



Signal Instrumentation cc

Industrial Instrumentation & Process Control

Calibration – Maintenance - Installation

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STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

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

- 1.1 **“Terms and Conditions”** means these Terms and Conditions together with the terms of any applicable Specification Document.
- 1.2 **“Customer”** means the organisation or person who purchases goods and services from the Supplier.
- 1.3 **“Specification Document”** means the statement of work, quotation or other similar document describing the goods and services to be supplied or rendered by the Supplier.
- 1.4 **“Supplier”** means **SIGNAL INSTRUMENTATION CC**, Unit 12 Van Biljon Park, 1 Winelands Close, Stikland.

2. GENERAL

- 2.1 These terms and conditions shall apply to all orders for the supply and installation of goods and the rendering of services by the Supplier to the Customer.
- 2.2 The goods and services to be supplied by the Supplier to the Customer are included in the Specification Document. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Specification Document. All Specification Documents shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to complete the supply and installation of goods and rendering of services within the estimated time

frames, but time shall not be of the essence in the supply and installation of goods and/or rendering of any services.

- 2.4 The Services shall commence on the agreed date for rendering of the services and shall continue until the finalisation thereof, unless terminated earlier in accordance with the provisions of these Terms and Conditions.

3. PRICE AND PAYMENT

- 3.1 Any quotations furnished by the Supplier will be valid for 30 (thirty) days from the date of the quotation, as set out in the Specification Document, subject thereto that prices of goods that are quoted are subject to fluctuations in the exchange rate between the South African Rand and foreign currencies.
- 3.2 In the event that a price change occurs at any time before or during the delivery of goods and/or services by the Supplier, the Customer will be notified in writing.
- 3.3 On acceptance of the Supplier's quotation, as set out in the Specification Document, the Customer shall be deemed to have accepted these Terms and Conditions.
- 3.4 Invoiced amounts shall be due and payable by regular clients of the Supplier within 30 days after receipt thereof, and upon delivery or within 7 days of receipt of the invoice for all other clients of the Supplier.
- 3.5 The Supplier shall be entitled to charge interest on overdue invoices from the date when the payment becomes due from day to day until the date of payment at the prime rate of interest charged from time to time by the major financial banks in South Africa.

4. SPECIFICATION OF THE GOODS AND SERVICES

All goods and services shall be required only to conform to the specification in the Specification Document. For the avoidance of doubt, no description, specification or illustration contained in any product, pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the contract, unless also contained in the Specification Document.

5. DELIVERY

- 5.1 The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or

indirectly by any delay in the supply and installation of the goods or rendering of the services.

5.2 Goods will be deemed to have been delivered –

5.2.1 when the goods are delivered to the Customer or the Customer's nominee by hand; OR

5.2.2 when the goods leave the Supplier's premises when sent by courier.

5.3 All risk in the goods shall pass to the Customer upon delivery.

6. TITLE

6.1 Title in the goods shall not pass to the Customer until the Supplier has been paid in full for the supply and installation of the goods.

6.2 Ownership of the goods will remain with the Supplier until such time as full payment for the supply and installation of the goods is received.

6.3 Notwithstanding the installation thereof, the goods will be deemed to remain movable goods for all purposes, including the removal thereof by the Supplier, until such time as full payment is received as stated in clause 6.1 above.

7. CUSTOMER'S OBLIGATIONS

7.1 To enable the Supplier to perform its obligations under this Agreement the customer shall:

7.1.1 Co-operate with the Supplier and comply with all reasonable requests;

7.1.2 Provide the Supplier with any information reasonably required by the Supplier;

7.1.3 Obtain all necessary permissions and consents which may be required before the installation of the goods; and

7.1.4 Comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.

7.2 The Customer shall be liable to compensate the Supplier for all and any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1 above.

7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the agreement pertaining to the supply and installation of the goods and rendering of the services in the Specification Document, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any

third party costs to which the Supplier has committed, and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Specification Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. Payment shall become due and owing upon receipt of the Supplier's invoice.

