

# KWIKOT (HAIER) SOUTH AFRICA (PTY) LTD- PROCUREMENT TERMS AND CONDITIONS

## I. THIS SUMMARY

- 1.1. The provisions of this document serve as a summary of the comprehensive Contract to be entered into by and between Kwikot (Haier) South Africa (Pty) Ltd ("Kwikot (Haier)"; and a supplier ("Supplier"; only and should not be seen nor construed as an offer and no provision contained herein will constitute a valid and binding agreement between the parties.
- 1.2. The contents hereof shall not supersede nor replace the terms of the SLA in any form whatsoever.

## 2. THE CONTRACT

- 2.1. The purpose of the CONTRACT is to provide uniform terms and conditions regulating the supply-relationship between Kwikot (Haier) and its Suppliers.

## 3. OFFER AND ACCEPTANCE

- 3.1. The Supplier will be appointed by Kwikot (Haier) for the supply of products and/or services ("Goods"; to Kwikot (Haier) in terms of the CONTRACT, which appointment may be accepted by the Supplier subject to the terms and conditions of the CONTRACT.

## 4. DURATION

- 4.1. The CONTRACT shall commence on the commencement date and shall remain in force for an unrestricted duration, unless otherwise terminated in terms of the CONTRACT.

The CONTRACT may be terminated by any of the parties subject to the following.

- 4.2.1. That 30 days' notice of termination be delivered to the other party;
- 4.2.2. That any and all Goods ordered by Kwikot (Haier), prior to the date of receipt of the notice of termination by any party, be delivered to Kwikot (Haier) in terms of the CONTRACT; and
- 4.2.3. That Kwikot (Haier) pays the price of the Goods referred to in clause 4.2.2 above, as contained in the order and/or quotation, on the date of delivery thereof.
- 4.3. The terms of the CONTRACT relating to disputes shall remain valid notwithstanding termination thereof by either of the parties.

## 5. NON-EXCLUSIVE AGREEMENT

- 5.1. The CONTRACT will not be deemed as an exclusive agreement between the parties for the supply and/or rendering of the Goods.

## 6. SUPPLY AND DELIVERY OF GOODS

- 6.1. The Supplier must supply the Goods to Kwikot (Haier)
- 6.1.1. as described in the order and/or quotation and in accordance with the directions given to the Supplier by Kwikot (Haier);
- 6.1.2. with the required level of care, skill, competence, diligence and judgement of a professional organisation of the best standards in the industry; and
- 6.1.3. in a professional and ethical manner.
- 6.2. Where requested by Kwikot (Haier), the Supplier shall send an order confirmation accompanied by a pro-forma invoice to Kwikot (Haier)
- 6.3. Should the parties agree on blanket orders (fixed orders for delivery of Goods on agreed dates at a fixed price), the Supplier shall commence transportation of the ordered Goods on the shipping date and shall complete the delivery by no later than the delivery date, both the shipping- and delivery dates being the dates as set out in the quoted order and/or quotation.
- 6.4. The Supplier shall not subcontract the performance of all or any part of the supply of the Goods without Kwikot (Haier)'s prior written consent.
- 6.5. The Supplier shall notify Kwikot (Haier) timeously prior to the delivery date, should the Supplier not be able to deliver the Goods on the set delivery date.
- 6.6. Kwikot (Haier) shall have the right in the event of delivery not being effected on the delivery date or in the event of Kwikot (Haier) being notified at any stage prior thereto that the Supplier will not be able to deliver the Goods timeously or at all, without prejudice to any other rights which it may have at Common Law, to claim damages, including but not limited to damages and/or loss resulting from a loss and/or downtrend in production, from the Supplier.

## 7. SUPPLIER'S PRICES

- 7.1. Unless indicated to the contrary in the order and/or quotation, the quoted price ("price"; includes packaging and delivery.
- 7.2. The price quoted in the order and/or quotation shall be fixed and may not be varied by the Supplier.
- 7.3. The price as contained in the order and/or quotation will be settled in accordance with the payment terms as agreed upon in terms of the CONTRACT.

## 8. INCORRECT ORDERS

- 8.1. The Supplier shall be responsible to refer the order to Kwikot (Haier) for correction or clarification before proceeding to complete the order in the following events,
- 8.1.1. Should there be any apparent contradiction or mistake in the description, dimension, price, quantity, shipping date, delivery date or quality of the Goods ordered; and

- 8.1.2. Shall notwithstanding delivery of the Goods not be entitled to payment of the price of the Goods if the Supplier has failed to query any such apparent contradiction, mistake or anomaly in the order.

- 8.2. Any incorrect order that does not contain a correct delivery as set out in the order form and/or quotation, will be collected by the Supplier and Kwikot (Haier)'s account will be credited with the Price of any incorrect order(s).
- 8.3. The Supplier will deliver the correct order within a reasonable period.
- 8.4. A corrected delivery does not constitute a waiver of any right that Kwikot (Haier) may have to claim damages in the event of an incorrect supply by the Supplier.

