

## IFP AFRICA LLC

### STANDARD TERMS AND CONDITIONS OF PURCHASE

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless such meaning is inconsistent with the context, the following terms shall, throughout these Terms and Conditions, have the meanings respectively ascribed to them, namely:
- 1.1.1 **“Agreement”**: these Terms and Conditions and the Contract;
  - 1.1.2 **“Business Hours”**: 08h00 – 16h30, Monday to Friday, excluding public holidays in South Africa;
  - 1.1.3 **“Company”**: IFP Africa LLC (Incorporated in the United States of America) External Profit Company of 1 Eastgate Lane, Bedfordview, Johannesburg, Gauteng, 2007, South Africa;
  - 1.1.4 **“Contract”**: the Order and the Seller’s acceptance of the Order;
  - 1.1.5 **“Goods”**: any goods agreed in the Contract to be bought by the Company from the Seller (including any part or parts of them). All references in these conditions to 'Goods' shall include any related services;
  - 1.1.6 **“Order”**: the Company’s written instruction to supply the Goods, incorporating these conditions;
  - 1.1.7 **“Parties”**: the Company and the Seller and **“Party”** means any one of them;
  - 1.1.8 **“Seller”**: the person, firm or company who accepts the Company’s Order;
  - 1.1.9 **“Terms and Conditions”**: these Standard Terms and Conditions of Purchase.
- 1.2 In these Terms and Conditions, unless the context otherwise requires -
- 1.2.1 the singular shall import and include the plural and vice versa;
  - 1.2.2 words indicating one gender shall import and include other genders;
  - 1.2.3 words indicating natural persons shall import and include juristic and artificial persons;
  - 1.2.4 the headnotes to these Terms and Conditions are used for the sake of convenience only and shall not govern the interpretation of the clauses to which they relate;
  - 1.2.5 where any numbers of days are prescribed in these Terms and Conditions, they shall be calculated exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
  - 1.2.6 if any doubt or conflict arises where figures are referred to in numerals and in words, the figure in words shall prevail;
  - 1.2.7 the rights and obligations of any Party arising from these Terms and Conditions shall devolve upon and bind its successors-in-title;
  - 1.2.8 if any provision in a definition contained in these Terms and Conditions is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it only appears in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these Terms and Conditions;
  - 1.2.9 these Terms and Conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
  - 1.2.10 the rule of construction that these Terms and Conditions shall be interpreted against the Party responsible for the drafting or preparation of these Terms and Conditions shall not apply.

#### 2. APPLICATION OF TERMS AND CONDITIONS

- 2.1 Subject to any variation under clause 2.4 below, these Terms and Conditions are the only terms and conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2 Each Order for Goods by the Company from the Seller shall be deemed to be an offer by the Company to buy Goods subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of Order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Terms and Conditions apply to all the Company's purchases and any variation, waiver, alteration or modification to these Terms and Conditions shall have no effect unless expressly agreed in writing and signed by a specifically authorized representative of the Company.

### **3. QUALITY AND DEFECTS**

- 3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specifications, prints, drawings and samples supplied or advised by the Company to the Seller.
- 3.2 The Seller warrants that any and all Goods covered by the Order shall be suitable and fit for the use intended by the Company.
- 3.3 The Seller warrants and guarantees that all Goods and ingredients and components intended for use in the manufacture or conversion of paper, or as a component of a package or packaging material, are free of all substances and/or additives which are banned in any relevant jurisdictions where the Goods are to be used.
- 3.4 At any time prior to delivery of the Goods to the Company the Company shall have the right to inspect and test the Goods at all times.
- 3.5 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications, prints, drawings and samples supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 3.6 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 3.7 The Company may notify the Seller of any claim for defect within one year after receipt by the Company.
- 3.8 If any of the Goods fail to comply with the provisions set out in clause 3.1 above, *the Company shall be entitled to avail itself of any one or more remedies listed in clause 14 below.*
- 3.9 The Company and the Seller may agree in writing to change from time to time the Goods to be supplied under the Order. No additional charge for any additional or different goods will be payable unless provided for in a supplemental written change Order executed by the Company and agreed by the Seller.
- 3.10 An overrun or underrun of up to 10% will constitute fulfilment of an order unless agreed otherwise by the parties in writing.

### **4. WARRANTIES AND LIABILITY**

- 4.1 The Seller assigns to the Company any warranties made to the Seller by any of its suppliers in connection with any goods or ingredients or components specifically acquired by the Seller for use in furnishing the Goods covered by this Order.

- 4.2 The Company shall not be responsible for any actions taken or fines or penalties assessed by any governmental agency against shipment of the Goods because of the failure of the Seller to comply with any relevant laws or regulations or with a notification issued to the Seller by any such governmental agency.
- 4.3 The Seller warrants that all Goods supplied and the operation and installation of the Goods by the Seller will comply with all prevailing electrical, environmental and health and safety regulations and standards.
- 4.4 The Seller warrants that performance of work under the Order will conform with all applicable employment laws including anti-discrimination and child labour laws.

