6.5 Where there is a breach of warranty contained in this Clause by the Seller, the Buyer, without thereby waiving any rights or remedies otherwise provided by law and/or elsewhere in this Agreement, may require the seller to repair or replace the defective goods at the Seller's risk and expense or repay the price or part of the price relating to the defect to the Buyer.
- 6.6 Items repaired or replaced shall be subject to these Terms and Conditions in the same manner as those originally delivered under this Agreement. If the Seller refuses or fails promptly to repair or replace items when requested under this provision, the Buyer may itself, or through an agent or sub-contractor, or otherwise, repair or replace any item itself and the Seller agrees to reimburse the Buyer for any costs or expenses incurred.

## 7. DEFAULT

- 7.1 Seller shall be deemed to be in default hereunder if it violates any of the terms hereof or fails timely to perform any of its covenants, duties or obligations hereunder, or if it performs or fails to perform any other act, whether pursuant to this Agreement or otherwise, which gives Buyer reasonable grounds to feel insecure with respect to Seller's future performance hereunder.
- 7.2 Upon default by Seller hereunder, Buyer may exercise any or all of the following rights and remedies, in addition to such other rights and remedies as may be provided hereunder or under applicable law:
- (i) Reject or revoke acceptance of any or all of the Materials, whether or not such Materials are defective and whether or not the condition of delivery thereof otherwise relates to, pertains to, concerns or gives rise to such event of default; and/or
  - (ii) Terminate this Agreement without any obligation whatsoever with respect to Materials not yet delivered to Buyer at time of such termination. Buyer's decision to pursue any one such remedy shall not be deemed to be an election not to pursue any other remedy at the time or at any other time.

## 8. TITLE

- 8.1 The Seller warrants that it has good title to the goods and that it will transfer such title as it may have in the goods to the Buyer pursuant to Clause 8.2
- 8.2 Title in the goods will pass to the Buyer when the goods are unconditionally appropriated (by either party or by or with consent of either party) to this Agreement, or on delivery to the Buyer, whichever happens first.

## 9. RISK

- 9.1 The goods will be and shall remain at the Seller's risk until such time as they are delivered to the Buyer (or at his direction) and are found to be in accordance with the requirements of this Agreement. It shall be the duty of the Seller at all times to maintain a contract of insurance over the goods and, on request from the Buyer, to assign to the Buyer the benefits of the insurance.

## 10. INSPECTION OF GOODS

- 10.1 The Buyer shall inspect the goods upon delivery.
- 10.2 Where the goods are damaged the Buyer shall notify the Seller. The Buyer may reject the damaged goods and the following provisions shall apply:
- 10.2.1 the Seller shall collect the damaged goods from the Buyer at the Seller's expense.
  - 10.2.2 during the period between delivery of the goods to the Buyer and collection by the Seller, the Buyer shall not be liable for any loss or further damage caused to the damaged goods.
  - 10.2.3 all sums payable by the Buyer in relation to the damaged goods shall cease to become payable.
  - 10.2.4 all sums paid by the Buyer in relation to the damaged goods shall be repaid by the Seller immediately.
  - 10.2.5 the Buyer shall be entitled to claim damages from the Seller for any losses caused to the Buyer as a result of the goods being damaged.
- 10.3 Where there are shortages in the order the Buyer shall notify the Seller and the following provisions shall apply:
- 10.3.1 All sums payable by the Buyer in relation to the missing goods shall cease to become payable.
  - 10.3.2 All sums paid by the Buyer in relation to the missing goods shall be repaid, unless the order is fulfilled in reasonable time, by the Seller.
  - 10.3.3 The Buyer shall be entitled to claim damages from the Seller for any losses caused to the Buyer as a result of the shortages.
- 10.4 If the Buyer so requests, the Seller shall immediately replace damaged goods or supply goods which are missing at the Seller's expense or the Buyer shall be entitled to cancel, without notice, the whole or any unexecuted part of the order and the rights referred to in Clause 5.3 shall apply
- 10.5 Where there is an excess of goods in relation to the order the Buyer may reject the excess goods by notice in writing to the Seller and the following provisions shall apply:
- 10.5.1 The Seller shall collect the excess goods from the Buyer at the Seller's expense.
  - 10.5.2 During the period between delivery of the goods and collection by the Seller, the Buyer shall not be liable for any loss or damage caused to the excess goods.
  - 10.5.3 No sum shall be due to the Seller for the excess goods and in the event that sums are paid to the Seller for the excess goods, the Seller shall repay such sums to the Buyer immediately.
- 10.6 The Buyer may accept excess goods by notifying the Seller of such acceptance and the price of the excess goods shall be payable by the Buyer.
- 10.7 The Seller shall repair or replace free of charge, goods damaged or lost in transit upon receiving notice to that effect from the Buyer.
- 10.8 The Buyer's signature on any delivery note of the Seller is evidence of the number of packages received only and not evidence of the correct quantity of goods received or that the goods are in a good condition or of the correct quality.

