



**AECI Food & Beverage  
General Conditions for Purchase Orders**

## 1. DEFINITIONS AND PRECEDENCE

### 1.1. Definitions

In interpreting this Order the following words shall have the meanings herein assigned to them unless there is something in the subject matter or context inconsistent with such construction.

1.1.1. **"AECI"** shall mean AECI Limited (1924/002590/06) including its subsidiaries, a company incorporated according to the laws of the Republic of South Africa

1.1.2. **"Amendment"** shall mean any variation in relation to the Order agreed in writing between the Supplier and AECI, and **"Amend"** shall be interpreted accordingly;

1.1.3. **"Documentation"** shall mean and include all drawings and other pertinent documents which are to be supplied to AECI by the Supplier in terms of the Order;

1.1.4. **"Goods"** shall mean and include machinery, apparatus, materials, articles, equipment and things of all kinds to be supplied including all work to be done by the Supplier under the Order;

1.1.5. **"Order"** shall mean the purchase order between AECI and the Supplier for the supply of the Goods and or services;

1.1.6. **"Order Date"** shall mean the date specified in the Order document as the commencement date of the Order;

1.1.7. **"Order Price"** shall mean the sum named in or ascertainable in terms of the Order as the price to be paid, subject to any additions or deductions as may be made under the provisions contained in the Order;

1.1.8. **"Sub-order"** shall mean any agreement, made with the prior written consent of AECI, between the Supplier and a Sub-supplier, or between two Sub-suppliers, in terms of which any part of the Order is sub-let;

1.1.9. **"Sub-supplier"** shall mean any person to whom any part of the Order has been sub-let by the Supplier, or by another Sub-supplier, and the successors in title and assigns of such Sub-supplier;

1.1.10. **"Supplier"** shall mean the other party named in the Order and shall include Sub-suppliers as well as both the Supplier's and Sub-supplier's successors in title and assigns;

- 1.2. Words importing persons shall include firms and companies.
- 1.3. Words importing the singular only shall include the plural and vice versa.
- 1.4. Any approval, consent, agreement or permission required in terms of the Order shall not be withheld unreasonably, and any rights or discretions exercisable in terms of the Order shall be reasonably exercised, and any decisions or opinions made or formed shall be reasonably made or formed.
- 1.5. The various sections forming the Order shall be comparatively interpreted in accordance with the following order of precedence.

1.5.1. Any Special Conditions contained in the Order.

1.5.2. These General Conditions for Purchase Orders.

1.5.3. The specification, as read together with any AECI standard engineering specifications and standards and any drawings included in the Order.

1.6. Should any ambiguity, contradiction or error occur between such sections of the Order, the Supplier shall advise AECI in writing and request a ruling thereon prior to carrying out any services. The responsible person's ruling on any ambiguity or contradiction shall be final and binding on the parties. Any work performed by the Supplier prior to clarification by the responsible person shall be at the Supplier's risk.

## 2. DOCUMENTATION

The Supplier shall supply to AECI any Documentation which is stipulated in the Order as being required by it. Such Documentation shall be supplied by the Supplier at the time or times and in the form and manner detailed in the Order, or if not so detailed, then in accordance with the requirements of AECI. All Documentation shall be in the English language and S.I. system of measurement. All Documentation shall become and remain the property of AECI. Any review by AECI of any Documentation shall not relieve the Supplier from any of its obligations in terms of the Order and the Supplier shall remain responsible for any discrepancies, errors or omissions in any of the Documentation and any effect thereof on any Goods.

## 3. CESSION, ASSIGNMENT AND SUB-LETTING OF THE ORDER

The Supplier shall not, without the consent of AECI in writing, cede or assign the Order or any part thereof, or enter into any Sub-order other than for the supply or execution of minor items or for any Goods in respect of which a Sub-supplier is named in the Order. Any such consent shall not release the Supplier from its obligations under the Order.

## 4. INTELLECTUAL PROPERTY

The Supplier hereby indemnifies AECI against all actions, claims, demands, costs, charges and expenses arising from and against all loss or damage suffered or incurred by reason of any infringement or alleged infringement of patents, registered designs, trade-marks or copyright or by reason of any infringement or alleged infringement of any other rights of third parties, resulting from the use by the Supplier in the execution of the Order of any Goods or process. The rights and obligations contained herein shall survive the Order and shall continue in full force and effect indefinitely.

