

BOILER AND INDUSTRIAL PLANT (PTY) LTD. - CONDITIONS OF TENDER

1. TIME LIMIT FOR ACCEPTANCE:

Unless previously withdrawn, this tender is open for acceptance in the manner hereafter set forth within thirty days from date hereof.

2. ACCEPTANCE:

Acceptance of this tender must be in writing and received by us and must be accompanied in writing by sufficient information to enable us to proceed with the accepted tender forthwith. The purchaser shall be liable for any increase in costs after the date of acceptance occasioned by any delay in furnishing such information or due interest, inflation or changes in VAT or other costs prescribed by law. The date of acceptance shall be the date on which the conditions of tender are signed by the purchaser or received by us, whichever occurs first.

3. SUBJECT TO PRIOR SALE:

Any offer to deliver ex-stock or ex-stock on order is made subject to such stock being unsold prior to receipt of order.

4. SAMPLES:

Any samples submitted by us shall remain our property and will be delivered or returned to us on demand.

5. PACKING:

Unless otherwise specified on this tender, the prices quoted are ex works and do not include packing charges which shall be payable by the Purchaser. Packing shall at our option be done either by ourselves in which event it shall be charged for by at cost price or by specialists or by third parties engaged by us in which event their charges shall be payable by the Purchaser.

6. LIMITS OF CONTRACT:

This tender includes only such goods and services, accessories, services or work as are expressly specified therein.

7. DRAWINGS ETC.

All descriptions, specifications, drawings, plans, sketches, particulars of weights and dimensions submitted with this tender are only approximate, any descriptions, illustrations, drawings, photographs or sketches contained in our catalogues, price lists and advertising matter are merely representations intended to present a general idea of the goods and services described therein and shall not constitute a material term of the contract. In circumstances where specifications are provided by the Purchaser, we shall rely on the specifications provided in the manufacture of the goods and services without the necessity to undertake independent specifications.

8. TESTS:

All goods and services manufactured by us are carefully inspected and where practical, submitted to our standard tests at our works before despatch. If special or additional tests in the presence of the Purchaser are required, such tests unless otherwise agreed upon will be paid for by the Purchaser and held at our works at a time to be fixed by us on reasonable notice not exceeding seven days.

9. (a) Any performance figures given by us are based upon our experience and are such as we expect to obtain on test. We shall not, however, be liable for any failure to obtain such performance figures unless these have been expressly warranted or guaranteed by us. In the absence of such warranty the Purchaser will be deemed to have satisfied himself that the performance and capacity of the goods and services are sufficient and suitable for the purposes for which the goods and services have been supplied.

(b) We shall not be liable for any performance figures or date or the performance of any goods and services or machinery supplied by sub-contractors unless otherwise agreed. Any warranty or guarantee furnished to the Purchaser by such sub-contractor will in no way be binding upon us. We supply with our machinery only first-class measuring instruments, electric and photo-electric equipment, boiler refractory etc. manufactured by reputable firms. Any guarantee or liability in connection with these instruments, unless otherwise stated, are expressly excluded from such warranties as we may specifically undertake.

10. MAINTENANCE:

The Purchaser shall employ persons capable of competently maintaining, servicing and operating the equipment supplied commensurate with the type and value of the plant involved. The Purchaser will ensure that his staff are adequately trained and familiar with methods of servicing, maintaining and operating the equipment and shall not rely solely on instruction books or manuals supplied with the equipment. The Purchaser acknowledges that he shall be liable for the maintenance, servicing and operation of the equipment and acknowledges that it shall not hold Boiler and Industrial Plant (Pty) Ltd liable for any damages or consequential damages arising from poor or irregular maintenance, servicing or operating of the equipment.

11. DELIVERY:

Unless otherwise expressly stated delivery shall take place at our works, place of business.

12. INSURANCE:

It is the Purchaser's responsibility to affect any necessary insurances from the time packing and/or shipping commences at our factory. The Purchaser agrees to indemnify us in respect to all costs incurred in respect of insurance, shipping and delivery and; or any other costs.

13. COMPLETION AND LIABILITY FOR DELAY:

(a) The period specified for completion or delivery shall run from the date of receipt by us: (a) of sufficient written information and written approval of drawings to enable us to proceed with the work forthwith, and
(b) when a deposit or any portion of the purchase price is payable upon acceptance of this tender, upon payment of such deposit or portion of the purchase price: whichever is the later. We shall use our best endeavours to keep to the times specified but shall not be liable for any delay in completion or delivery, unless we have in writing specially agreed to the contrary in which case we are in any case relieved from any responsibility in the event of strikes, lockouts, act of God, force majeure, or late deliveries by sub-contractors.

14. HANDLING CHARGE:

At our option a handling fee of ten percent of the total tender price may be levied and become payable by the Purchaser on all accepted tenders subsequently cancelled, for any reason whatsoever.

15. INSTALLATIONS:

Unless otherwise stated our tender does not include the installation and erection of the goods and services, equipment or machinery. Where installation or erection is included in our tender, this shall mean, unless otherwise expressly provided, only the requisite skilled supervision by us of such installation or erection. The Purchaser shall provide at his own cost and expense, suitable access to and possession of the site, proper foundations ready to receive the goods and services, machinery or plant as and

when delivered an adequate crane and/ or other lifting tackle, scaffolding, or labour masons, joiners and builders work suitable protection for the goods and services, machinery or plant from the time of arrival at the site to completion of erection or installation and all other necessary facilities and assistance to enable the unloading, installing and erection to proceed under our supervision continuously and expeditiously.