## 11. SELLER'S OBLIGATIONS

- 11.1 The Seller warrants, represents and undertakes that:

- 11.1.1 All services performed under this Agreement shall be performed with all due skill and care, in a good and workmanlike manner and otherwise in line with best practice within its industry (“Best Industry Practice”)
  - 11.1.2 The Seller’s Personnel will possess the qualifications, professional competence and experience to carry out such services in accordance with Best Industry Practice.
  - 11.1.3 The service will not in any way infringe or violate any Intellectual Property Rights, trade secrets or rights in proprietary information, nor any contractual, employment or property rights, duties of non-disclosure or other rights of any third parties; and
  - 11.1.4 It has full capacity and authority to enter into this Agreement and that it has or will obtain prior to the commencement of the services, any necessary licenses, consents and permits required of it for the performance of the services.
- 11.2 The Seller shall provide the Buyer with such progress reports, evidence or other information concerning the services as may be requested by the Buyer from time to time
- 11.3 The Seller shall be responsible for maintaining such insurance policies in connection with the provision of the services as may be appropriate or as the Buyer may require from time to time
- 11.4 The Seller shall procure that the Seller Personnel take all reasonable steps to safeguard their own safety and the safety of any other person who may be affected by their actions, and the Seller agrees to indemnify and keep indemnified the Buyer from all and any liabilities, obligations, costs and expenses whatsoever arising from any loss, damage or injury caused to the Buyer or any third party by the Seller Personnel.

## 12. STATUS AND LIABILITIES

- 12.1 It is expressly understood that neither the Seller nor the Seller Personnel have the authority to act as agent for the Buyer or to contract on the Buyer’s behalf.
- 12.2 The Seller Personnel shall at no time be deemed to be employed or otherwise engaged by the Buyer.
- 12.3 The Seller shall be responsible for paying the Seller Personnel and for making any deductions required by law in respect of income tax and National Insurance contributions or similar contributions relating to provision of the services. The Seller agrees to indemnify the Buyer in respect of any claims that may be made by the relevant authorities against the Buyer in respect to tax demands or any similar contributions relating to the provision of the services by the Seller
- 12.4 The Seller shall, and shall procure that the Seller Personnel shall, comply with all applicable statutes, rules and regulations in providing the services, including all immigration and employment requirements imposed by any applicable jurisdiction, and the Seller shall indemnify and hold harmless the Buyer from damages arising out of any failure to do so.

## 13. TERMINATION

- 13.1 The Buyer may terminate this Agreement for any reason by providing 15 days prior written notice to the Seller.
- 13.2 The Buyer may terminate this Agreement with immediate effect by providing written notice to the Seller if:
- 13.2.1 The Seller or the Seller’s Personnel commit any material or persistent breach of this Agreement.
  - 13.2.2 The Seller fails to or refuses after written warning to procure that the Seller Personnel provide the services properly required of them in accordance with this Agreement.

- 13.2.3 The Seller ceases to carry on its business or substantially the whole of its business; or
- 13.2.4 The Seller is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

## 14. INDEMNIFICATION

- 14.1 Seller agrees to indemnify and hold Buyer harmless from and against any and all liabilities, costs, losses or expenses, including reasonable attorneys' fees, incurred or suffered by the Buyer as a result of or in connection with Seller's breach of any of its obligations hereunder.
- 14.2 Seller agrees to indemnify and hold Buyer harmless from and in respect of any damages, losses or expenses which the Buyer may suffer or incur (including reasonable attorney's fees) arising out of, relating to or concerning any claim, action or allegation that any of the Materials (or the use of same in an intended manner) infringes any patent or intellectual property rights claimed by any third party; provided that Buyer shall notify Seller in writing of any such claim, act or allegation promptly after learning of the same and shall assist and cooperate in the defense or settlement thereof. Such defense or settlement shall be at Seller's sole expense, and Seller shall pay all damages and costs finally awarded against Buyer as a result of any such suit or proceedings.

