



MAGWA ENTERPRISE TEA (PTY) LTD

GENERAL CONDITIONS OF CONTRACT NOTES

The purpose of this document is to:

- i) Draw special attention to certain general conditions applicable to MET bids, contracts and orders; and
- ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with MET.

In this document words in the singular also have the same meaning in the plural and vice versa and words in the masculine also mean the feminine.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid shall be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC the provisions in the SCC shall prevail.

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General Conditions of Contract

1. Definitions

The following terms shall be interpreted as indicated:

- 1.1. **“Closing time”** means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. **“Contract”** means the written agreement entered into between MET and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. **“Contract price”** means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. **“Corrupt practice”** means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5. **“Country of origin”** means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.6. **“Day”** means calendar day.
- 1.7. **“Delivery”** means delivery in compliance of the conditions of the contract or order.
- 1.8. **contract or order**, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.9. **“Force majeure”** means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.10. **“Fraudulent practice”** means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.11. **“GCC”** means the General Conditions of Contract.
- 1.12. **“Goods”** means all of the equipment, machinery, and/or other materials that the supplier is required to supply to MET under the contract.
- 1.13. **“Local content”** means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place. [if applicable to bid]
- 1.14. **“Manufacture”** means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.15. **“Order”** means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.16. **“Project site,”** where applicable, means the place indicated in bidding documents.
- 1.17. **“Republic”** means the Republic of South Africa.
- 1.18. **“MET”** means the Magwa Enterprise Tea.
- 1.19. **“SCC”** means the Special Conditions of Contract. **“Services”** means those functional services ancillary to the supply of the Skills development & Training and other such obligations of the supplier covered under the contract.



- 1.20. **“Written”** or **“in writing”** means handwritten in ink or any form of electronic or mechanical writing.

2. Application

- 2.1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2. Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3. Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. Standards

The goods and/or supplied shall conform to the standards mentioned in the bidding documents and specifications.

4. Confidentiality: Use of contract documents, information and inspection.

- 4.1. The supplier shall not, without MET's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the MET in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- 4.2. The supplier shall not, without MET's prior written consent, make use of any document or information mentioned in GCC clause except for purposes of performing the contract.
- 4.3. Any document, other than the contract itself mentioned in GCC clause 4.1 shall remain the property of the MET and shall be returned (all copies) to MET on completion of the supplier's performance under the contract if so required by MET.
- 4.4. The supplier shall permit the MET to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by MET, if so required by MET.

5. Inspections, tests and analyses

- 5.1. All pre-bidding testing will be for the account of the bidder.
- 5.2. If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection,

the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of MET or an agent acting on behalf of MET.

- 5.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, MET shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 5.4. If the inspections, tests and analyses referred to in clauses 5.2 and 5.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by MET.
- 5.5. Where the supplies or services referred to in clauses 5.2 and 5.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 5.6. Supplies and services which are referred to in clauses 5.2 and 5.3 and which do not comply with the contract requirements may be rejected.

6. Delivery and documents

- 6.1. Delivery of the goods shall be made by the supplier in accordance with the terms specified in SCC.
- 6.2. Documents required to effect delivery are specified in SCC.

7. Contract Amendments

- 7.1. No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

8. Assignment

- 8.1. The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with MET's prior written consent.

9. Subcontracts

- 9.1. The Supplier shall not subcontract any part of this contract without prior written consent of MET. Should such consent be given by MET, this shall not in any way relieve the supplier from any liability or obligation under the contract.

10. Delays in the Supplier's Performance

- 10.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by MET in the contract.

- 10.2.** If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify MET in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, MET shall evaluate the situation and may at its discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 10.3.** The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

11. Penalties

- 11.1.** Subject to GCC , if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, MET shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. MET may also consider termination of the contract.

12. Termination for Default

- 12.1.** MET, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- 12.2.** If the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by MET.
- 12.3.** If the Supplier fails to perform any other obligation(s) under the contract; or
- 12.4.** If the supplier, in the judgment of MET, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

13. Force Majeure

- 13.1.** Notwithstanding the provisions of GCC, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 13.2.** If a force majeure situation arises, the supplier shall promptly notify MET in writing of such condition and the cause thereof. Unless otherwise directed by MET in writing, the supplier shall continue to perform its obligations under the contract as far as is



reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

14. Termination for Insolvency

MET may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to MET.

15. Settlement of Disputes

- 15.1.** If any dispute or difference of any kind whatsoever arises between MET and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 15.2.** If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either MET or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 15.3.** Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

16. Applicable Law

The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

17. Notices

- 17.1.** Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.
- 17.2.** The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

18. Taxes and Duties

- 18.1.** No contract shall be concluded with any bidder whose tax matters are not in order.
- 18.2.** A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to MET.



General Condition Of Contract (Revised July 2010)

Signature:

Position:

Name of Bidder:

Date: