

**Balwin Properties Limited**  
**Standard Terms & Conditions of Purchase**

**1. INTERPRETATION**

In these Terms & Conditions

- 1.1. **"the/this Agreement"** means the agreement concluded between the Purchaser and Supplier in respect of the transaction, which agreement comprises the Purchase Order and the Terms;
- 1.2. **"Confidential Information"** means any personal information or data which by its nature or content is identifiable as confidential and/or proprietary to the Purchaser and/or any third party, or which is provided or disclosed in confidence; and which the Purchaser or any person acting on its behalf may disclose or provide to the Supplier or which may come to the knowledge of the Supplier by whatsoever means, including all information relating to the Purchaser's current and existing strategic objectives, its business' activities, business' relationships, technical, scientific, commercial, financial and market information and trade secrets, data concerning its architectural information, demonstrations, processes and machinery, all agreements to which it or its clients is/are a party; information relating to clients and facilities, but specifically excluding information or data which –
  - is lawfully in the public domain at the time of disclosure thereof;
  - subsequently becomes lawfully part of the public domain by publication or otherwise;
  - becomes available from a source other than one of the Parties which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information; and
  - is disclosed pursuant to a requirement or request by operation of law, regulation or court order;
- 1.3. **"Delivery"** means the delivery instructions set out on the face of the Purchase Order;
- 1.4. **"Delivery Date"** means the date of delivery for Goods or performance of Services as specified in a Purchase Order;
- 1.5. **"Delivery Point"** means the location identified by the Purchaser in the Purchase Order to which the Supplier is to deliver Goods and/or perform the services, or such other delivery area or point which is specified in writing by the Purchaser;
- 1.6. **"Description"** means the goods purchased by the Purchaser from the Supplier as specified on the face of the Order;
- 1.7. **"Fee"** means the 30% management fee to be deducted by the Purchaser and which shall be calculated on the total cost of:
  - the repair, replacement or substitution of defective Goods by the Supplier or (at the election of the Purchaser) any third-party supplier; or
  - the re-performance of any Services provided by the Supplier or (at the election of the Purchaser) any third-party supplier;
- 1.8. **"Goods"** means the goods that are required to be delivered by Supplier pursuant to a Purchase Order, and include all materials, component parts, packaging and labelling of such goods;

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- 1.9. **"Purchase Order"** means the purchase order between Purchaser and Supplier for the purchase and sale of Goods and/or Services, to which these Standard Terms and Conditions of Purchase are attached or are incorporated by reference;
- 1.10. **"Parties"** means the Supplier and the Purchaser;
- 1.11. **"the Purchaser"** means the party denoted as such on the face of the Order;
- 1.12. **"Services"** means any services to be provided by Supplier to Purchaser pursuant to a Purchase Order.
- 1.13. **"Supplier"** means the party indicated on the face page of the Purchase Order that is contracting with the Purchaser for the purchase and sale of Goods and/or Services.
- 1.14. **"Supplier Proposal"** means any acknowledgement, estimate, quote, offer to sell, invoice, or proposal of Supplier relating to the supply of Goods and/or Services to Purchaser, including any delivered in connection with a request for quotations, request for proposal or similar process initiated by the Purchaser.
- 1.15. **"Specifications"** means the requirements, attributes and specifications for the Goods or Services that are set out in the applicable Purchase Order. Specifications also include: (a) documentation published by Supplier relating to the Goods or Services; (b) operational and technical features and functionality of the Goods or Services; (c) standards or levels of service performance for Services; and (d) Purchaser specific business requirements that are expressly set out in a Purchase Order;
- 1.16. **"the Terms"** means the standard terms and conditions contained in this Agreement read together with the Supply and Installation Sub-Contractor Agreement or Labour Only Sub-Contractors Agreement; and
- 1.17. **"the Transaction"** means the purchase of Goods or Services by the Purchaser from the Supplier subject to the terms and conditions of this Agreement.

## 2. **AGREEMENT**

The Agreement consists only of:

- (a) these Standard Terms and Conditions;
- (b) the applicable Purchase Order; and
- (c) any Specifications or other documents expressly referenced in the Purchase Order. Any reference in the Purchase Order to any Supplier Proposal is solely for the purpose of incorporating the descriptions and specifications of the Goods and/or Services contained in the Proposal, and only to the extent that the terms of the Supplier Proposal do not conflict with the descriptions and Specifications set out in the Purchase Order. Purchaser's acceptance of, or payment for, Goods and/or Services will not constitute Purchaser's acceptance of any additional or different terms in any Supplier Proposal, unless otherwise accepted in writing by the Purchaser. If there is any conflict or inconsistency between the documents constituting the Agreement, then unless otherwise expressly provided, the documents will rank in the order of precedence in accordance with the order in which they are listed in this section.