## 9. QUALITY

- 9.1. The Goods shall comply with the quality specifications laid down in the order.
- 9.2. Kwikot (Haier) shall at any time during the process of manufacturing be entitled to inspect the Goods.
- 9.3. In the event that any latent defect in the Goods may manifest within a period of 12 (twelve) months from the date of the delivery of the order, Kwikot (Haier) will be entitled to replacement and/or repair thereof at the Supplier's sole cost and without delay.
- 9.4. In the event of the Supplier having rendered defective work and/or labour, Kwikot (Haier) shall be entitled, to require the Supplier to make good at the Supplier's sole expense such faulty work and/or labour and to replace any materials damaged and/or rendered ineffective as a result thereof.
- 9.5. Should any decision by Kwikot (Haier) regarding the rejection of any Goods delivered in terms of the CONTRACT by the Supplier, not be readily acceptable to the Supplier, Kwikot (Haier) shall arrange for tests and analyses by a third party (being a recognized Public Authority where possible). The costs of such tests and analyses shall be for the Supplier's account should such test results be in Kwikot (Haier)'s favour.

## 10. STOCK LEVELS

- 10.1. The Supplier shall store and manage the stock levels of the product(s) to be delivered to Kwikot (Haier) as set out in the CONTRACT.
- 10.2. The Supplier shall ensure that the stock levels are maintained at a level at least equal to Kwikot (Haier)'s sell through rate during the preceding two months and as communicated by Kwikot (Haier) to the Supplier in writing.
- 10.3. Kwikot (Haier) shall advise the Supplier once a month of the quantity and type of stock that should be stored and made available to Kwikot (Haier)

## II. PAYMENT

- II.1. Kwikot (Haier) shall be responsible to accept delivery of the Goods within 30 (thirty) days from the due date and which goods shall become payable on such date.

## 12. PERIODS OF ABSENCE

- 12.1. If the Supplier is unavailable or unable to supply the Goods in terms of the CONTRACT, Kwikot (Haier) shall be entitled to forthwith contract other suppliers to supply the Goods and to claim damages from the Supplier in the event of such breach.

## 13. INDEMNITY

- 13.1. The Supplier shall indemnify Kwikot (Haier) from and against any claims, demands, liabilities or expenses (including attorney's fees and costs) for any injury or damage, including but not limited to, any personal and/or bodily injury or tangible property damage of any nature whatsoever, arising out of or resulting in any way from any alleged defects in material(s), service(s), product(s), order(s), workmanship or performance, or any other act, omission or misrepresentation by the Supplier.
- 13.2. Kwikot (Haier) will not be liable to the Supplier for any lost profits of the Supplier, whether direct or indirect, consequential- and/or punitive, arising from the CONTRACT.

## 14. CONFIDENTIALITY

- 14.1. The Supplier will keep confidential and will not make use of, directly or indirectly, and will not disclose any of Kwikot (Haier) SNs trade secrets or confidential information as set out in the CONTRACT.

## 15. TERMINATION AND BREACH

- 15.1. Should the Goods or any portion thereof not be delivered in accordance with the provisions of the CONTRACT, Kwikot (Haier) shall without prejudice to any other remedy for breach of contract either in terms of the CONTRACT or Common Law and without being obliged to afford the Supplier the opportunity of remedying such defect, have the right to,
- 15.1.1. Cancel the order and claim damages; and/or
- 15.1.2. Purchase other Goods of the same or similar description to make good such default and to claim any costs and expenses so incurred from the Supplier; and
- 15.1.3. Claim and/or recover legal costs on an attorney and own client scale, should legal action be instituted to enforce Kwikot (Haier)'s rights in terms of the CONTRACT and/or recover any damages suffered.

- 15.2. If either party ("the defaulting party") commits a breach of any of the provisions of the CONTRACT and such breach is a material breach, the other party ("the aggrieved party"; will be entitled to cancel the CONTRACT with immediate effect, without prejudice to such other rights as the aggrieved party may have at law.

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### 16. DISPUTE RESOLUTION AND ARBITRATION

- 16.1. If a dispute arises between the parties, the representatives of each of the parties will meet to resolve the dispute.
- 16.2. Only in the event that parties' representatives are able to resolve the dispute will the aggrieved party resort to arbitration on the terms as set out in the CONTRACT.

### 17. SUSTAINABILITY

- 17.1. The Supplier is required to review and agree to the Kwikot (Haier) supplier work place standard.
- 17.2. The Supplier agrees to, with prior arrangement and non-disclosure agreement signed, to share information and be available for audits conducted by Kwikot (Haier) and or an assigned third party.

### 18. GENERAL

- 18.1. The duly signed and executed CONTRACT shall constitute the entire agreement between the parties and no amendment hereof shall have any force unless committed to writing and signed by both parties.
- 18.2. No party will be bound by any express or implied term, representation warranty, promise or the like, not recorded in the CONTRACT.