16. EXTRA COSTS:

Any extra costs occasioned by an act, omission, neglect or default on the part of the Purchaser or the Purchaser's sub-contractors causing any suspension of or delay in the completion, testing, delivery, installation or erection of the goods and services shall be borne and paid for by the Purchaser.

17. PRICE:

This tender is based on rates of exchange, ocean freight, loading charges or dock dues, insurance duty, railage, wages, statutory allowances and expenses and costs of materials ruling at the date of tender which shall be the date of acceptance as defined in clause 2 hereof. Any subsequent increase or decrease in any of the foregoing, insofar as it affects our deliveries and/or erected costs, is for the Purchaser's account. Where applicable the amount of such increase or decrease shall be calculated in accordance with the S.E.I.F.S.A. general contract price adjustments formulae for manufacturing and /or erection contracts, as the case may be.

18. TERMS OF PAYMENT:

A cash deposit of forty percent (40%) shall be paid with order, and the balance paid within thirty (30) days of delivery. Payment unless otherwise specified in this tender, shall be made in cash in South African currency free of deduction or setoff. We reserve the right to refuse acceptance of any order should the Purchaser fail to pay the aforementioned deposit upon placing the order.

19. CUSTOMER'S CREDIT

Tenders are subject to our approving of customer's credit profile.

20. INTEREST:

Without prejudice to any other rights we may have, all amounts not paid by the Purchaser on or before the due date of payment shall bear interest from such date to date of payment at the current prime overdraft rate charged by our bankers at the due date. All goods and services shall remain the property of Boiler and Industrial Plant (Pty) Ltd until the goods and services have been paid for in full.

21. LIABILITY FOR DEFECTS:

All express or implied warranties against any defects in the condition, quality or suitability of the goods and services for any purpose whatsoever, whether patent or latent are hereby excluded from the contract. The Purchaser acknowledges that. If any part or portion of the goods and services proves to be defective due to faulty design, materials or workmanship within our control, we may, in our sole discretion and wherever possible, repair or replace any such defective goods and services. We shall in no circumstances be held liable for any consequential and indirect liability occasioned in any way arising from this agreement and our engagement with you. Any and all liability arising from our breach of this agreement will be limited to the price stated in the applicable PO.

22. All our machinery is supplied with our own name plate from the manufacturers. Removal or defacing of this nameplate invalidates any guarantees or responsibility on our part.

23. PATENTS:

On acceptance of this tender the Purchaser warrants that any design or instructions furnished or given by him shall not be such as will cause us to infringe any letters Patent, Registered or trademark in the execution of the contract. The Purchaser further indemnifies us against any claim which may be made against us for such infringement.

24. WAGES AND GENERAL COSTS VARIATION CLAUSE:

Unless expressly agreed to the contrary in writing if between the date of tender and the delivery of the goods and services in terms of this contract there shall be any increases in the price of materials to be used in execution of this contract if there shall be any increase in the wages of or any change in the hours of work of any persons employed or to be employed by us in the execution of this contract and where as a result of such increases or change the cost to us of executing this contract is increased, the Purchaser shall be liable to pay us the amount of such increased cost. Any additional cost in terms of the aforementioned cost variations shall be calculated in accordance with the Steel and Engineering Industrial Federation of South Africa's formula and index, as ruling at delivery date, for price variations.

25. SUB-CONTRACTING:

We shall in our sole discretion be entitled to enter into such sub-contracts as are customary in the trade or industry in which we are engaged.

26. ARBITRATION:

All disputes, differences and questions whatsoever which may arise at any time during the subsistence of the contract or at any time thereafter as to the construction or application of the contract and/or any act deed omission or default of any party thereto or as to any matter or thing arising therefrom, shall if so required by us be referred to an Arbitrator mutually agreed upon by the parties for decision, on written notice by either party that a dispute has arisen. In the absence of agreement as to the appointment of an Arbitrator within two weeks of receipt of such notice an Arbitrator shall be appointed by the President for the time being of the Steel and Engineering Industrial Federation of South Africa or the President of the S.A. Institute of Mechanical Engineers, whose decision shall be final, neither side to appear before the arbitrator by solicitor or counsel. Such arbitration shall be held and conducted in accordance with the Rules of the Arbitration Foundation of Southern Africa.

27. APPLICATION OF SOUTH AFRICAN LAW AND JURISDICTION:

The laws of the Republic of South Africa shall in all respects apply to and govern this contract, including interpretation construction or any manner or things arising therefrom. The parties hereby consent to the jurisdiction of the Magistrates Court for any dispute arising in respect of these conditions of tender or any agreement concluded in terms thereof. Notwithstanding the foregoing, the parties shall be entitled to bring proceedings in any other court where such proceedings would, but for the foregoing consent, fall outside the jurisdiction of the Magistrates Court.

28. All material and equipment supplied by us will remain our property and we reserve the right to remove such property unless payment therefore is received within the prescribed period of time as indicated in clause 18 of condition of tender.

29. The Purchaser or any representative on behalf of the Purchaser, by his signature and or and acknowledges acceptance of this tender, warrants that he is duly authorised to accept such tender. The Purchaser further warrants that he is not a consumer as defined in Section 1 of the Consumer Protection Act 68 of 2008 or Section 1 of the National Credit Act 34 of 2005 and the Purchaser expressly acknowledge that the provisions of the Consumer Protection Act and the National Credit Act and the regulations thereto are not applicable to any agreements or transaction or transaction entered into with Boiler and Industrial Plant (Pty) Ltd.