## 15. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Buyer, and the Seller shall do all that is reasonably necessary to ensure that such rights vest in the Buyer by the execution of appropriate instruments or the making of agreements with third parties.

## 16. FORCE MAJEURE

The Buyer shall not be liable for any delay or failure to perform any of its obligations under this Agreement if the delay or failure results from events or circumstances beyond its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, flood or industrial disputes, and the Buyer shall be entitled to a reasonable extension of its obligations.

## 17. RELATIONSHIP OF PARTIES

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in this Agreement shall be deemed to construe either of the parties as the agent of the other.

## 18. ASSIGNMENT

The Seller shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Buyer.

## 19. SEVERABILITY

If any provisions of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## 20. WAIVER

No failure by the Buyer to enforce any of these Terms and Conditions shall constitute a waiver of its rights hereunder.

## 21. NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given on the Purchase Order or such other address as such party may from time to time have communication to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

## 22. NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

## 23. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

## 24. GENERAL PROVISIONS

- 24.1 In order to assess Seller's performance under and the compliance with this Agreement, including but not limited to Seller's compliance with respect to pricing, specifications, warranties and certifications, Buyer and/or its designated representative(s) shall have the right upon reasonable notice to Seller to access and audit Seller's facilities, books, records, goods and services related to this Agreement and Materials. The costs of any such audit will be paid by Buyer, unless the audit reveals any nonconformance by the Seller, in which case Seller will promptly reimburse Buyer for the reasonable costs of the audit.
- 24.2 Seller shall furnish, at Seller's expense, all labor, materials, equipment, transportation, facilities and other items that are necessary to meet the Order requirements. Time is of the essence in Seller's performance. Seller must immediately notify Buyer whenever Seller has knowledge of an actual or potential delay to the timely performance of the Order. In the event of Seller's refusal or failure to meet the delivery date(s) specified in the Order, Buyer may, without limiting its other rights and remedies, direct expedited routing and charge the excess costs incurred thereby to Seller or cancel all or part of the Order.
- 24.3 This Agreement shall constitute the complete understandings and contract between Seller and Buyer with respect to the subject matter hereof and supersedes any prior written or oral understandings with regards thereto. No purported amendment, modification or waiver of any provision of the Agreement shall be binding on Buyer unless set forth in a written document signed by an authorized representative of the Buyer. Any waiver shall be limited to the circumstances or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of the Agreement between Seller and Buyer or if the same circumstances or even upon any recurrence thereof.
- 24.4 Seller may not assign or subcontract any of its obligations without Buyer's prior written consent. Seller is responsible for the performance or non-performance of any subcontractor and will indemnify, defend and hold harmless Buyer from and against all claims, actions, losses, damages, costs and expenses (including reasonable attorneys' fees) arising from any subcontractor's acts or omissions.



