



GRINDROD INTERMODAL

TERMS AND CONDITIONS OF PURCHASE

Rev 18.03.2015

1. DEFINITIONS

1.1. In these terms and conditions the clause headings are for reference purposes only.

1.2. Unless the context clearly indicates a contrary intention;

- i) Expressions, which denote any one gender, shall include the other genders,
- ii) A person, shall include a natural person, company, partnership, close corporation or any other legal person,
- iii) The singular shall include the plural and vice versa.

1.3. The following expressions shall bear the meanings assigned to them hereunder;

- 1.3.1. **“Buyer”** shall mean Grindrod and/or its associated or subsidiary companies and divisions.
- 1.3.2. **“Confidential Information”** means all technical, commercial, business or personnel information disclosed or otherwise made available by the Buyer.
- 1.3.3. **“Confidentiality Agreement”** means the Grindrod Confidentiality and Non-Disclosure Undertaking.
- 1.3.4. **“Deliverables”** shall mean the physical goods, to be supplied and/or rendered in terms of the Order; and any activity, work and/or services to be rendered in conjunction with the Delivery of goods and *vice versa* .
- 1.3.5. **“Delivery”** shall mean the completion and/or Delivery of Deliverables in a condition acceptable to the Buyer, Acceptance of the Deliverables is not considered to have taken place until payment has been effected.
- 1.3.6. **“Delivery Note”** means a document presented to the Buyer or its agent on Delivery of the Deliverables ordered.
- 1.3.7. **“Invoice”** means a document issued by the Seller wherein the amounts owing for Deliverables Delivered to the Buyer are set out.
- 1.3.8. **“Order”** shall mean the purchase order placed for the Deliverables.
- 1.3.9. **“Seller”** shall mean an entity contracting with the Buyer, for the rendering of Deliverables.
- 1.3.10. **“Party”** shall mean either the Buyer or the Seller as the context denotes.
- 1.3.11. **“Price”** means the agreed monetary remuneration to be paid by the Buyer to the Seller in return for the satisfactory rendering of the Deliverables.

2. ORDER CONSTITUTES ENTIRE CONTRACT

The Order, additional instructions and references on the face of the Order and these Terms and Conditions of Purchase, shall constitute the entire contract. Any subsequent changes to the Order shall be in writing

Page 1 of 5



and signed by the Parties. Payment will only be made against an Order where the Seller has received the physical purchase order for the Deliverables from the Buyer. For the avoidance of doubt the seller's possession of an order number will not be sufficient to obtain payment as the physical purchase order document is required.

3. ACCEPTANCE

Unless the Seller repudiates the Order, in writing, within 2 working days from date of Order, acceptance by the Seller will be deemed to have occurred.

4. PRICE

Unless otherwise agreed to in writing, Prices stated in the Order shall be fixed and shall not be subject to variation. The Price shall include all costs incurred up to the point of Delivery, unless otherwise stated in the Order. There shall be no adjustment of the Price of Deliverables as shown on the Order unless the Seller stipulates an escalation formula as detailed below:

- 4.1. Written notification of the Seller's price increase must be submitted to the Procurement Department at procurement@grindrod.co.za, 30 days prior to the effective date of the increase.
- 4.2. Price increases can only be implemented once accepted by a representative of the Buyer from the Procurement Department.

5. CUSTOMS DUTIES, EXCISE DUTIES, FORWARDING AND CLEARING COSTS

In all applicable instances custom duties, excise duties, clearing costs, forwarding costs and all other import/export costs will be incorporated as part of the total Price,

6. EXCHANGE RATE

Where the Seller is to effect forward cover any variations in the rate of exchange at the time payment is made shall be for the account of the Seller. Where the Buyer wishes to effect forward cover, the Seller shall be so informed.

7. RISK

Risk will pass to the Buyer on Delivery and acceptance of the Deliverables by the Buyer.