## **5. INDEMNITY**

- 5.1 The Seller shall keep the Company and its customers indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
  - 5.1.1 defective workmanship, quality or materials in relation to any goods supplied;
  - 5.1.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and
  - 5.1.3 **any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.**

## **6. DELIVERY**

- 6.1 The Goods shall be delivered, carriage paid, place of delivery as is agreed by the Company in writing prior to delivery of the Goods. The Seller shall off-load the Goods at its own risk as directed by the Company.
- 6.2 The date for delivery shall be specified in the Order or in accordance with the attached delivery schedule.
- 6.3 The Seller shall invoice the Company upon, but separately from, despatch of the Goods to the Company.
- 6.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 6.5 Time for delivery shall be of the essence.
- 6.6 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company during Business Hours.
- 6.7 The Seller shall notify the Company promptly of any delays or threatened delays in the performance of the order.
- 6.8 The Company may from time to time change delivery schedules or direct temporary suspensions of scheduled shipments by means of written or telephonic notice to the Seller.
- 6.9 If the Goods are not delivered on the due date or not in accordance with the attached delivery schedule then, without prejudice to any other rights which it may have, the Company reserves the right to:
  - 6.9.1 cancel the Contract in whole or in part;
  - 6.9.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
  - 6.9.3 recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and

- 6.9.4 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods on the due date.
- 6.10 Where the Company agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- 6.11 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

## **7. RISK/PROPERTY**

The Goods shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Company.

## **8. PRICE**

- 8.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges and taxes.
- 8.2 No variation in the price or extra charges shall be accepted by the Company unless otherwise agreed in writing between the parties.
- 8.3 If the Seller does not deliver to the Company within 3 days of the date of shipment an invoice giving the Company's correct purchase order number accompanied by the original bill of lading or express receipt, the Company may assume that any early payment discount that may be available in the Order is to be calculated from the date the bill reaches the Company, allowing 3 business days for transmission.

## **9. PAYMENT**

- 9.1 If no price is agreed by the parties the Order shall be accepted and fulfilled at the lowest of:
  - 9.1.1 the price most recently quoted for goods of the same type;
  - 9.1.2 the price at which goods of the same type were last shipped; or
  - 9.1.3 the price at which goods of the same type are generally sold by others in the industry.
- 9.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.
- 9.3 If any uncontested sum payable under the Contract is not paid within 14 business days of written notice from Seller to the Company that the amount is past its due date then, without prejudice to the parties' rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum above the base rate from time to time of the Company's principal bankers. The Seller is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

## **10. CONFIDENTIALITY**

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or subcontractors are subject to like obligations of

confidentiality as bind the Seller.

**11. THE COMPANY'S PROPERTY**

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Company but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

**12. TAXES**

Any existing or future taxes imposed in respect of the Contract or the manufacture, sale, delivery, transportation or storage of the Goods shall be paid by the Seller or shall be reimbursed by the Seller to the Company, if paid or required to be paid by the Company. The Company shall be entitled to cancel any order for Goods, either wholly or in part, in the event of the Seller's failure to pay any such taxes or reimburse the Company in respect of the same.

**13. PRIVACY AND DATA PROTECTION**

13.1 The Seller shall at all times during the performance of its obligations in terms of the Agreement ensure that:

13.1.1 no data collected from any person during the supply of the Goods is sold, disclosed, commercially exploited or used in any way other than as expressly authorised by the Company; and

13.1.2 it processes data only for the express purpose for which the data was obtained.

13.2 The Seller consents to the collection, processing and further processing of its personal information (including personal information contained in electronic communications) by the Company for the purposes of implementing the Agreement and facilitating the supply of Goods.

**14. TERMINATION**

14.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

14.2 The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

14.2.1 the Seller commits a material breach of any of these Terms and Conditions or any additional terms and conditions of the Contract; or

14.2.2 any distress, execution or other process is levied upon any of the assets of the Seller; or

14.2.3 the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or

- notice of intention to appoint an administrator is given by the Seller or its directors or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or proceedings are commenced relating to the insolvency or possible insolvency of the Seller under any law or regulation; or
- 14.2.4 the Seller ceases or threatens to cease to carry on its business; or
  - 14.2.5 the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
  - 14.2.6 any representation made by the Seller is false or misleading.
- 14.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **15. REMEDIES**

- 15.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:
- 15.1.1 to rescind the Order;
  - 15.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
  - 15.1.3 at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
  - 15.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Seller;
  - 15.1.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and
  - 15.1.6 to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

## **16. DISPUTE RESOLUTION**

- 16.1 Should a dispute occur between the Parties in connection with any matter arising out of the Agreement or its interpretation or their respective rights and obligations under the Agreement or its cancellation or termination or any matter arising out of its cancellation or termination (any of which, a "**Dispute**"), the Dispute shall be referred to the respective Parties' senior management, who shall endeavour to resolve the Dispute in good faith and with due willingness and intention to determine a solution.
- 16.2 If the Parties' senior management are unable to resolve the Dispute in accordance with clause 16.1 above within 21 days of any Party having declared a Dispute, then the matter may be referred by any Party to arbitration in accordance with clause 16.3 below.
- 16.3 Arbitration amongst the Parties shall be subject to the following terms and conditions:
- 16.3.1 There shall be 1 arbitrator who shall be, if the question in issue is:
    - 16.3.1.1 primarily an accounting matter, an independent chartered accountant of not less than 15 years' standing;
    - 16.3.1.2 primarily a legal matter, a practising attorney or advocate of not less than 15 years' standing;
    - 16.3.1.3 primarily a technical matter, a suitably qualified person; and
    - 16.3.1.4 any other matter, a suitably qualified person.