- 7.4 For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 above shall be deemed to be a cancellation of the agreement and subject to the payment of the damages set out in this Clause.
- 7.5 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:
- 7.5.1 The Supplier shall have no liability in respect of any delay to the supply and installation of the goods and rendering of the services;
 - 7.5.2 If applicable, the timetable for the project will be modified accordingly;
 - 7.5.3 The Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

8. ALTERATIONS TO THE SPECIFICATION DOCUMENT

- 8.1 The parties may at any time mutually agree upon and execute new Specification Documents. Any alterations in the scope of goods and/or services to be provided under this Agreement shall be set out in the Specification Document, which shall reflect the changed goods and/or services and price and any other terms agreed between the parties.
- 8.2 The Customer may at any time request alterations to the Specification Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.

- 8.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

9. WARRANTIES

- 9.1 The Supplier does not warrant that the goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials. All goods and their component parts shall be subject to manufacturer's warranty only.
- 9.2 The Supplier warrants that the services performed under these Terms and Conditions shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 9.3 In the event that the Supplier is required to repair any goods supplied or services performed by the Supplier under the warranties stated in clause 9.1 and/or 9.2 above, then the Customer will be liable for any travelling time and – expenses.
- 9.4 Except as expressly stated in these Terms and Conditions, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the goods and services to be provided by the Supplier.

10. INDEMNIFICATION

- 10.1 The Customer hereby indemnifies the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under these Terms and Conditions, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.
- 10.2 The Customer hereby indemnifies the Supplier against all and any claims for damage of any nature whatsoever, whether direct or contingent, caused by its employees, agents and sub-contractors during or arising from the supply and installation of the Goods or the rendering of the services as specified in the Specification Document.
- 10.3 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential

loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

11. **TERMINATION**

The Supplier may terminate the supply agreement forthwith by notice in writing to the Customer if:

- 11.1 the Customer commits a material breach of these Terms and Conditions and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the Customer to do so;
- 11.2 the Customer commits a material breach of these Terms and Conditions which cannot be remedied under any circumstances;
- 11.3 the Customer passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 11.4 the Customer ceases to carry on its business or substantially the whole of its business; or
- 11.5 the Customer is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

12. **CANCELLATION**

Should the Customer fail to comply with any of these Terms and Conditions and the Supplier in writing addressed to the Customer at its selected domicilium citandi, demands compliance therewith and the Customer remains in default for a period of 5 (FIVE) days after despatch of such notice, then the Supplier may:-

- 12.1 cancel the supply agreement, in which event the Customer shall forfeit all amounts which have been paid in terms of the supply agreement in favour of the Supplier as liquidated damages, or the Supplier may claim damages from the Customer in lieu of the liquidated damages mentioned above;
- 12.2 alternatively, and in his sole discretion, the Supplier may claim immediate payment of the full balance of the contract price still outstanding in terms of the supply agreement without prejudice to any claim for damages which it may have against the Customer.

13. LEGAL PROCEEDINGS

Should the Supplier institute legal proceedings against the Customer arising from these Terms and Conditions or the cancellation of the supply agreement, the Supplier shall be entitled to recover costs calculated on the attorney and own client scale from the Customer.

14. FORCE MAJEURE

14.1 The Supplier shall not be liable for any delay or failure to perform any of its obligations in terms of the supply agreement if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services.

14.2 The Supplier shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

15. INDEPENDENT CONTRACTORS

15.1 The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties.

15.2 The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under these Terms and Conditions or any applicable Specification Document.

16. ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under these Terms and Conditions without the prior written consent of the Supplier.

17. SEVERABILITY

If any provision of these Terms and Conditions 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 these Terms and Conditions had been agreed with the invalid illegal or unenforceable provision eliminated.

18. **WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the Terms and Conditions contained herein.

19. **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 in the Specification Document or such other address as such party may from time to time have communicated 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.

20. **ENTIRE AGREEMENT**

These Terms and Conditions contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

21. **NO THIRD PARTIES**

Nothing in these Terms and Conditions is intended to, nor shall it confer any rights on a third party.

22. **GOVERNING LAW AND JURISDICTION**

These Terms and Conditions shall be governed by and construed in accordance with South African law and the parties hereby submit to the exclusive jurisdiction of the South African courts.