

MRC ENERGY (PTY) LTD

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

In these terms and conditions, unless inconsistent with or otherwise indicated by the context:

- 1.1 **"Client"** means person, firm or company purchasing services or products from MRC;
- 1.2 **"Goods and/or Services"** means the goods supplied and/or services provided by MRC to Client as set out in a quotation provided by MRC and accepted by the Client;
- 1.3 **"MRC"** means MRC Energy (Pty) Ltd, a private company with limited liability duly incorporated in terms of South African law, Registration Number: 2015/132170/07 and any of its divisions and subsidiaries;
- 1.4 **"Price"** means the written quotation provided by MRC and accepted by the Client or, if there is no such quotation, the price usually charged by MRC for the Services.
- 1.5 **"Retention"** The security selected by the contractor as a payment reduction from the value of the contract.
- 1.6 **"Practical Completion"** means the stage when the works are substantially complete and can be used for the purposes intended.
- 1.7 **"Final Completion"** mean the stage of completion of the works as being free of defects
- 1.8 **"STCs"** means these standard terms and conditions;

2. APPLICABILITY

- 2.1 These STCs shall apply to the supply of all goods and the provision of all services by MRC to the Client.
- 2.2 These STCs shall prevail over any terms and conditions which the Client may seek to apply to MRC (including without limitation the standard trading terms of the Client) unless otherwise agreed in writing.
- 2.3 These STCs shall apply from the date on which a quotation by MRC is accepted or deemed to be accepted by the Client (as provided for in clause 3.2).

3. GOODS AND/OR SERVICES

- 3.1 Any quotation prepared by MRC and accepted or deemed to be accepted (as provided for in clause 3.2) shall constitute an irrevocable agreement for the purchase of Goods and/or Services by the Client from MRC.

- 3.2 A quotation by MRC shall be deemed to be accepted by the Client if MRC commences with the supply of goods or the provision of services pursuant to the quotation and the Client has not raised any objections to the quotation prior to that commencement.
- 3.3 No variation or withdrawal of an accepted quotation shall be valid unless MRC specifically confirms such variation or withdrawal in writing.
- 3.4 If MRC, at its sole discretion, accepts the variation or withdrawal of an accepted quotation, MRC reserves the right to charge the Client for all resultant costs incurred.
- 3.5 The date of completion of Services shall be the date on which MRC certifies that the Services have been completed.
- 3.6 The Client must grant MRC and/or its sub-contractors access to the site/s where the Services are to be rendered provide all assistance and cooperation necessary to allow MRC and/or its sub-contractors to render the Services.
- 3.7 Delivery of Goods takes place as soon as Goods begin to be unloaded at the Client's delivery address. If the Goods are collected by the Client or a third party on behalf of the Client delivery takes place as soon as the Client or third party starts to load the Goods. MRC may effect delivery in one or more instalments and each instalment shall be treated as a separate transaction.
- 3.8 Ownership in and to Goods pass to the Client upon full payment in respect of the Goods. Goods are sold *voetstoots*.
- 3.9 Risk in and to Goods pass to the Client upon delivery.
- 3.10 Unless the Client notifies MRC in writing within 3 days of delivery of the Goods or completion of the Services that the Goods and/or Services are not in accordance with the accepted quotation, MRC shall not be liable for any discrepancies. If MRC is satisfied of the validity of the Client's complaint, MRC will, in its absolute discretion, determine the manner in which it will resolve the complaint.

4. **DISCLAIMER AND PURPOSE**

- 4.1 Any recommendations, statements or suggestions given by MRC relating to the Goods and/or Services, whether given in technical literature or in response to a specific enquiry or otherwise is given in good faith. The Client shall satisfy itself (by, for example, contracting its own experts such as architects, surveyors, engineers, designers and the like) as to the suitability of the Goods and/or Services and any designs or specifications related to the Goods and/or Services for the Client's purpose even though that purpose may be specified. Any implied warranty or condition is specifically excluded unless otherwise agreed in writing.

- 4.2 MRC does not warrant the technical or professional competence of experts referred to in clause 4.1 above and the Client shall satisfy itself as to the competence of such experts before appointing them to inspect MRC's Goods and/or Services or to work alongside MRC.

5. **PAYMENT TERMS**

- 5.1 Client shall pay the Price or any part thereof, disbursements and applicable value-added tax without deduction, set off or demand, within 7 days of receipt of an invoice from MRC.
- 5.2 If the Client fails to pay any amount to the Seller on the due date, without prejudice to the Seller's other rights, the Applicant shall pay interest on all overdue amounts at 5% above the prime overdraft lending rate charged by the Seller's principal bankers from time to time, calculated from the due date until the date of payment in full.
- 5.3 All payments made by the Client to MRC may, upon acceptance in writing from MRC, subject to a retention 5% of which 2.5% is to be released upon Practical Completion, with the outstanding 2.5% to be released on Final Completion which is deemed to be no longer than two months after Practical Completion.

