



DICKINSON
GROUP OF COMPANIES

GENERAL TERMS AND CONDITIONS

Between

DICKINSON HOLDINGS (TRADING) (PTY) LTD company registration number 1996/015217/07 subsidiaries
and associates
("Dickinson")

and

The person or entity supplying the Goods or rendering the Services to Dickinson
("Supplier")

(collectively "the Parties" and individually "a Party")

1. BACKGROUND

- 1.1. DICKINSON conducts business of providing a comprehensive range of services to support its clients in various aspects of furnace projects, product related to furnaces and processes and the maintenance and rebuilt of furnaces and client plants.
- 1.2. As an approved or potential supplier of DICKINSON, the Supplier will supply goods and/or perform services from time to time to DICKINSON (the "Goods or Services").
- 1.3. The nature, quantity and specifications of the Goods or Services shall be agreed upon between DICKINSON and the Supplier in writing from time to time (the "Specifications").
- 1.4. These Standard Terms of Purchase (the "Terms") shall govern the supply of Goods and/or performance of Services by the Supplier to DICKINSON and shall take precedence over any other conditions/terms which may be contained in the Supplier's documentation.
- 1.5. A "Project Execution Contract" may be concluded additionally between the Parties to detail the delivery and warranties of the Service and or Product to be delivered for a specific

project Dickinson may be undertaking for a client, to the extent this is silent on matters set out in the DICKINSON Terms then the DICKINSON Terms shall apply.

2. SITE RULES DICKINSON AND DICKINSON CLIENT

- 2.1. In supplying the Goods and/or performance of Services, the Supplier shall ensure adherence by its employees/agents to DICKINSON's "Site Rules for Contractors" and the site rules of the client of DICKINSON where the Goods and/or performance of Services may be required to be delivered ("Site Rules"), which will be made available on request.
- 2.2. The Site Rules shall not apply if the Supplier is required only to supply Goods and/or perform Services in circumstances where no presence of the Supplier is required on DICKINSON's or its client's premises.

3. ORDER PROCEDURE

- 3.1. DICKINSON shall place a written Purchase Order with the Supplier in the form of the DICKINSON Purchase Order (the "Purchase Order"). The Purchase Order constitutes an offer by DICKINSON to purchase Goods and/or

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Services from the Supplier in accordance with these Terms read together with the Specifications and Project Execution Contract (if any).

3.2. The Purchase Order shall be deemed to be accepted on the earlier of:

3.2.1. the Supplier issuing written acceptance of the Purchase Order;
or

3.2.2. any act by the Supplier consistent with fulfilling the Purchase Order.

3.3. Once the Purchase Order has been deemed to have been accepted, the whole agreement between DICKINSON and the Supplier shall constitute the Purchase Order, these Terms the Project Execution Contract and Specifications (if any) and shall apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.4. All of these Terms shall apply to the supply of the Goods and the performance of the Services, except where the application to one or the other is specified.

3.5. DICKINSON shall not be obliged to pay for all or any part of the supply of the Goods or the rendering of the Services, unless such Goods or Services are supplied and performed (as the case may be) in accordance with the Purchase Order, these However, Terms the Project Execution Contract and Specifications (if any).

4. PRICING AND CURRENCY FLUCTUATIONS

4.1. Unless specified to the contrary by DICKINSON, the price of the Goods or Services specified in the Purchase Orders shall be the full and exclusive remuneration of the Supplier in respect

of the Purchase Order and shall therefore:

4.2. be fixed and not subject to any adjustments due to:

4.2.1. favourable or unfavourable exchange rate fluctuations;

4.2.2. fluctuations in the cost of parts, materials or consumables;

4.2.3. any other fluctuation, which may impact on the price of the Goods or Services; and

4.3. include:

4.3.1. all charges and costs required to effect delivery of the Goods to DICKINSON or the performance of the Services in accordance with the Purchase Order and the Terms read together with the Specifications and Project Execution Contract (if any) and the;

4.3.2. all taxes, custom duties, clearance, other charges, packaging, delivery, off-loading and insurance costs, unless otherwise specified by DICKINSON in the Purchase Order; and

4.3.3. Value Added Tax.

5. PAYMENT

5.1. Unless specified to the contrary in the Purchase Order, payment in respect of the Goods or Services shall be effected following final delivery of the Goods or performance of the Services in accordance with these Terms read together with the Specifications and Project Execution Contract (if any).

5.2. Payment due by DICKINSON in respect of the Goods or Services (the "Payment") shall be effected, in the currency specified in the Purchase Order:

5.2.1. at the end of the month following the month during which the Goods are received by DICKINSON and/or

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the Services are fully performed by the Supplier, and upon receipt of a valid tax invoice in respect of the Goods or Services; or

5.2.2. if applicable, in accordance with the agreed payment terms or intervals specified in the Purchase Order.

5.2.3. 60 days from date of statement or otherwise per PO.

5.3. Goods delivered or Services performed prior to the delivery or performance date specified in the Purchase Order shall, for purposes of these Terms, be deemed to have been delivered or performed on the date specified in the Purchase Order.

6. RETENTION

6.1. DICKINSON shall be entitled to withhold an amount, not exceeding 10% (ten percent) of the Payment, in respect of any Goods supplied or Services performed, or which are to be supplied or performed, until the expiry of the Supplier's liability as defined in Clause 12.1 if not set out in a Project Execution Contract.

7. DELIVERY AND PERFORMANCE

7.1. The Supplier shall ensure that, at all times, it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations in these Terms.

7.2. Delivery includes, but not limited to, all End of Manufacturing Reports/Data Books/Data Packs etc. required as per legislation, codes of manufacture, specifications etc.

7.3. The date for delivery of the Goods or the performance of the Services shall be the date specified in the Purchase Order or agreed between the Parties, in writing, from time to time.

7.4. Goods shall be delivered and Services performed during DICKINSON's normal business hours at the stipulated place of delivery or the stipulated place of performance (as the case may be).

7.5. Against delivery of Goods to DICKINSON by the Supplier, DICKINSON shall issue the Supplier with a written delivery receipt signed by an authorised representative of DICKINSON, against which ownership of, and all risk in and to, the Goods shall pass to DICKINSON.

7.6. Acceptance of delivery shall only amount to an acknowledgment by DICKINSON that the Goods of the quantity and nature stated in the Purchase Order were received and shall not amount to an acknowledgement that the Goods met the Specifications.

7.7. Without prejudice to any of DICKINSON's other rights under these Terms or its remaining rights in law, if Goods delivered do not substantially comply with the Purchase Order and/or Specifications (if any), DICKINSON shall be entitled to tender the return of the Goods to the Supplier, within 21 (twenty one) days of delivery, in which event:

7.7.1. DICKINSON shall not be liable for payment in respect of the Goods returned;

7.7.2. the Goods shall be returned at the cost of the Supplier;

7.7.3. all risk in respect of Goods returned shall pass to the Supplier, upon notice by DICKINSON to the Supplier that the Goods have been rejected and are available for collection at the premises to which they were delivered by the Supplier; and

7.7.4. ownership of the rejected Goods shall pass from DICKINSON to the

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Supplier upon collection of those Goods.

8. PENALTY

8.1. The Supplier accepts that the time stated ("the Due Date") for the delivery of the Goods or the performance of the Services to DICKINSON is:

8.1.1. A Material and Essential term of these Terms; and

8.1.2. A Material inducement for DICKINSON to have placed the Purchase Order.

8.2. If delivery of Goods or the performance of the Services is delayed beyond the Due Date, or if DICKINSON has reasonable grounds to believe that the Supplier will be unable to deliver the Goods or perform the Services on or before the Due Date, DICKINSON may, in its sole discretion and without prejudice to any of its other rights under these Terms or its remaining rights in law, elect to recover penalties for the delay at the rates specified in Clause 8.3 or as varied in accordance with the Terms.