- 16.3.2 The appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between them within a period of 10 business days after the arbitration has been demanded, any of the Parties shall be entitled to request the chairperson for the time being of the Arbitration Foundation of Southern Africa (“**AFSA**”) to make the appointment and, in making his appointment, to have regard to the nature of the dispute;
- 16.3.3 Each arbitration shall take place in Johannesburg and shall be submitted to and determined by arbitration in accordance with the Commercial Arbitration Rules of AFSA, provided that a Party which has been given notice of breach in terms of this Agreement and has not disputed such breach within the time period provided for remedying of such breach (if any) shall not thereafter be entitled to raise or refer such dispute to arbitration in terms of this clause 16.3, and the costs of any such arbitration shall be determined by the arbitrator as part of his finding;
- 16.3.4 The decision of the arbitrator shall be final and binding on the Parties, and may be made an order of any Court of competent jurisdiction; and
- 16.3.5 Should any other Party wish to make the arbitrator’s decision an order of that court, each of the Parties hereby submits itself to the jurisdiction of the South Gauteng High Court of South Africa.
- 16.4 The provisions of this clause will not preclude any Party from access to a competent division of the High Court of South Africa for urgent and/or interim relief pending the outcome of an arbitration in terms hereof or in respect of arbitration proceedings in terms hereof.

## **17. NOTICES AND DOMICILIA**

- 17.1 Any notice to be given to the Parties in terms of the Agreement shall be in writing and delivered during Business Hours by way of e-mail or posted by prepaid registered post to the addresses mentioned hereunder, which addresses the Parties choose as their domicilium citandi et executandi for all purposes arising out of the Agreement:
- 17.1.1 The Company: c/o Rödl & Partner at 1 Eastgate Lane, Bedfordview, Johannesburg, Gauteng, 2007, South Africa
- 17.1.2 The Seller: As indicated on the Purchase Order
- 17.2 The Parties may choose such other physical address by written notice to the other.

## **18. ASSIGNMENT AND DELEGATION**

- 18.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 18.2 The Company may assign the Contract or any part of it to any person, firm or company.
- 18.3 The Seller shall not be entitled to delegate any part of its performance under the contract without the prior written consent of the Company.

## **19. FORCE MAJEURE**

- 19.1 The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, accidents or breakdowns, flood, epidemic and pandemic, lock-outs, strikes or other labour disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
- 19.2 The Seller shall not be excused from the performance of its obligations under the contract following the occurrence or existence of the following events and circumstances:
- 19.2.1 any adverse change in the cost or availability of raw materials, supplies or

- semi-processed goods from the date of this order to the delivery date under this order;
- 19.2.2 fire, floods, explosions, accidents or breakdowns;
- 19.2.3 riots, strikes, slowdowns or other concerted acts of workmen whether direct or indirect; and
- 19.2.4 any other cause similar to any of the foregoing.

**20. GENERAL**

- 20.1 Each right or remedy of the Company under the Agreement is without prejudice to any other right or remedy of the Company whether under the Agreement or not.
- 20.2 The Agreement and attached delivery schedule constitute the entire agreement between the Parties and no representation by either of the Parties or their agent shall be binding on either of the Parties unless done in writing and signed by the authorised representatives of the Parties.
- 20.3 Save as expressly referred to in the Agreement, there is no right to cancel or vary any Order once it has been accepted by the Seller.
- 20.4 Subject to the Company's discretion to update and amend these Terms and Conditions from time to time, no variation, alteration or consensual cancellation of these Terms and Conditions shall be of any force or effect, unless done in writing and signed by the authorised representatives of the Parties.
- 20.5 No waiver or abandonment by either Party of any of its rights in terms of the Agreement shall be binding on that Party, unless such waiver or abandonment is in writing and signed by the waiving Party.
- 20.6 No indulgence, extension of time, relaxation or latitude which any Party may show, grant or allow to another shall constitute a waiver by a Party of any such Party's rights and such Party shall not be prejudiced or stopped from exercising any of its rights against any Party which may have arisen in the past or which might arise in the future. Unless the context indicates otherwise, the rights and obligations of any Party arising from the Agreement shall devolve upon and bind its successors-in-title.
- 20.7 Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement shall survive any termination or expiration of the Agreement and continue in full force and effect.
- 20.8 The Parties agree that they will do all things and sign all documents necessary to give effect to the Agreement and to all transactions deriving therefrom.