## 5. CONFIDENTIALITY AND DISCLOSURE

5.1. The Supplier shall keep and hold secret and confidential all information, whether written or oral, received or otherwise obtained by it in connection with the Goods or relating to AECI or its business, and shall not use such information other than for the purpose of this Order nor disclose such information to any other parties other than those involved in the execution of this Order, and then only to the extent required to enable such parties to perform their respective functions. The Supplier shall include this requirement in all Sub-orders.

5.2. The provisions contained in clause 5.1 shall not apply to information which is already known to the recipient with free right of disposal at the date of receipt, or which is already public knowledge at the date of receipt, or which becomes public knowledge thereafter otherwise than through default on the part of the recipient, its directors, officers or

employees, or which the recipient obtains from any third party with good legal title thereto and free right of disposal.

- 5.3. The rights and obligations contained in clause 5.1 shall survive the Order, and shall continue in full force and effect for a period of 5 (five) years from the Order Date. Any documents supplied to the Supplier by AECI for the purpose of the Order shall remain the property of AECI and shall be returned to AECI on delivery of the Goods.

## 6. AMENDMENTS

- 6.1. AECI may, from time to time during the execution of the Order, by notice in writing direct the Supplier to Amend the Order, and the Supplier shall carry out such Amendments and be bound by the same conditions as though the said Amendments were stated in the Order, provided that, if any such direction affects or is likely to affect the Order Price and/or the Supplier's obligations in terms of the Order, then such direction shall not be binding on the Supplier unless and until the Supplier and AECI have agreed upon a suitable Amendment to the Order.
- 6.2. Unless the Supplier advise AECI of any error or omission in such Amendment, within 3 (three) days of signature by AECI, it shall be deemed to have accepted same in its entirety.

## 7. THE SUPPLIER'S DEFAULT

Should the Supplier fail or neglect to carry out its obligations in terms of the Order, or refuse or neglect to comply with any reasonable orders given to it in writing by AECI in connection with the Order, or make a material breach of any of the provisions of the Order, AECI may give notice in writing to the Supplier to make good the failure, neglect, refusal or breach complained of. Should the Supplier fail to comply with the notice or to justify its actions, to the reasonable satisfaction of AECI, within 3 (three) days or within any shorter time that may be reasonable, AECI shall have the right to terminate the Order forthwith by giving written notice to the Supplier, and upon such termination the provisions of clause 9 shall become effective.

## 8. BUSINESS RESCUE PROCEEDINGS OR INSOLVENCY

Should the Supplier become insolvent or commit an act of insolvency or pass a resolution for winding-up, (not being a members' voluntary winding-up for the purpose of reconstruction or amalgamation), or be subject to a winding-up or provisional or final liquidation order of Court, or commence with business rescue proceedings either by court order or board resolution, AECI shall have the right:

- 8.1. to terminate the Order forthwith by notice in writing to the Supplier or to the liquidator or business rescue practitioner or to any person in whom the Order may become vested, whereupon the provisions of clause 9 shall become effective, or
- 8.2. to give such liquidator or business rescue practitioner or other person the option of carrying out the Order subject to him or her providing a suitable guarantee for performance of the Order.

## 9. TERMINATION

- 9.1. Effect of termination under clauses 7 or 8

In the event of termination of the Order by virtue of the provisions of clauses 7 or 8.1, the Supplier shall be liable for

any amount by which the costs and expenses incurred by AECI in completing the Order exceeds the amount which AECI would have paid to the Supplier to complete the Order. Any such excess amount shall be set off against all sums of money due and payable by AECI to the Supplier for all expenditure and liabilities properly incurred by the Supplier prior to termination.

- 9.2. Termination by AECI

AECI shall be entitled to terminate this Order forthwith at any time on written notice to the Supplier, provided that such termination is not caused by any one of the grounds specified in clauses 7, 8.1 or 22 hereof, AECI will be obliged to pay to the Supplier that portion of the Order Price attributed to work completed by the Supplier at the date of termination. The Supplier shall not be entitled to any further or other payment.