8. PAYMENT

The Buyer shall endeavour to effect payment, 30 days from the end of the month in which the Deliverables were rendered. Delivery notes must be stamped by the relevant Grindrod Receiving function. In order to ensure timely payment of invoices the Seller must comply with the following invoicing requirements:-

- 8.1. Invoices/Credit Notes must be addressed to Grindrod Intermodal, A division of Grindrod (South Africa) (Pty) Ltd.
- 8.2. The Vat Registration number 4140107782 must be endorsed on all invoices/credit notes and statements.
- 8.3. A purchase order number must be requested from the relevant Buyer requesting the Deliverables and this number and prefix must be endorsed on all invoices (exceptions only to rentals/contract related invoices)
- 8.4. Invoices relating to rentals or fixed term contracts- must stipulate Buyer's address at which the delivery takes place or where the services are performed.
- 8.5. Invoices that relate to Forklift or Trailer Repairs & Maintenance must have the Forklift serial/indent numbers or Trailer registration number endorsed on invoices.
- 8.6. Invoices must be delivered to the Buyer within 3 days from date of Delivery. As an extra measure – copies of invoices must be emailed to creditors@grindrod.co.za by the 30th of each month to



ensure that invoices are processed timeously. Where possible, the invoices are to be sent weekly, opposed to monthly.

8.7. Statements must be sent directly to the creditors department, by no later than the 3rd day of each month, by email (creditors@grindrod.co.za) or fax (0865451260)

8.8. All payments will be made by the Buyer 30 days from date of Statement. The statement date will be deemed to be the last day of the respective month.

9. QUALITY

The Seller warrants that all Deliverables will be rendered strictly in compliance with instructions and/or samples furnished and requested by the Buyer or in the absence thereof, will be the best of their respective kinds, Acceptance of the Delivery of the Deliverables by the Buyer shall not constitute a waiver of any warranty.

10. PACKAGING

Packing cases and materials shall be deemed to be included in the Price of the Deliverables and shall remain the property of the Buyer.

11. INSPECTION AND TESTING

The Buyer shall be entitled to examine, test and inspect the Deliverables at any stage of the rendering and/or production thereof.

12. PERFORMANCE OF WORK

12.1. While rendering the Deliverables on a site for which the Buyer is responsible in terms of OHS Act 85 of 1993 as amended, the Seller will comply with the said Act.

12.2. The Seller shall whilst on the Buyers Site have in operation, a valid and current Workman's Compensation certificate.

12.3. The Seller will whilst on the Buyers Site have in operation a valid 3rd party insurance policy to fulfil any liability that arises for property damage, injury or death to any party.

12.4. All the Sellers staff, contractors and sub-contractors will first be obliged to undergo induction before entering the Buyers site.

13. DELIVERY

The Seller shall effect Delivery of the Deliverables on the date of Delivery indicated on the Order.

Should the Seller fail to render the Deliverables on the dates stipulated in the Order, the Seller shall be liable, for a sum equal to 1% (one percent) of the total Price for each overdue day or part thereof.

14. SPECIFICATIONS, SOFTWARE, DRAWINGS ET AL

The Buyers' specifications, software, dongles, drawings and any information and/or goods supplied by the Buyer or becoming available or known during the rendering of the Delivery are considered Confidential Information and are the exclusive property of the Buyer and shall be returned by the Seller to the Buyer upon demand or upon completion of the Order. The Seller shall impose these obligations on its successors in business, assignees, subcontractors, suppliers and employees and shall ensure strict compliance therewith

15. PATENTS

The Seller hereby indemnifies the Buyer against any claim by a third party for infringement of letters, patent, trademarks, registered design and/or copyright arising out of or as a consequence of the production, rendering, use or sale of the Deliverables.

16. SUB-CONTRACTING AND ASSIGNMENT



The Seller shall not cede, assign, transfer or sublet the Order, or any portion thereof, without the Buyer's written consent. Such permission granted shall in no way release the Seller from any of its obligations or duties at law or as set out in the Order in its entirety.

17. FORCE MAJEURE

Neither Party shall be held liable in respect of failure to fulfil their obligations to deliver when the reason for such failure is caused by, or arises from, any act of God or circumstances which could not be reasonably and practicably avoided in the ordinary conduct of that Party's business.