- 24.5 If any provision hereof is held to be unenforceable by the final order of any court of competent jurisdiction, such provision shall be severed here from and shall not affect the interpretation or enforceability of remaining provisions hereof.
- 24.6 Seller shall not advertise, publicly announce or provide to any other party information relating to the existence of this Agreement or use Buyer's name in any format for any promotion, publicly, marketing or advertising purpose, without Buyer's prior written consent. All information, drawings, material, goods, equipment, apparatus or documents disclosed or delivered to Seller by Buyer or arising from work or services done for Buyer, and also all knowledge of any business relationship between Seller and Buyer, shall be treated by Seller as confidential proprietary information of Buyer and shall not be disclosed or made available to others by Seller without prior written permission by an officer of the Buyer. Seller also agrees not to use any of such information, drawings, material, goods, equipment, apparatus or documents for the manufacturing or production of products or components for any other party or for Seller. Such obligation shall not apply to any information, material, goods, equipment or apparatus which Seller establishes (a) is already known to Seller at the time of its receipt from Buyer as shown by Seller's records, (b) is or subsequently becomes available and accessible to the public through no fault of Seller, or (c) is disclosed to Seller by a third party on a non-confidential basis.
- 24.7 The title to any tangible property, including but not limited to material, goods, equipment, apparatus, documents, and literary property (e.g., drawings, manuscripts, artwork, motion pictures, video programs, and computer software), provided to Seller by Buyer or produced by Seller in submitting a bid or estimate or in carrying out an Order for Buyer shall be vested in Buyer, and Seller agrees to return or deliver such tangible property to Buyer upon request. Seller hereby expressly assigns to Buyer all copyrights in and to any literary property produced by Seller for Buyer.
- 24.8 In the event the Agreement relates to consulting services, the Seller shall be considered a consultant and every work or idea created or acquired by or on behalf of the Seller for the Buyer (past and future) shall be considered a "work made for hire" on behalf of the Buyer. It is the intent of the parties that Buyer shall have unrestrictive ownership in and to all such works and to any derivative works, without further compensation of any kind to the Seller. To the extent that the law would fail to automatically vest in Buyer the full unrestrictive ownership of all such work under "work for hire" treatment or similar concepts, the Seller hereby assigns to Buyer the copyright and any and all other rights in and to every such work including any derivatives, and the Seller waives any claim of moral right that it may have in or in connection with such work.
- 24.9 Buyer and Seller acknowledge that they are each an independent party, and neither shall be deemed an agent or representative of the other or have authority to bind the other in any manner whatsoever.
- 24.10 During the term of this Agreement and one year following completion of final delivery of the Materials, Seller agrees that it will not, without Buyer's prior written consent, directly, or indirectly through third parties, employ, solicit, engage or retail the services of Buyer's employees or personnel.

## 25. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of Republic of South Africa and the parties hereby submit to the exclusive jurisdiction of the South African courts.

## TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

The headings to the clauses are for reference purposes only and shall not be used in the interpretation thereof. Unless otherwise indicated, words to which a meaning is ascribed in the body of this agreement shall bear that meaning wherever such words appear thereafter.

The laws of the Republic of South Africa shall apply to this Agreement.

### 2. DEFINITIONS

In these Terms and Conditions of Sale, unless inconsistent with or otherwise indicated by context,

- 2.1 “Seller” means Continental Africa Power Supplies (PTY) Ltd, Registration Number, 1999/011644/07, of Burnside Island Office Park, Continental Africa House, 410 Jan Smuts Avenue, Craighall Park.
- 2.2 “Buyer” means the person, firm, company or corporation by whom the order is given.
- 2.3 “Equipment” means the goods specified in the quote or tender.
- 2.4 “Quote” is synonymous to quotation or tender and means a formal statement of promise by the seller to supply the goods or services required by the buyer at specified prices and within a specified period.
- 2.5 “Tender” is synonymous to quotation or quote and means a formal statement of promise by the seller to supply the goods or services required by the buyer at specified prices and within a specified period.
- 2.6 “Price” means the amount specified by the seller in the quotation or tender.
- 2.7 “Order” is synonymous to contract and means the acceptance of a quote or tender by the buyer and constitutes an agreement binding on both parties.

- 2.8 “Site” means the place identified in the contract or order acknowledgement where the product or service is to be installed or provided.
- 2.9 “Agreement” means these standard terms and conditions of sale, the order, the quotation or tender and any other schedule referred to in the quotation or tender documents.

### 3. VALIDITY OF QUOTATION OR TENDER AND PRICE

- 3.1 The validity of the seller’s quotation or tender is open for acceptance within the period stated therein or when no period is stated within 30 days after its date.
- 3.2 Prices will be stated in the quotation or tender to be firm, subject to rate of exchange or subject to Contract Price Adjustment for delivery within the period of order completion. Details will be confirmed as per order acknowledgement or contract after placement of order.
- 3.3 If prices are subject to Rate of Exchange, the cost difference will be for the Buyers account as stipulated in the order acknowledgement or contract.
- 3.4 If prices are subject to Contract Price Adjustment, the cost difference will be for the Buyers account as stipulated in the order acknowledgement or contract.
- 3.5 The prices for goods sold outside of the borders of South Africa are exclusive of other taxes, insurance duties, levies or other like charges or as specified in the quotation or tender documents. Details of each order will be verified in the order acknowledgement.
- 3.6 If not otherwise stated in the quotation or tender document, prices are based on INCOTERMS 2010 for imported and exported goods and will be verified in each order acknowledgement or contract after order placement.

#### **4. VAT (VALUE ADDED TAX)**

VAT will be charged at a rate of 15% to all good sold. Details of whether prices include or exclude VAT will be based on prices quoted in the quotation or tender document. Details will be confirmed as per order acknowledgement or contract after placement of order.