## 10. INSPECTION, TESTING AND REJECTION

- 10.1. AECI's representative/s shall be entitled, at AECI's cost, to inspect, examine and test on the Supplier's or other premises the materials and/or workmanship and/or performances of any Goods, and if any Goods are being manufactured on other premises. The Supplier shall obtain for AECI, any requisite permission for such representative/s to inspect, examine and test as if such Goods were being manufactured on the Supplier's premises. Such inspection, examination or testing, if made, shall be in addition to any inspection, examination or testing to be carried out by the Supplier in terms of the Order, and shall not release the Supplier from any obligation under the Order nor be interpreted to imply that any Goods are free of any patent or latent defects.
- 10.2. The Supplier shall give to AECI reasonable prior written notice of the date on which and the place at which any Goods will be ready for testing as provided in the Order. If after inspecting, examining or testing the Goods, AECI's representative/s decide/s that such Goods are defective or not in accordance with the Order, such Goods may be rejected by giving to the Supplier notice in writing, stating therein the grounds upon which the said decision is based.

## 11. DELIVERY AND OWNERSHIP

11.1. The Goods shall be delivered by the Supplier in accordance with the relevant provisions contained in the Order. The costs of such delivery to the point of delivery as stated in the Order, and the costs of all suitable containers, packing and crating are included in the Order Price. The Supplier shall give AECI reasonable prior written notice of its intention to deliver any Goods or any part thereof. Ownership in any Goods shall vest in AECI when delivered by the Supplier to the specified point of delivery.

## 12. MASS OF PRODUCTS, DAMAGED BAGS OR OTHER PACKAGING MATERIALS AND USE

12.1. In respect of orders dispatched from facilities with weighbridges, the Supplier guarantees the full mass of the goods as stated on the weighbridge certificate and AECI shall not be responsible for any loss of mass or volume of the goods due to causes arising from drying or evaporation thereafter.

12.2. The Supplier shall be liable for any loss of goods caused as a result of bags or other containers being damaged prior to passing of risk in terms of the relevant incoterm or provisions of PO.

12.3. The Supplier shall be liable for any loss of goods caused as a result of bags or other containers being damaged prior to passing of risk in terms of the relevant incoterm or provisions of PO.

12.4. Unless otherwise agreed to, in the event of dispute in respect to loss of mass or volume, the AECI weighbridge and inspection facilities results shall be used shall be used to settle said disputes.

## 13. EXTENSION OF TIME FOR DELIVERY

If by reason of any cause beyond the reasonable control of the Supplier, the Supplier is delayed or impeded in the delivery of any Goods, the Supplier shall request in writing an extension of the delivery date. AECI shall, on receipt of such notice, grant the Supplier from time to time in writing, either prospectively or retrospectively, such extension of the time fixed by the Order for delivery as may be reasonable.

## 14. DELAY IN DELIVERY

14.1. If it is stated in the Order that penalties will be payable by the Supplier for failure to deliver the Goods timeously, and such penalties become applicable, then AECI shall have the right to deduct the amount of such penalties from any monies due or becoming due to the Supplier.

14.2. If it is stated in the Order that time is of the essence for the delivery of the Goods, and the Supplier fails to deliver the Goods on the date for delivery stated in the Order, then such failure to deliver timeously shall be deemed to be a material breach of the Order and the provisions of clause 7 hereof shall apply.

## 15. GUARANTEES

15.1. The guarantee period shall commence when all the Goods have been delivered by the Supplier in terms of clause 11 hereof and shall, subject to the provisions of clause 14.2, terminate 18 (eighteen) months thereafter or 12 (twelve) months after installation and commissioning, whichever is the earlier. The Supplier shall be responsible for making good, by repair or at its option by the supply of a replacement, with all possible speed and at no cost to AECI any defect that may, under proper use by AECI, become apparent or develop in any of the Goods during the guarantee period.

15.2. If any defect is not remedied or any replacement is not carried out, as contemplated in clause 14.1, by the Supplier within a reasonable time, AECI may proceed to remedy the

defect or replace the defective Goods at the Supplier's risk and expense but without prejudice to any other rights which AECI may have against the Supplier in respect of the failure of the Supplier to carry out its obligations.

15.3. Without limiting or restraining the nature and scope of the foregoing and without derogating from any guarantees contained in law, the Supplier guarantees that the Goods will be free from fault and defects and that they will serve the purpose for which they are devised, with all of which the Supplier declares itself fully acquainted.

## 16. LIMITATION OF LIABILITY

Neither party shall be liable to the other party for any consequential or indirect losses of any nature whatsoever, which includes without limitation, loss of profits, loss of business revenue or failure to realise expected profits or savings.