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### **3. THE TRANSACTION**

- 3.1. The Purchaser hereby purchases the Goods or Services from the Supplier who agrees to supply and deliver the Goods to the Purchaser or perform the Services as per the Purchase Order and Specifications.
- 3.2. This Agreement shall be deemed to come into effect upon the date of delivery of the Goods or Services by the Supplier to the Purchaser.
- 3.3. The Supplier shall deliver to the Purchaser a waybill together with the Goods or Services which shall include the order number and the number of units supplied.
- 3.4. The Supplier acknowledges that time is of the essence with respect to delivery of the Goods and performance of Services. Goods shall be delivered, and Services performed by the applicable Delivery Date. Supplier must immediately notify Purchaser if Supplier is likely to be unable to meet a Delivery Date. At any time prior to the Delivery Date, Purchaser may, upon notice to Supplier, cancel or change a Purchase Order, or any portion thereof, for any reason, including, without limitation, for the convenience of Purchaser or due to failure of Supplier to comply with this Agreement, unless otherwise noted.
- 3.5. The Supplier's failure to deliver the Goods or perform the Services on the Delivery Date and at the Delivery Point, timeously in accordance with delivery instructions, shall entitle the Purchaser to source the Goods or Services from third party suppliers (other than the Supplier) and to recover from the Supplier any adverse difference between the respective purchase prices or to recover damages from the Supplier.
- 3.6. The onus shall be on the Supplier to prove that the Purchaser did not suffer damages as a result of its failure to deliver in terms of the delivery instructions.
- 3.7. Title and risk of loss or damage shall pass to Purchaser upon receipt of Goods at the Delivery Point, unless otherwise agreed to by the Purchaser in writing. Purchaser has no obligation to obtain insurance while Goods are in transit from Supplier to the Delivery Point.

### **4. PAYMENT**

- 4.1. Prices for the Goods and/or Services will be set out in the applicable Purchase Order. Price increases or charges not expressly set out in the Purchase Order shall not be effective unless agreed to in advance in writing by Purchaser. Supplier will issue all invoices on a timely basis. All invoices delivered by Supplier must meet Purchaser's requirements, and at a minimum shall reference the applicable Purchase Order. Purchaser will pay the undisputed portion of properly rendered invoices 30 (thirty) days from the invoice date.
- 4.2. Purchaser shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts and such withholding of disputed amounts shall not be deemed a breach of this Agreement nor shall any interest be charged on such amounts. Notwithstanding the foregoing, Purchaser agrees to pay the balance of the undisputed amounts on any invoice that is the subject of any dispute within the time periods specified herein.
- 4.3. The Purchaser will pay the purchase price to the Supplier within 30 (thirty) days after receipt of a valid statement recording the original invoices together with all supporting documentation proving delivery of Goods or Services to the Purchaser.

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- 4.4. If the tax invoices referenced in the statement are incorrect or incomplete or not timeously received by the Purchaser (i.e. received on or before the 25<sup>th</sup> of each month) then the Purchaser shall notify the Supplier accordingly and the Purchaser shall not be required to effect payment of the purchase price until it receives the correct or complete version of the relevant tax invoice and/or supporting documentation.

## **5. LOSS AND / OR DAMAGES**

- 5.1. All Goods supplied in terms of the Purchase Order shall be and remain at the sole risk of the Supplier who shall bear all costs whatsoever arising from, or in respect of all losses, damages and/or destruction of the goods until such time as the goods have been delivered to the Purchaser at the Delivery Point and/or installed by the Supplier at the Delivery Point.
- 5.2. All delivery of Goods and performance of Services shall be subject to Purchaser's right of inspection. The Purchaser shall have the right following the delivery of the Goods at the Delivery Point or performance of the Services to undertake such inspection, and upon such inspection, the Purchaser shall either accept the Goods or Services ("**Acceptance**") or reject them. Purchaser shall have the right to reject any Goods that are delivered in excess of the quantity ordered or which are damaged or defective. In addition, Purchaser shall have the right to reject any Goods or Services that are not in conformance with the Specifications or any term of this Agreement. Transfer of title to Purchaser of Goods shall not constitute Purchaser's Acceptance of those Goods. Purchaser shall provide Supplier with a notice of any Goods or Services that are rejected, together with the reasons for such rejection.
- 5.3. Purchaser shall be entitled to return rejected Goods to Supplier at Supplier's expense and risk of loss for, at Purchaser's option, either: (i) full credit or refund of all amounts paid by Purchaser to Supplier for the rejected Goods; or (ii) replacement Goods to be received within the time period specified by Purchaser.
- 5.4. Title to rejected Goods that are returned to Supplier shall transfer to Supplier upon such delivery and such Goods shall not be replaced by Supplier except upon written instructions from Purchaser. Supplier shall not deliver Goods that were previously rejected on grounds of non-compliance with this Agreement, unless delivery of such Goods is approved in advance by Purchaser and is accompanied by a written disclosure of Purchaser's prior rejection(s).
- 5.5. The Supplier hereby indemnifies and holds the Purchaser harmless against all and any costs, liability, loss, consequential loss, damages or expense that it may sustain by virtue of the Supplier breaching the Agreement; and any claims which may be made against it for the unauthorised use or infringement of patent rights, trademarks and/or any other protected proprietary rights in respect of the goods.
- 5.6. In the event of any patent or latent defects manifesting in the Goods or performance of Services from date of completion of a particular project, in respect of which the Goods have been ordered, the Purchaser shall be entitled to call upon the Supplier to replace, at the Supplier's own cost, such defective goods promptly and without delay.