#### **5. PAYMENT AND OWNERSHIP**

- 5.1 Payments shall be in the South African Rand or any other freely convertible currency as stated in the order acknowledgement or contract and shall be affected from date of statement.
- 5.2 The seller shall have the right to suspend the buyers account or any deliveries if any amount due by the buyer is unpaid and to report such buyer as non-creditworthy.
- 5.3 The seller shall have the right to charge interest on all overdue accounts. Interest on overdue accounts shall be charged at a rate that is 2% above the South African Reserve Bank's overdraft rate. Interest accrues from day to day; from the day the relevant invoice becomes due and payable up to and including the day the relevant invoice is paid in full. Any amount of interest, together with the outstanding purchase price is payable by the buyer on demand and further, the buyer expressly undertakes to pay all such interest. All legal fees in respect to the collection of overdue accounts will be charged to the Buyer
- 5.4 Payments shall not be withheld on account of minor defects or omissions which do not affect the functionality or use of the product or service. Payment shall be made in full without set-off, counterclaim or withholding of any kind.
- 5.5 Payments shall be made in cash immediately to the seller before the equipment is shipped unless the buyer has a credit facility with the seller, in which event payment shall be in accordance with the credit agreement or order acknowledgement.
- 5.6 Ownership of the equipment shall not pass on to the buyer until the full purchase price has been paid in full.

5.7 The buyer undertakes to keep the equipment in good condition and in a state of good repair and not to encumber or dispose of the equipment or permit the equipment to be encumbered or attached by operation of law, nor to remove the equipment or permit the removal thereof from the location, until the entire purchase price has been paid.

## 6. CASH HANDLING FEES

1.5% additional bank charges for cash deposits over ZAR 10,000.00 will be payable by the Buyer

## 7. CANCELLATION FEES

In the event of cancellation of contract or order, the terms and charges payable by the Buyer shall be:

Number of days after order placement	Compensation
0 – 30 days	30% cancellation fee
31 – 60 days	70% cancellation fee
61 – 90 days	100% cancellation fee

In the event of cancellation after 90 days, the Seller shall be compensated for any costs or loss incurred including but not limited to loss of Profit.

## 8. RETENTION AND PERFORMANCE OR SURETY BONDS

We have not allowed for any performance guarantee or retention costs and considerations, unless stipulated otherwise in the quotation or tender documents.

## 9. THE CONTRACT

9.1 All orders must be in writing and are accepted subject to these Terms and Conditions of Sale. No terms or conditions put forward by the Buyer and no representations, warranties, guarantees or other statements not contained in Seller's quotation / tender document or Acknowledgement of Order nor otherwise expressly agreed in writing by Seller shall be binding on Seller.

- 9.2 The Contract shall become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order form or upon the date of fulfilment of all conditions precedent stipulated in the Contract, whichever is the later (the "Effective Date"). If the details of the goods described in the Seller's quotation differ from those set out in the Acknowledgement of Order Form the latter shall apply.
- 9.3 No alteration or variation to the Contract shall apply unless agreed in writing by both parties. However, Seller reserves the right to effect minor modifications and/or improvements to the Goods before delivery provided that the performance of the Goods is not adversely affected and that neither the Contract Price nor the delivery date is affected.

## 10. FORCE MAJEURE

Force Majeure of any kind, unforeseeable production, traffic or shipping disturbances, acts of God, war, acts of terrorism, fire, floods, unforeseeable shortages of labor, utilities or raw materials and supplies strikes, lockouts, acts of government, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent production, shipment, acceptance or use of the goods, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails. Should the Seller's suppliers fail to supply him in whole or in part, the Seller shall not be under obligation to purchase from other sources. In such cases, the Seller shall have the right to distribute the available quantities among his customers while at the same time taking into account his captive requirements.

## 11. PASSING OF RISK AND TITLE

The product sold shall remain the property of the Seller until fully paid for, and the Buyer agrees to perform all acts which may be necessary to protect and ensure retention of title to such product by the Seller including but not limited to insure the goods.

## 12. INTELLECTUAL PROPERTY RIGHTS

The intellectual property rights held by the Seller, its affiliates and/or its licensors relating to Goods quoted or supplied by the Seller shall remain the absolute property of the Seller, its affiliates and its licensors. The Seller's designs and drawings shall not be reproduced or disclosed without the Seller's written consent. The Buyer will

not, without Seller's previous written consent, copy or allow others to copy any drawings or intellectual property, Goods or part thereof supplied by Seller.