## 17. PAYMENT TERMS

17.1. Unless otherwise stipulated in the Order, payment of the Order Price will be made by AECI to the Supplier within 32 (thirty two) days from the last day of the month in which the Supplier's correct and acceptable invoice is submitted, provided such an invoice is submitted before the 25th (twenty fifth) day of the said month, which invoice shall not be submitted prior to the complete delivery of the Goods. The Supplier shall submit an invoice and any necessary substantiating documents in respect of each and every amount which becomes due and payable to the Supplier in terms of the Order.

17.2. Should there be any delay on the part of the Supplier in completing its obligations in terms of the Order, or should there be any defect in the Goods, then AECI may withhold all or part of any payment to cover such delay or defect until the Supplier has completed its obligations in terms of the Order or rectified such defect

17.3. Irrespective of cause 17.1. AECI can at its discretion delay payments due in June and December to the first week of the proceeding month.

## 18. ARBITRATION

18.1. The parties shall use their best endeavours to amicably resolve all disputes arising between them.

18.2. In the event that the parties are unable to resolve a dispute within 7 (seven) days of receipt of formal notification thereof by a party, then such dispute shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by the Foundation. Such arbitration shall take place in Sandton, Gauteng, South Africa and be conducted in the English language. The governing law shall be the law of the Republic of South Africa.

18.3. It shall be regarded as a dispute for the purposes of this clause 17 if one party addresses any notice in terms of this Order or dealing with any matter related, directly or indirectly, to this Order which notice calls either for remedy of any breach or for a response to that notice and, after the lapse of time specified in this Order for remedy or response, (or, in the absence of any such specified time, a period of 7 (seven) days from the date of the receipt of the notice) the party which gave the notice alleges that no or inadequate remedy

has occurred or that no or in adequate response has been received.

18.4. Performance of the Order shall continue during arbitration proceedings unless the Engineer shall order the suspension thereof or of any part thereof. If any such suspension shall be ordered by the responsible person, the justification for such suspension shall form part of the arbitration proceedings and only if the arbitrator finds that the responsible person was justified in ordering such suspension, then the reasonable expenses of the Supplier occasioned by such suspension shall be added to the Order Price. No payments due or payable by AECl shall be withheld on account of a pending reference to arbitration.

18.5. This clause 17 shall not preclude either party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator or before arbitration proceeding are initiated.

#### 19. CONSTRUCTION OF ORDER

The Order shall in all respects be construed and operate as a South African agreement and in conformity with the law of the Republic of South Africa. The clause headings hereto shall not be used in interpreting the Order.

#### 20. PUBLICITY

No advertisement shall be displayed by the Supplier in connection with the Order without the prior written consent of AECl. The taking of photographs of any Goods without the prior written consent of AECl is expressly forbidden. No photographs, sketches, drawings, information, etc. regarding the Goods may be published in magazines or elsewhere without the prior written approval of AECl.

#### 21. TAXES, DUTIES AND PERMITS

21.1. AECl shall not be responsible for any income or other taxes levied by the Government of the Republic of South Africa on the Supplier and/or its employees and/or representatives and/or agents in respect of the Supplier's obligations in terms of the Order.

21.2. Unless otherwise stipulated in the Order, and where applicable, the Supplier shall be responsible for obtaining any necessary import permits and for the payment of any customs duty and import surcharge payable on the importation of any Goods into the Republic of South Africa, and the Order Price is deemed to include any such duty and surcharge.

#### 22. ORDER PRICE ADJUSTMENT

22.1. Should the Order contain provisions for adjusting the Order Price in order to allow for any increase or decrease in the cost to the Supplier for performing its obligations in terms of the Order, then, subject to the provisions of the clause 21.2, the Order Price shall be adjusted accordingly.

22.2. AECl shall only accept, which acceptance shall be in writing, an increase in the cost of the Order if AECl, in accordance with the provisions of clause 21.1, is directly responsible for such increase.

#### 23. IMPOSSIBILITY OF PERFORMANCE

23.1. Should any of the obligations of either party hereto become objectively impossible of performance then such party shall be exempted from performance of such obligation(s) under the Order, provided that the circumstances that rendered

performance impossible:

22.1.1. were unforeseeable at the time of contracting and the party concerned displayed reasonable care and diligence in attempting to avoid the consequences thereof; or

22.1.2. were foreseeable at the time of contracting but was beyond the control of the party concerned and provided that the party concerned could not reasonably have been expected to have taken it into account in undertaking its contractual obligations and displayed reasonable care and diligence in attempting to avoid the consequences thereof.