Should any Goods supplied in terms of this Agreement fail to comply with the Specifications, or be unsuitable for the purpose for which it was intended or defective or damaged, the Purchaser shall be entitled to require that the Supplier, at its own cost, cause such defects/damages to be rectified or to be replaced promptly and without delay or to cancel the Agreement and claim damages, in which case the Supplier shall at its own cost be required to remove the Goods at the request of the Purchaser.

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- 5.7. If the Purchaser instructs attorneys to render legal services to enforce its rights arising from a failure by the Supplier to comply with its obligations in terms of this Agreement, the Supplier shall be liable for all costs and disbursements incurred by the Purchaser on attorney and client scale.

## **6. OCCUPATIONAL HEALTH & SAFETY**

- 6.1. In carrying out its obligations under the Agreement, including the performance of Services, Supplier shall at all times comply with all applicable national, provincial, and municipal laws, regulations, standards, and codes. Supplier shall obtain all applicable permits, licences, exemptions, consents and approvals required for the Supplier to manufacture and deliver the Goods and perform the Services.
- 6.2. The Supplier shall ensure that all employees, workmen and sub-contractors of the Supplier are inducted in their area of work.
- 6.3. The Supplier and any sub-contractors of the Supplier shall ensure their Letter of Good Standing is valid at all times, in accordance with the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993.
- 6.4. The Supplier shall ensure that all requirements in terms of the Occupational Health and Safety Act No.85 of 1993 (the "**OHS Act**") are complied with.

## **7. WARRANTIES**

### **7.1. Product Warranties**

Supplier warrants to Purchaser that the Goods provided hereunder shall be:

- i. of merchantable quality;
- ii. fit for the purposes intended;
- iii. new, unless otherwise agreed to by Purchaser;
- iv. free from defects in design, material and workmanship;
- v. in strict compliance with the Specifications;
- vi. free from any liens or encumbrances on title whatsoever;
- vii. in conformance with any samples provided to Purchaser in any Supplier Proposal or other document; and
- viii. compliant with all applicable national, provincial, and municipal laws, regulations, standards, and codes.

The Supplier shall when supplying Goods under this Agreement exercise the degree of professionalism, skill, diligence, care, prudence, judgment, and integrity which would reasonably be expected from a skilled and experienced service provider supplying Goods under the same or similar circumstances.

### **7.2. Service Warranties**

Supplier shall perform all Services:

- i. exercising that degree of professionalism, skill, diligence, due care, prudence, judgment, and integrity which would reasonably be expected from a skilled and experienced service provider providing Services under the same or similar circumstances as the Services under this Agreement;

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- ii. in accordance with all Specifications and all Purchaser policies, guidelines, by-laws and codes of conduct applicable to Supplier; and
- iii. using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services. Purchaser may object to any of the Supplier's personnel engaged in the performance of Services who, in the reasonable opinion of Purchaser, are lacking in appropriate skills or qualifications, engage in misconduct, constitute a safety risk or hazard or are incompetent or negligent, and the Supplier shall promptly remove such personnel from the performance of any Services upon receipt of such notice, and shall not re-employ the removed person in connection with the Services without the prior written consent of Purchaser.

The Supplier acknowledges that the Fee shall be levied in the event of any breach of the warranties above in relation to the Goods and/or Services. The Fee may be payable to the Purchaser utilising set-off against any monies owed to the Supplier by the Purchaser.

### 7.3. **Intellectual Property Warranty**

Supplier further warrants to Purchaser that at all times all Goods and or Services will not be in violation of or infringe any Intellectual Property Rights of any person.

### 7.4. **Manufacturer Warranties**

Supplier shall assign to Purchaser all manufacturer's warranties for Goods not manufactured by or for Supplier and shall take all necessary steps as required by such third-party manufacturers to effect assignment of such warranties to Purchaser.