8.3. Unless specified to the contrary in these Terms, if the Supplier delivers, installs or commissions Goods or performs the Services after the Due Date, DICKINSON shall be entitled to deduct from the Payment and/or recover from the Supplier a penalty equal to 2% (two per cent) of the value of the Purchase Order for each week, or part thereof, following the Due Date ("the Penalty") up to a maximum of 10% (ten percent).

9. PACKAGING AND SHIPPING

Subject to any contrary provisions of the Specifications (if any):

9.1. all Goods delivered by the Supplier to DICKINSON shall be suitably packed or otherwise prepared for shipment by the Supplier to secure the lowest transportation and insurance rates and comply with the carriers' requirements, while ensuring that the Goods reach their destination in good condition; and without derogating from the provisions of these conditions

9.2. DICKINSON reserves the right to specify the method of dispatch and type of transportation and/or packaging to be used and to alter DICKINSON's requirements in respect thereof from time to time, at DICKINSON's discretion.

10. INSPECTION

10.1. DICKINSON shall at all reasonable times, both prior to and upon delivery of the Goods or the performance of the Services, have the right to inspect the Goods or Services and shall be entitled to reject the Goods or Services that do not conform to the Purchase Order and/or the Specifications (if any).

10.2. Notwithstanding any such inspection, the Supplier shall remain fully responsible for the Goods and Services and any such inspection or testing shall not reduce, relieve or otherwise affect the Supplier's obligations in terms of the Purchase Order and/or Specifications (if any). The Supplier shall have no right to rely on the failure of DICKINSON to identify defects during such inspection.

10.3. Notwithstanding acceptance by DICKINSON of the Goods or Services upon delivery or performance thereof, DICKINSON shall be entitled to reject the Goods or Services in accordance with the provisions of

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these Terms but without prejudice to its remaining rights in law, if they are subsequently found not to conform to the Purchase Order and/or Specifications (if any).

- 10.4. Rejected Goods will be held at the risk and expense of the Supplier, and unless otherwise directed by DICKINSON, shall be replaced, at the sole expense of the Supplier, by those that conform to the Purchase Order.

11. WARRANTIES AND UNDERTAKINGS

11.1. The Supplier gives the following warranties, representations and undertakings in respect of the Goods or Services, as the case may be:

- 11.1.1. any Service shall be performed with the best care, skill and diligence in accordance with the best practice in the Supplier's trade, industry or profession by personnel who are suitably experienced, qualified and skilled to perform the tasks assigned to them;
- 11.1.2. the Goods shall be free of any defect (latent or patent) in material or workmanship and shall be fit for the purpose designed or manufactured;
- 11.1.3. the Supplier has reviewed and understands the Specifications (if any) and will ensure that the Goods are supplied and/or the Services performed in accordance with such Specifications and otherwise in accordance with the provisions of these Terms and the Purchase Order;
- 11.1.4. the Goods shall, upon delivery to DICKINSON, have been fully paid for by the Supplier, be fully owned by the Supplier, not be

subject to any encumbrance or restriction and the Supplier shall be entitled to pass ownership of the Goods to DICKINSON;

11.1.5. in respect of consumable or perishable Goods:

11.1.5.1. the Goods shall have an adequate remaining shelf-life if there is a limited shelf life, measured from date of delivery to DICKINSON, to enable DICKINSON to utilise the Goods prior to their stated expiry date, during the normal course of business of DICKINSON;

11.1.5.2. the Goods shall remain free of defect in design, material or workmanship and good for consumption in accordance with their intended use until either their stated expiry date or the end of the defect liability period specified in Clause 12.1, whichever is applicable;

11.1.6. all potentially hazardous substances, products or chemicals shall:

11.1.6.1. be clearly identified and marked with appropriate warnings;

11.1.6.2. be properly sealed or secured;

11.1.6.3. be delivered in a good and stable condition;

11.1.6.4. comply with all legal prescriptions regarding the manufacture, packaging, labelling, storage, handling, delivery and safety (including environmental safety).