23.2. Notice of the existence of any circumstances referred to in clauses 22.1.1 and 22.1.2 hereof shall be given promptly by the affected party to the other party hereto. Should any such circumstances endure for a continuous period of 10 (ten) days then either party hereto shall be entitled to terminate the Order on written notice to the other party. In the event of such termination, the provisions of clause 9 shall not be applicable, but should any dispute arise in connection with or as a result of such termination, such dispute shall be referred to arbitration in terms of clause 17 hereof.

#### 24. NOTICES AND CORRESPONDENCE

24.1. All notices required in terms of the Order shall, unless amended by notice in writing from the relevant party, be addressed to the Supplier at the address set out in the Order and to AECl at the following address:

The Sourcing Department

AECl Place

24 The Woodlands,

Woodlands Drive

Woodmead, Sandton

Republic of South Africa

Marked for the attention of the Contracts Manager

Telephone No: +27 11 606 0000

Telefax No: +27 11 608 2581

Email: marketingaecifb@aeciworld.com

24.2. Any notice given in terms of this clause shall be deemed delivered:

23.2.1 14 (fourteen) days after mailing if mailed by prepared registered post; or

23.2.2. 24 (twenty four) hours after dispatch if sent by facsimile and successful transmission thereof is evidenced by electronic confirmation of transmission. In the event that the telefax is transmitted or received after 16h30 or on a day other than a business day, delivery shall rebuttably be deemed to have been effected on the following business day; or

23.2.3. immediately if by hand.

24.3. All correspondence, invoices and monthly statements of account shall bear AECl's Order number and be in the English language. All invoices shall also bear AECl Value Added Tax reference number which is 4350103539

24.4. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party

shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

**25. CLAIMS FOR EXTRA PAYMENT**

AECI shall not be liable for claims for extra expense to which the Supplier may consider itself entitled to as a result of the Order unless the Supplier has notified AECI as soon as reasonably practicable of its intention to make such a claim and in any case within 10 (ten) days of the start of the circumstances on which the claim is based. The Supplier shall submit to AECI at the end of each month full particulars of all such outstanding claims for AECI's consideration.

**26. SPARES**

The Supplier hereby guarantees the availability in the Republic of South Africa of spare parts for the Goods supplied in terms of the Order for a period of not less than 6 (six) months from the date of AECI's receipt of the Goods.

**27. QUALITY OF UNSPECIFIED MATERIALS**

In the absence of specification or sample, all Goods must be the best of their respective kinds and subject to AECI's approval. In all cases the Goods are to be first-class workmanship.

**28. CLERICAL ERRORS**

If any clerical errors appear in the Purchase Order they shall be rectified by AECI and such rectification shall be accepted by the Supplier.

**29. HAZARDOUS GOODS**

Hazardous Goods must be packed and labelled in terms of statutory requirements and the applicable local/international transport regulations. Documentation and labels relative to the cargo must be in English. International warning symbols are acceptable if English cannot be used. The cargo must be described on documents to enable transport carriers to identify the hazardous nature of the cargo.

**30. THE SUPPLIER'S NON-COMPLIANCE WITH ORDER CONDITIONS**

Should the Supplier fail to comply with any of the conditions contained in this Order, notwithstanding any other right which AECI might have either in terms of the Order or at law, AECI shall have the right to suspend all payments due to the Supplier until such condition/s is/are fully complied with.

**31. NO WAIVER OF RIGHTS**

Any relaxation or indulgence afforded by either party to the other relative to any of the terms and conditions of the Order shall not in any way prejudice such party's rights in terms thereof nor be construed as a waiver of same.

**32. WHOLE ORDER**

32.1. Neither party will be liable for any warranties or representations which are not recorded in writing in the Order.

32.2. No amendment of, addition to or deletion from the Order will be of any force or effect unless reduced to writing and signed by both parties hereto.

32.3. No terms and conditions imposed or issued by the Supplier will have any force or effect in respect of this Order, or the service to be provided by the Supplier in terms hereof.

**33. ACCEPTANCE**

Unless the Supplier shall, within 10 (ten) days of the Order Date, advise AECI of any error or omission in the Order, it shall be deemed to have accepted the Order in its entirety.