6. **INDEBTEDNESS**

- 6.1 MRC may, in its discretion, appropriate and allocate any payment made by the Client to any part of the Client's indebtedness to MRC as MRC sees fit.
- 6.2 A certificate given under the hand of any director or manager of MRC (whose appointment need not be proved) of the amount owing by the Client to MRC at any time and/or as to the rate of interest payable by the Client to MRC in respect of any period, shall be prima facie proof of the facts and matters set out therein.

7. **WARRANTY**

MRC gives no warranty in respect of the Goods and/or Services to the Client apart from any manufacturer's warranties which may be honoured by the manufacturer as a separate entity of the Company.

8. **NO LIABILITY AND INDEMNITY**

- 8.1 Neither MRC nor its sub-contractors shall be liable for any claims, liabilities, losses, damages, costs or expenses incurred by the Client or any third party or arising as a result of these STCs or arising in connection with any act, omission or neglect on the part of contractors appointed

pursuant to these STCs, whether direct, indirect or consequential, including, but without limitation, any economic loss, loss of turnover, profits, business or goodwill.

8.2 Without limiting the generality of the above clauses 7 and 8.1 MRC shall not be liable for any claims, liabilities, losses, damages, costs or expenses incurred by the Client or any third party or arising as a result of:

- a) its Goods and/or Services being applied to or used in respect of any building or other structure which is structurally, mechanically and/or electrically not sound in accordance with industry standards in any way, it being expressly agreed that MRC may assume that any building or other structure is structurally, mechanically and/or electrically sound in accordance with industry standards unless otherwise proved by the Client;
- b) interference of any kind by anybody/anything other than MRC employees or contractors with the Goods and/or Services before completion of an order, it being expressly agreed that any repair or additional Goods and/or Services in the discretion of MRC required as a result of such interference will be for the account of the Client; and
- c) the failure of its Goods and/or Services if the Goods and/or Services were installed and delivered in accordance with the relevant manufacturer or supplier specifications.

8.3 The Client hereby indemnifies MRC and its sub-contractors, their directors, employees, officers and agents against all claims, losses, damages, liability and costs arising out of, or in connection with, the purchase, use, consumption, resale, handling or disposal of any of Goods and/or Services, or the conduct of the Client's business (including without limitation any claims, losses, damages, liability and costs arising pursuant to section 61 of the Consumer Protection Act 2008, as amended or replaced from time to time), save to the extent that any such liability is caused directly by the fault or negligence of MRC or its sub-contractor.

9. **NO PENALTY**

Unless otherwise agreed in writing, MRC shall not be liable for any penalties or similar charges arising out of these STCs and/or the delivery of Goods and/or Services. In addition to clause 8.3, the Client indemnifies MRC against any penalties or similar charges that may arise out of these STCs and/or the delivery of Goods and/or Services.

10. **INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

10.1 MRC shall retain ownership of any existing or new intellectual property in and to the Goods and/or Services.

10.2 The Client acknowledges that during the course of the relationship between it and MRC, the Client may become aware of confidential and secret information relating to MRC's businesses. The Client therefore agrees:

10.2.1 to keep all confidential information belonging to MRC in the strictest confidence;

10.2.2 not to use the confidential information belonging to MRC for any purpose other than the purchase of Goods and/or Services in terms of these STCs; and

10.2.3 not to disclose the confidential information belonging to MRC to any third party without prior written consent, which may require that such third party signs a confidentiality undertaking before he gives his consent;

11. **DISPUTES**

11.1 In the event of a dispute arising out of or in connection with these STCs and the Goods and/or Services MRC may appoint any expert of its choice to examine the cause of the dispute and to write a report on his findings. In this regard the Client must fully cooperate with the expert appointed by MRC including but not limited to giving the expert access to all requested buildings, structures and/or documentation.

11.2 Notwithstanding the above, in the event of a dispute arising out of or in connection with these STCs or the breach, termination or invalidity thereof, then upon written notice of the dispute from either party to the other the dispute must be settled by:

11.2.1 mediation by an independent third party chosen by the parties; and

11.2.2 in the event that the mediation fails to resolve the dispute, by arbitration. In this regard, an award by a single arbitrator will be final and binding.

11.3 The mediator and/or arbitrator will be selected by agreement between the parties or failing such agreement will be nominated, at the request of the parties, by the Chairperson of the Association of Arbitrators. The arbitration shall be held in Johannesburg and in accordance with the rules of the Association of Arbitrators.

