

Ohorongo Cement (Pty) Ltd General Terms and Conditions of Purchase

General Terms and Conditions of Purchase

A standard document that governs the supply of type of goods, equipment and materials (hereinafter referred to as "goods" and/or provision of all types of services (herein referred to as 'works" by Suppliers/Contractors.

This document will be available on the Ohorongo Website and reference will be made to in the standard purchase order.

1. Applicability and applicable law

- 1.1 These conditions of purchase shall apply to all orders or other jobs/assignments issued or awarded by us. We do not accept the General Terms and Conditions of our contracting parties.
- 1.2 All jobs/assignments are subject to the law of the Republic of Namibia, and the validity of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

2. Conclusion of contract

- 2.1 Orders will be given in writing. Verbal orders and alterations or additions to an order shall be confirmed by us in writing so as to become effective. The written form shall also include fax, e-mail or comparable electronic forms of text.
- 2.2 The Contractor/Supplier shall immediately confirm or turn down any orders. If we do not receive an objection from the Contractor/Supplier within 10 days after the order was awarded, the order shall be deemed to have been accepted unconditionally.
- 2.3 The Contractor/Supplier shall point out to us expressly and clearly any deviations in his confirmation of our order, if any. They will only become effective if we agree with them in writing. If the confirmation of the order does not contain any such reference to deviations, the order shall be deemed to have been accepted unconditionally.

3. Prices and payment terms

- 3.1 The prices agreed when the order was placed are fixed prices and include all ancillary services for the fulfilment of the contract (e.g. transport and packaging). The Contractor/Supplier shall not be entitled to subsequent unilateral price increases.
- 3.2 If nothing else is agreed, we shall pay, upon receipt of statement, net within 32 days after date of statement.
- 3.3 The Contractor/Supplier shall not be entitled to cede any claims against us without our

written approval. The assignment of an outstanding debt without such approval is effective, but in this event we will be entitled to pay our Contractor/Supplier with discharging effect even if a deed or notice of assignment is presented to us.

- 3.4 The Contractor/Supplier shall send all hard copies of original invoices to the finance department in Windhoek and all soft copies to the same department at the following e-mail address: creditors@ohorongo-cement.com

4. Time of performance and consequences if exceeded

- 4.1 If a period is determined for the execution of the order, this period, in case there should be any doubt, shall commence upon the date of our written order.
- 4.2 The Contractor/Supplier have to inform us forthwith if he realises that conditions have arisen which will jeopardize compliance with the fixed time of performance. In this case he will have to inform us, without being asked to do so, of the reason and the expected duration. He will have to supplement the relevant particulars, should there be later changes.
- 4.3 If compliance with the timeframe for performance depends on our collaboration, the Contractor/Supplier may only rely on our collaboration if he requests this in writing in good time.
- 4.4 In case of non-compliance with the timeframe for performance, even if not due to own fault, we are entitled to withdraw wholly or in part from the contract after expiry of an adequate period of grace determined by us. We are entitled to determine the period of grace even before the expiry of the fixed time of performance. The period of grace determined by us is at any rate appropriate in case it amounts to at least two weeks as from receipt of the specified date and if the Contractor/Supplier does not inform us within three workdays of receipt of the deadline despite a relevant note at the time when the deadline was fixed, furnishing valid reasons that the period of grace fixed by us is unreasonably short.
- 4.5 If the Contractor/Supplier falls behind with the fulfilment of the order, he is obliged to pay a penalty for breach of contract amounting to 0.5 % per week or part thereof in which he is in default, but in total not exceeding 5 % of the invoice value in respect of the works affected by the delay. This shall not affect our claims for compensation in respect of an actually incurred higher damage.

5. Warranties by Contractor/Supplier

- 5.1 The Contractor/Supplier guarantees that any item sold, or any plant built or supplied by him will be in accordance with state-of-the-art technology and also with the current statutory and official rules and regulations at the date of delivery or acceptance, in particular the relevant regulations regarding environmental protection, accident prevention and health and safety, and that it displays the contractually agreed properties.
- 5.2 The Contractor/Supplier furthermore guarantees that his works, in particular delivered objects, will be free from proprietary rights of third parties.

- 5.3 The Contractor/Supplier is obliged to compensate us for all damage incurred by us arising from a breach of the above guarantees, even if it is not attributable to anybody's fault. The claim shall be subject to the statutory period of prescription.

6. Rights in case of defects

- 6.1 Defects in goods delivered will be reported by us to the supplier as soon as they are recognised as such in the course of everyday business. We are not obliged to perform any further receiving inspections or examinations. The Contractor/Supplier hereby waives the objection that the notice of defects was late.
- 6.2 In case of defects in sold objects or of defects in a plant built by the Contractor/Supplier, we shall have unrestricted access to such goods or plant. Clause 4.4 shall apply mutatis mutandis in respect of the appropriateness of a period determined by us for supplementary performance (remedy of defect or new delivery).
- 6.3 If we as manufacturer are held liable because of a defect in connection with a thing [object], which is based on the mal-performance of the Contractor/Supplier, the Contractor/Supplier shall indemnify us against all claims.
- 6.4 Our rights as a result of a defect in the object of sale or the plant as well as our right of Indemnification in terms of clause 6.3 is subject to a 5-year period of prescription which commences upon delivery or handover of the object of sale or the final delivery of the plant, whichever is the later... Prescription will be delayed for a period of 6 months by means of a written notice of defects. (Not applicable in Namibian law)

7. Copyright

Samples, drawings, models, profiles and similar items as well as material supplied by us shall remain our property and shall be returned to us in usable condition at the latest together with the delivery of the remainder of the goods. As with merchandise produced thereafter, they shall not be handed to third parties without our consent or be used by them or for advertising purposes. Violations shall entail damages and shall entitle us to withdraw wholly or partly from the contract without compensation.

8. Data protection

We store data in terms of the Data Protection Act.

9. Court of jurisdiction

In the event of the Contractor/Supplier being a trader, the court of jurisdiction for all disputes arising from the contract shall be Namibia. We shall however also be entitled to sue the Contractor/Supplier in his normal court of jurisdiction.

10. Exemption clause

In the event of any of the provisions of these conditions of purchase or of the other contractual agreements being or becoming null and void, the validity of the other provisions of the contract shall not be affected thereby.

Endorsement

Signed at WINDHOEK on this 27 TH day of JUNE 2016



Mr. Hans-Wilhelm Schuette
Managing Director



Mr. Peter Goettert
Procurement Manager



Mr. Manfred Pirker
Plant Manager