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11.2. Unless agreed to the contrary in writing by DICKINSON, the warranties shall:

11.2.1. be in addition to, and not limited by reference to, any other warranties made by the Supplier in any other documentation accepted by DICKINSON; and

11.2.2. not detract from any other warranties implied by law in respect of Goods or Services, regard being had to the Specification (if any) of and functions in respect of which the Goods or Services are purchased.

11.3. The Parties acknowledge that in terms of section 61 of the Consumer Protection Act, 68 of 2008, as amended ("the CPA Act") DICKINSON and the Supplier may be jointly and severally liable to a customer (as defined in the Act) for any harm caused wholly or partly as a consequence of:

11.3.1. supplying any unsafe goods; or

11.3.2. a product failure, defect or hazard in any goods; or

11.3.3. inadequate instructions or warnings provided to the customer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of DICKINSON or the Supplier, as the case may be.

11.4. Each Party ("Indemnifying Party") hereby indemnifies and holds harmless the other Party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other Party as a result of or arising out of any harm alleged or proven by a

customer himself or herself, or other person contemplated in section 4(1) of the CPA Act, to the extent such harm is attributable to the negligent or intentional conduct of the Indemnifying Party or any contravention by the Indemnifying Party of any applicable law.

11.5. This Clause 11 shall survive termination of these Terms.

12. SUPPLIER'S LIABILITY

12.1. Liability for Defects

12.1.1. If the Goods or Services manifest any defects (whether patent or latent) within the earlier of a period of 18 (eighteen) months from the delivery date or the date of performance or such other periods as may be stipulated in the Purchase Order or these Terms, the Supplier shall, at its cost and expense and within a reasonable time frame:

12.1.1.1. repair, replace any defective Goods or remedy or reperform any of the Services; and

12.1.1.2. refund to DICKINSON all costs, damages or expenses (excluding consequential loss) suffered by DICKINSON as a result of such defects.

12.1.2. The obligations of the Supplier in terms of Clause 12.1.1 in respect of all repaired, replaced or remedied or re-performed Goods or Services shall be extended for a further period of 12 (twelve) months (or such other period as may be agreed in writing) from the date of completion of such repair,

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replacement, or remedy or re-performance.

12.1.3. DICKINSON shall be entitled to withhold any Payment due to the Supplier and claim against the Retention for the recovery of any amount due by the Supplier to DICKINSON in terms of Clause 12.1.

12.2. Insurance for Loss, Accidents or Damage

12.2.1. For the duration of these Terms and a period of 6 months thereafter, the Supplier shall maintain, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with these Terms.

12.3. This Clause 12 shall survive termination of these Terms.

13. INDEMNITY

13.1. The Supplier indemnifies and holds DICKINSON harmless against any claims, costs, damages, expenses, judgments, losses, liabilities, obligations and/or penalties, which DICKINSON may incur, suffer or sustain during or arising out of, or in connection with, the use of the Goods or the performance and/or use of the Services for their intended purpose, to the extent that such claims, costs, damages, expenses, judgments, losses, liabilities, obligations and/or penalties result from:

13.1.1. a defect in, or failure of, the Goods or Services; the incorrect manufacture of the Goods or

performance of the Services by the Supplier;

13.1.2. a breach of any of these Terms and/or the Specifications (if any) including without limiting the generality of the foregoing a breach of the warranties and undertakings in Clause 11; and/or

13.1.3. any claim for infringement of any intellectual property rights ("Indemnified Loss").

13.2. The Supplier shall be obliged to pay DICKINSON the amount of Indemnified Loss incurred, suffered or sustained by DICKINSON as soon as DICKINSON is obliged to pay the amount thereof (in the case of any Indemnified Loss that involves a payment by DICKINSON) or as soon as DICKINSON suffers the Indemnified Loss (in the case of an Indemnified Loss that does not involve a payment by DICKINSON).