11.4 Nothing in this clause will preclude any party from seeking urgent interim relief from any court of competent jurisdiction.

12. ADDRESS FOR SERVICE OF NOTICES, DOCUMENTS AND PROCESSES

12.1 The Client chooses as its address for service of all notices, documents and processes the address set out on the quotation prepared by MRC for the Client. .

12.2 MRC chooses as its address for service of all notices, documents and processes the following address:

Unit 6, Almar centre
143 Crompton Street
New Germany
3610
Email: marcf@mrc-energy.co.za

12.3 All notices, documents and processes relating to these STCs must be delivered by hand, fax or email.

13. GOVERNING LAW AND JURISDICTION

13.1 These STCs shall be governed, interpreted and implemented in accordance with the laws of South Africa.

13.2 The Client consents to the jurisdiction of any Magistrate's Court having jurisdiction by virtue of section 28 of the Magistrate's Court Act 32 of 1944, as amended, for the determination of any claim which MRC may at any time have against the Client and which would otherwise be beyond the jurisdiction of a Magistrate's Court because of the amount of the claim. Despite such consent, MRC shall be entitled, at its discretion, to institute legal proceedings in any other court of competent jurisdiction.

14. GENERAL

14.1 In these STCs clause headings are for convenience only and shall not be taken into account in its interpretation;

14.2 Unless the context indicates a contrary intention, in these STCs any reference to the singular includes the plural and *vice versa*, a natural person includes an artificial or juristic person and *vice versa* and any one gender includes the other genders, as the case may be.

14.3 Any reference in these STCs to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at the current date, and as amended or replaced from time to time.

- 14.4 Where any term is defined within the context of any particular clause in these STCs, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning assigned to it for all purposes in terms of these STCs, notwithstanding that that term has not been defined in clause 1.
- 14.5 If any provision in clause 1 is a substantive provision conferring a right or imposing an obligation on MRC or the Client then, notwithstanding that such provision is contained in such clause, effect shall be given thereto as if such provision were a substantive provision in the body of these STCs.
- 14.6 The expiration or termination of these STCs shall not affect such of the provisions of these STCs as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 14.7 When any number of days is prescribed in these STCs, same shall be reckoned exclusively of the first and inclusively of the last unless the last day falls on a Saturday, Sunday or public holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in South Africa.
- 14.8 The use of the word "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example or examples.
- 14.9 The terms of these STCs having been negotiated, the rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply to these STCs and the Parties waive any rights they have to rely on such rule.
- 14.10 The Client undertakes not to solicit or to offer any fixed term, contract or permanent employment to any employee or contractor of MRC within one year of that employee or contractor ceasing employment or work for MRC. In the event that the Client does offer employment as described in this clause, the Client agrees to pay MRC a placement fee equivalent to one year's annual cost to company of the employee or Contractor, the rate of which is calculated at the same rate that was applicable in the month when the employee or Contractor leaves MRC.
- 14.11 For the duration of these STCs, and for a period of 1 (one) year after its termination Client will not, without the prior written consent of MRC, in any way whatsoever contract directly with contractors introduced to Client by MRC.

- 14.12 Nothing in these STCs shall constitute the relationship of agent, employer and employee or of partnership between MRC on the one hand and the Client on the other.
- 14.13 The rights and obligations in terms of these STCs may not be transferred, sub-contracted, assigned or made over to a third party by the Client without the MRC's prior written consent.
- 14.14 The Client warrants to and in favour of MRC that it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to accept a quotation from MRC and that these STCs constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms.
- 14.15 The Client acknowledges and agrees that it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all the provisions of these STCs and that it has either taken such independent advice or has dispensed with the necessity of doing so.
- 14.16 Each and every provision of these STCs (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of these STCs. If any of the provisions of these STCs (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of these STCs shall be and remain of full force and effect.
- 14.17 No addition to, variation, amendment or agreed cancellation of these STCs shall be of any force or effect unless recorded in a written document and signed by or on behalf of the Parties. For purposes hereof, a "written document" shall exclude any written document that is in the form, either wholly or partly, of a data message as that term is defined in the Electronic Communications and Transactions Act, No. 25 of 2002, as amended, and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.
- 14.18 The grant of any indulgence, extension of time or relaxation of any provision by MRC under these STCs shall not constitute a waiver of any right by MRC or prevent or adversely affect MRC's exercise of any existing or future right of the grantor.
- 14.19 Any costs incurred by MRC arising out of the breach by the Client of any of the provisions of these STCs shall be borne by the Client on an attorney and own client scale.