18. BUYER'S REMEDIES

Where the Buyer reasonably believes a continued association with the Seller is contrary to its security or business interests, the Buyer reserves the right to cancel this Order and withdraw from it at its sole discretion with complete and total impunity from any claim or action.

19. RELEVANT LEGISLATION

All Deliverables and the rendering thereof, shall comply with the requirements of all laws, by-laws and regulations applicable thereto.

20. B-BBEE CERTIFICATES

It is the Seller's responsibility to ensure that a valid B-BBEE certificate is sent to procurement@grindrod.co.za annually when the previous certificate expires.

If the supplier does not have a B-BBEE certificate and their turnover does not exceed R10 Million per annum, then an EME Affidavit Letter from the auditors/external accountants confirming the turnover and supporting documentation must be sent to procurement@grindrod.co.za.

21. WAIVER

No relaxation or indulgence, which the Buyer may grant to the Seller, shall debar the Buyer from insisting upon the Seller's strict compliance with the terms and conditions of the Order.

22. APPLICABLE LAW

Regardless of the place of execution, performance or *domicile* of the Parties, this Order and all modifications, variations and amendments hereof shall be governed by and constructed under and in accordance with the laws of the place the Order was placed from/in.

23. INDEMNITY

The Seller indemnifies the Buyer against any claim, damage, loss or expense of whatever nature, due to or resulting from any negligence or breach on the Seller's part or the part of its employees, sub-contractors, agents or third parties or assignees, whether contractual, statutory or otherwise.

24. THE SELLER'S USE OF BUYER'S PLANT OR EQUIPMENT

Plant, tools, equipment and other property provided to the Seller, its servants, agents or assignees by the Buyer shall be at the Seller's sole risk and any loss or damage caused to or caused by the same shall be the Seller's sole responsibility and the Seller hereby indemnifies the Buyer against any loss, damage, claim or proceedings in respect thereof albeit that such loss, damage, claim or proceedings may have occurred at the Buyer's nominated Delivery site or by the Buyer's breach, default, action, inaction and/or negligence.

25. JIGS, DIES, TEMPLATES, MOULDS, PATTERNS, PRINT POSITIVES, TOOLS, INSTRUMENTS, PROPRIETARY INFORMATION AND THE LIKE (CARE, CONTROL OF AND OWNERSHIP OF)

Where the Buyer supplies the Seller with any of its property or information for purposes of rendering the Deliverables the Seller shall not use or remove the same from its premises without the express prior



written authorisation of the Buyer. The Seller shall, keep such equipment or information in good condition, fair wears and tear accepted. All risk and responsibility for any loss or damage to such equipment and/or information shall be with the Seller who shall effect and maintain a policy of insurance against loss, damage or theft of same. Where the cost of jigs, dies, templates, moulds, patterns, print positives, tools, instruments, proprietary information and the like are included in the Sellers Price, ownership thereof shall vest in the Buyer immediately and not on final payment of Price.

26. SET OFF

If the Seller is liable to the Buyer in respect of any breach of Order terms and conditions, the Buyer shall be entitled to deduct or set off against any monies due to the Seller.

27. NON-APPLICABILITY / SEVERABILITY

The non-applicability of any clause will not affect the applicability of other clauses in the Terms and Conditions applied to this Order.

28. EXCLUSION OF LIABILITY RELATING TO LOSS OF PROFIT, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES AND THIRD PARTIES

Under no circumstances, shall the Buyer be liable to the Seller for consequential, special or indirect damages, however so arising.

29. SUPPLIER DISCLOSURE

By accepting these Terms and Conditions of Purchase the Seller confirms, that they have disclosed all direct or indirect interests associated with Parties that represent the Buyer and where such disclosure is deemed to be a conflict of interest for whatsoever reason, the Buyer may refuse or continue to retain the Seller as a service provider under special conditions which shall be recorded in writing.

Failure to provide adequate disclosure will entitle the company to seek legal recourse against the Seller and/or parties that represent the Seller to the extent of any damages sustained whether actual or potential.

The Seller also gives authority to the Buyer to investigate the information provided and authorises the Buyer to conduct all credit and reference checks.