13.3. This Clause 13 shall survive termination of these Terms.

14. FORCE MAJEURE

14.1. Neither the Supplier nor DICKINSON shall be liable for any failure to perform its obligations under the Conditions where such performance has been delayed, hindered or prevented by any circumstance beyond the control of that Party, including but not limited to Acts of God, strikes, lock outs, trade disputes, fire, government directions and/or war.

14.2. Where such circumstances beyond the control of the Parties prevent performance; the obligations of the Party shall be suspended until the termination of such circumstances, provided that should any suspension

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continue for more than 45 (forty-five) continuous days either Party shall be entitled, on giving 7 (seven) days' notice to the other, to terminate the Purchase Order.

15. TERMINATION CONSEQUENT OF BREACH OF ANCILLARY AGREEMENT

- 15.1. If the Supplier –
- 15.1.1. commits a breach of any other agreement between DICKINSON and the Supplier (all of which are deemed to be material), and fails to remedy such breach within any remedy period specified in such agreement; or
 - 15.1.2. generally does anything which may substantially prejudice DICKINSON's rights in terms of the Purchase Order and/or these Terms, then, DICKINSON shall be entitled to terminate, at its sole discretion, the Purchase Order immediately on giving notice to the Supplier, without prejudice to any other rights in law which may be available to DICKINSON.

16. BREACH

- 16.1. If a Party (the "Breaching Party") breaches any provisions of these Terms, the Purchase Order and/or the Specifications (if any) and remains in breach for 7 (seven) days after receipt of written notice from the other Party (the "Innocent Party") requiring the Defaulting Party to rectify the breach, or if either Party repudiates the Purchase Order, the Innocent Party shall be entitled at its sole election to either:
- 16.1.1. sue for the immediate specific performance of any of the

Defaulting Party's obligations under the Purchase Order, Terms and/or Specifications (if any), whether or not such obligation is then due; or

- 16.1.2. (either as an alternative for a claim for specific performance or upon the abandonment of such claim) to cancel the relevant Purchase Order. Written notice of such cancellation shall be given to the Defaulting Party and the cancellation shall take effect on the giving of that notice.
- 16.1.3. The Innocent Party's remedies in terms of this Clause 16 are without prejudice to any other remedies set out in these Terms or its remaining rights in law.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1. All intellectual property rights ("IPR") arising in respect of and or associated with the Services or Goods shall vest absolutely in, and be owned by DICKINSON.
- 17.2. The Supplier warrants in favour of DICKINSON that it shall not claim any rights to any of the IPR and shall not do anything which is calculated or likely to undermine or prejudice DICKINSON's right, title or interest in and to the IPR, nor DICKINSON's use thereof.
- 17.3. The Supplier warrants in favour of DICKINSON that the deliverables supplied in terms of this Agreement, shall not infringe any law or third Party IPR.

18. DOMICILIUM

The Parties hereby choose their respective domicilium citandi et executandi for all purposes at the address specified in the Purchase Order.

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19. CESSION OR ASSIGNMENT

The Supplier shall not be entitled to cede, assign or subcontract any of its rights or obligations in terms of the Purchase Order and these Terms, without the prior written consent of DICKINSON.

20. SUPERSESION

20.1. The Parties agree that these Terms read together with the Purchase Order, Project Execution Contract or Specifications (if any) constitute the sole record of the agreement between the Parties in relation to the subject matter hereof.

20.2. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. The Terms read together with the , Project Execution Contract or Specifications (if any) supersede and replace all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof, including any terms and conditions or agreement proffered by the Supplier.

21. CODE OF CONDUCT

21.1. The Supplier agrees that it is responsible for controlling its own supply chain and that it shall encourage compliance with ethical standards and human rights by any subsequent supplier of goods or renderer of services that are used by the Supplier when performing its obligations to the DICKINSON Group.