### 13. DELIVERY AND PACKAGING

- 13.1 The seller shall endeavor to honor all delivery dates estimated, and such dates are indicated in good faith. The delivery date will be based on the buyer's approval of the technical documentation and drawing approval, if applicable. Late deliveries, however caused, shall not give rise to any claim for damages or consequential loss from any cause whatsoever.
- 13.2 In the case that the technical documents and drawing approval are outside of the agreed period of approval in the order acknowledgement or contract, the seller has the right to amend the delivery period.
- 13.3 The order is considered technically clarified after receipt of the buyer's approval of the drawings and technical documents.
- 13.4 Unless specified in the Buyers specifications, order acknowledgement or contract, the seller shall pack the system in accordance with the seller's standards. Any packing materials are non-returnable.
- 13.5 Risk in the equipment shall pass from the seller to the buyer upon the date when the equipment is delivered to the Buyers site or works as specified in the order acknowledgement or contract.
- 13.6 Each order will have a full delivery schedule included.

### 14. ACCEPTANCE

- 14.1 The Buyer shall not be entitled to refuse acceptance in case of a) defects which only insignificantly impair use of the respective works, b) minor deviations of the Work from the specification of the Work, c) defective installation or erection carried out by Supplier, or d) inappropriate foundation or particular external influences not explicitly assumed to have an impact on the Work.

- 14.2 If Work or any portion thereof is ready for delivery or performance and cannot be delivered or performed due to reasons beyond the seller control, acceptance shall be deemed to have taken place upon the seller notification to the Buyer of readiness for delivery or performance.

## 15. WARRANTIES AND GUARENTEES

- 15.1 The seller warrants, subject to the provisions of the contract, good title to and the unencumbered use of the goods, that the goods provided for in the order acknowledgement or contract conform with the technical documents and approved drawings and are free of defects in material and workmanship and that the services provided by the seller will be performed in accordance with good engineering practice.
- 15.2 The seller will at the seller's option repair or replace by the supply of replacement parts any defects which under proper use, care and maintenance which are reported to the seller within the contract warranty period and which arise solely from faulty materials or workmanship provided.
- 15.3 Notwithstanding above clauses, the seller shall not be liable for: any defects caused by reasonable wear and tear; materials or workmanship made, furnished or specified by the buyer; non-compliance with the seller's storage, installation, operation or environment requirements; lack of proper maintenance; any modification or repair not previously authorized by the seller in writing; nor for the use of non-authorized replacement parts.
- 15.4 The seller's costs incurred in investigating and rectifying such defects shall be paid by the buyer on demand.
- 15.5 The buyer shall at all times remain solely responsible for the adequacy and accuracy of all information supplied.

## 16. AFTER SALES SUPPORT

The seller shall provide the buyer with reasonable after sales support within the warranty period.

After the warranty period has expired the seller offers continued after sales support throughout the product life cycle through a separate agreement between the seller and the buyer



## 17. DEFAULT AND INSOLVENCY

The seller shall be entitled to recover from the buyer or the buyer's representative all costs and damaged incurred by the seller as a result of default or insolvency, including a reasonable allowance for overheads and profit (including but not limited to the loss of prospective profits and overheads).

## 18. LIMITATIONS OF LIABILITY

- 18.1 We are insured against risks that may occur. However, we cannot accept responsibility for consequential loss or damage of whatever nature you may suffer as a result of loss of use of property and capital (including loss of income) resulting from the failure of the works after takeover date or late delivery.
- 18.2 The seller shall be liable only for those damages arising under or in connection with this Agreement for which the seller has expressly assumed liability or for which liability is legal compulsory, such as in case of intent or gross negligence, but subject to a maximum limited of the contract value.
- 18.3 In no event shall the seller be liable for indirect or consequential damages, including loss of profits.
- 18.4 The Seller's liability in terms of any damages is limited as per our group insurance policies in place.

## 19. CONFIDENTIALITY

Buyer having received Documents, know-how data or information identified by the Seller as confidential (**hereinafter referred to as "confidential information"**) agrees not to reproduce or disclose Confidential Information to any third party, without Seller's prior written consent, and not to use Confidential Information for any purpose not authorized by Seller.