In the event of breach of any of the warranties listed above and without prejudice to any other right or remedy available to Purchaser (including Purchaser's indemnification rights hereunder), Supplier will, at Purchaser's option and Supplier's expense, refund the purchase price for, or correct or replace the affected Goods, or re-perform the affected Services, within 7 (five) day(s) after notice by Purchaser to Supplier of warranty breach. All associated costs, including costs of re-performance, costs to inspect the Goods and/or Services, transport the Goods from Purchaser to Supplier, and return shipment to Purchaser, and costs resulting from supply chain interruptions, will be borne by Supplier. If Goods are corrected or replaced or Services are re-performed, the warranties in this Agreement will continue as to the corrected or replaced Goods for a further Goods warranty period commencing on the date of Acceptance of the corrected or replaced Goods by Purchaser. If Supplier fails to repair or replace the Goods or perform the Services within the time periods required above, Purchaser may contract a third-party supplier to; repair or replace the Goods or to perform the Services, at Supplier's expense.

In the event that any Goods provided by Supplier to Purchaser are subject to a claim or allegation of infringement of Intellectual Property Rights of a third party, Supplier shall, at its own option and expense, without prejudice to any other right or remedy of Purchaser (including Purchaser's indemnification rights hereunder), promptly provide Purchaser with a commercially reasonable alternative, including the procurement for Purchaser of the right to continue using the Goods in question, the replacement of such Goods with a non-infringing alternative satisfactory to Purchaser, or the modification of such Goods (without affecting functionality) to render them non-infringing.

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## 8. CONFIDENTIALITY

Supplier shall safeguard and keep all Confidential Information relating to the Purchaser obtained by it or provided to it by Purchaser in connection with this Agreement strictly confidential, and shall use such Confidential Information only for the purposes of carrying out its obligations under this Agreement.

## 9. INSURANCE

Supplier represents and warrants to Purchaser that it has in place with reputable insurers such insurance policies in coverage amounts that would be maintained by a prudent supplier of goods and services similar to the Goods and Services provided hereunder, including, as applicable, professional negligence and public liability insurance and comprehensive commercial general liability insurance (including product liability coverage and all-risk contractors' equipment insurance). In addition, Supplier will take out and maintain, at its own cost, such insurance policies and coverages as may be reasonably required by Purchaser from time to time. Supplier will promptly deliver to Purchaser, as and when requested, written proof of such insurance.

## 10. INDEMNITY

Supplier shall indemnify, defend and hold harmless Purchaser, its Affiliates, and their respective officers, directors, employees, consultants, and agents (the "**Indemnified Parties**") from and against any claims, fines, losses, actions, damages, expenses, legal fees and all other liabilities brought against or incurred by the Indemnified Parties or any of them arising out of: (a) death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the Goods or Services, or from the failure of the Goods or Services to comply with the warranties contained herein; (b) any claim that the Goods or Services infringe or violate the Intellectual Property Rights or other rights of any person; (c) any intentional, wrongful or negligent act or omission of Supplier or any of its Affiliates or subcontractors; (d) Supplier's breach of any of its obligations under this Agreement; or (e) any liens or encumbrances relating to any Goods or Services.

## 11. INDEPENDENT CONTRACTORS

Supplier will perform its obligations under the Agreement as an independent contractor and in no way will Supplier or its employees be considered employees, agents, partners, fiduciaries, or joint ventures of Purchaser. Supplier and its employees will have no authority to represent Purchaser or its Affiliates or bind Purchaser or its Affiliates in any way, and neither Supplier nor its employees will hold themselves out as having authority to act for Purchaser or its Affiliates.

## 12. FORCE MAJEURE

12.1. Each of the Purchaser and the Supplier ("**the Affected Party**") shall be discharged from its obligations in terms of this Agreement, without any right on the part of the other party to claim damages or any other relief where the Affected Party is prevented or restricted directly or indirectly from carrying out its obligations under this Agreement by reason of strike, lockout, fire, explosion, floods, drought, riot, war, accident, acts of god, embargo, legislation, civil commotion, unrest or disturbance, cessation of labour, government interference or control.

12.2. The Affected Party shall notify the other party in writing of its inability to comply with the Agreement by reason of force majeure. If, as a result of the force majeure the Affected Party is unable to comply with its obligations in terms of the Agreement, either of the parties shall be entitled to cancel the Agreement without liability for any damages whatsoever.

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### **13. SEVERABILITY**

If any provision of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect.

### **14. WAIVER**

No waiver of any provision of this Agreement shall be enforceable against that party unless it is in writing and signed by that party.

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