21.2. The Supplier –

21.2.1. agrees that it is responsible for conducting its business in compliance with applicable

environmental laws and regulations when performing its obligations to the DICKINSON Group; and

21.3. The Supplier will not, directly or indirectly, make any payment, offer or promise to make any payment or transfer of anything of value to –

21.3.1. any government official, or to any political Party or any candidate for political office, with the purpose of influencing decisions favourable to the Supplier and/or its business in contravention of applicable laws; and/or

21.3.2. any employee of the DICKINSON group of companies, other than bona fide gifts which individually or cumulatively do not exceed the value of R300 (Three Hundred Rand)

21.4. The Supplier will not, directly or indirectly, undertake any act or omission, whether alone or together with any other person or entity, which may contravene any applicable competition/anti-trust legislation, regulations and/or rules.

21.5. To the extent to which the Supplier undertakes its business activities in the Republic of South Africa, it shall comply with Broad-Based Black Economic Empowerment (“BBBEE”) legislation and policies and on or before 1 July of each year it shall provide DICKINSON with a BBBEE Rating Certificate issued by an accredited agency.

22. NON-VARIATION

These Terms shall be updated as and when required by DICKINSON but will be applicable in its form as at date of Purchase

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Order until completion of that Purchase Order by the Supplier.

23. APPLICABLE LAW

All disputes arising in connection with the Terms, the Purchase Order and/or the Specifications (if any) shall be determined in accordance with the laws of the Republic of South Africa.

24. NON-SOLICITATION

The Supplier agree to not, without the prior written consent of DICKINSON, for a period of 6 (six) months after the completion of the Services or Delivery of the Product actively solicit for employment any employee employed by DICKINSON.

25. PROTECTION OF PERSONAL INFORMATION ACT ("POPI ACT")

25.1. The POPI Act sets conditions that any person who processes personal information must comply with and aims to protect the personal information of people. The POPI Act does not aim to stop the free flow of information but creates a balance.

25.2. The POPI Act includes eight information protection conditions and these Conditions are subject to exclusions and processing of information is prohibited in certain instances. The conditions are:

- 25.2.1. Accountability
- 25.2.2. Processing limitation
- 25.2.3. Purpose specification
- 25.2.4. Further processing limitation
- 25.2.5. Information quality
- 25.2.6. Openness
- 25.2.7. Security safeguards
- 25.2.8. Data subject participation

25.3. DICKINSON confirms that it will take reasonable and required steps to protect, secure and process all information received from Suppliers

in a professional manner, in accordance with these Conditions.

25.4. However, the Supplier agree and confirm that the Supplier will not hold DICKINSON responsible for any breach of confidentiality, stemming from wilful or intentional misconduct or criminal activity, and/or any form of gross negligence, especially where any breach of confidentiality or information arises as a result of any action taken by the Supplier in providing the information to DICKINSON.

25.5. Any damage suffered by the Supplier as an result of any breach of POPI obligations shall be limited to a maximum of the value of R 2000 (Two Thousand Rand), and DICKINSON cannot and will not be held responsible for any future-dated damages and/or patrimonial damages suffered downstream of any breach.

26. LEGAL COSTS

The Supplier shall pay all legal costs, including attorneys and client costs and collection commission, which DICKINSON may incur in taking any steps to enforce its rights, and/or procure performance by the Supplier of its obligations, under these Terms, the Purchase Order and/or the Specifications (if any).

27. SET-OFF

27.1. Dickinson may at any time, deduct moneys from any amount due or becoming due to the supplier in order to meet all debts and amounts due from the Supplier to Dickinson under or in connection with this Purchase Order (including any penalty amounts). For the avoidance of doubt

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the balance of the amount due and payable will be paid to the Supplier.

- 27.2. Dickinson will notify the Supplier in writing of any amounts deducted and the basis for the deduction, at the time that the deducted amount would otherwise be due to the Supplier.⁹