

## **AGSA'S STANDARD PURCHASE ORDER TERMS AND CONDITIONS (AD HOC PROCUREMENT)**

### **1. Precedence of terms**

- 1.1. The Auditor-General South Africa (AGSA) is a Chapter 9 entity duly established in terms of section 181(1)(e) of the Constitution of the Republic of South Africa, 1996, read together with the Public Audit Act No 25 of 2004.
- 1.2. Unless otherwise agreed to in writing, the under mentioned terms and conditions of the AGSA's purchase order/s (the "Purchase Order/s") represent the only terms and conditions upon which the AGSA shall agree to procure the items or services as specified in the Order/s ("Products") from the service provider to whom the Order is addressed ("Supplier").
- 1.3. The AGSA shall not accept any other terms and conditions which the Supplier may specify, unless otherwise explicitly agreed to by the AGSA in writing. In the event of any inconsistency between these Terms and Conditions and any subsequently executed Memorandum of Agreement (MoA), the MoA shall supersede and take precedence over any further procurement.

### **2. Payment terms**

Unless otherwise agreed in writing and aligned to the AGSA's payment categories, payment shall be effected by the AGSA within thirty (30) days after receipt of an original, valid tax invoice accompanied by a statement. The AGSA reserves the right to withhold payment for any disputed amounts until resolution.

### **3. Invoice submission and Purchase Order reference**

All invoices accompanied by a statement shall be forwarded to the AGSA's responsible procuring Business Unit, for confirmation and approval. The Purchase Order number must always be referenced in all invoices submitted to the AGSA against this Purchase Order. Invoices must be submitted within thirty (30) days of goods delivery or service completion.

### **4. Delivery delays**

If the Supplier is unable to meet the specified delivery date on the Purchase Order/s for goods or services, the Supplier shall promptly notify the AGSA's contact person in writing, at least five (5) business days before the scheduled delivery date. Such notification shall not be interpreted as a waiver of any right or claim the AGSA may otherwise be entitled to in terms of the law or any provision in the Purchase Order/s. The AGSA reserves the right to cancel the order or claim damages for unreasonably late delivery.

## **5. Entire Agreement**

In the absence of a MoA, the Purchase Order, together with its attachments, or terms incorporated by reference, constitutes the entire agreement between the AGSA and the Supplier concerning the subject matter thereof and supersedes all prior or contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written.

## **6. Purchase Order variations and modifications**

Unless specifically agreed to in writing by the Business Unit Leader (BUL) of the responsible procuring Business Unit on behalf of the AGSA, no variation, addition to or modification to the Purchase Order/s shall be binding on the AGSA. No goods and/or services shall be substituted for those specified in the Purchase Order except upon the explicit written consent or instruction from the AGSA. The Supplier warrants that the goods and/or services shall be fit for their purpose and be of satisfactory quality.

## **7. Packaging**

(Applies to the purchase of physical goods)

All goods shall be packaged in a manner which assures that they are protected and delivered in good condition, in accordance with the Purchase Order. The Supplier shall be liable for any damage caused by inadequate packaging.

## **8. Inspection and Acceptance**

8.1. The AGSA shall have at least ten (10) business days, or such extended period of time as may reasonably be required and agreed to with the Supplier –

8.1.1. For goods: From the date of delivery of goods, or

8.1.2. For services: From date of completion of the services to

- inspect and confirm that goods and services meet the specifications outlined in the Purchase Order and are generally fit for purpose.

8.2. During this period, the AGSA may reject any goods or services that are defective, not fit for purpose, or do not conform to the specifications. Acceptance shall not be deemed to have occurred until the end of this inspection period.

## **9. Liability for defective goods or services**

9.1. In the event that any goods or services are found to be defective, not fit for purpose, or not in conformity with the specifications during the inspection period, the Supplier shall be liable to cover all costs incurred by the AGSA to rectify the situation. This includes, but is not limited to, the cost of returning the goods, obtaining replacements, rectifying defective

services, and any financial losses suffered by the AGSA as a result of the defect. The Supplier shall promptly replace or repair the defective goods or services at no additional cost to the AGSA.

## **10. Warranty**

(Applies to both goods and services)

- 10.1. Where applicable, the Supplier's standard warranty shall be furnished in respect of all goods supplied under the Purchase Order.
- 10.2. The Supplier warrants that all goods supplied under this Purchase Order shall be new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials.
- 10.3. The Supplier further warrants that all goods supplied under this Purchase Order shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 10.4. The Supplier warrants that all services provided under this Purchase Order shall be performed in a professional manner, consistent with industry standards and best practices, or as otherwise agreed upon by the parties, and with due care, skill, and diligence, by appropriately qualified and trained personnel in compliance with all applicable professional codes of conduct.
- 10.5. The Supplier further warrants that the services shall be fit for their intended purpose and free from defects in quality or performance for a period of not less than six (6) months after the date of completion.

## **11. Confidentiality**

- 11.1. Confidential information shall include, but is not limited to, any technical, financial, operational, or other business information, trade secrets, customer data, or personal information disclosed by the AGSA to the Supplier in connection with this Purchase Order, whether orally, in writing, or by other means.
- 11.2. The Supplier shall maintain strict confidentiality of all the AGSA information accessed during the provision of goods or services. Unless otherwise agreed in writing, the confidentiality obligations under this clause shall survive the termination or expiration of this Purchase Order for a period of at least one (1) year.

- 11.3. If specifically required by the AGSA, the Supplier agrees to sign a separate Non-Disclosure Agreement, which shall then supersede and take precedence over any confidentiality stipulations related to the ad hoc procurement.

## **12. Indemnification**

The Supplier shall defend, indemnify, and hold the AGSA harmless from all claims, actions, demands, losses, and causes of action arising from injury (including death) to any person, or damage to property, if such injury or damage results in whole or in part from acts or omissions of the Supplier, its employees, agents, or subcontractors.

## **13. Limitation of liability**

- 13.1. To the fullest extent permitted by law, the AGSA shall not be liable to the Supplier for any indirect, incidental, special, consequential, or punitive damages arising out of or relating to this Purchase Order, whether based on contract, tort, strict liability, or any other legal theory.
- 13.2. The AGSA's total liability under this Purchase Order shall not exceed the total amount paid or payable by the AGSA to the Supplier under the relevant Purchase Order.

## **14. Insurance**

The Supplier shall maintain adequate comprehensive insurance, including but not limited to public liability and professional indemnity insurance, and shall provide the AGSA with certificates of insurance upon request. Such insurance shall remain in effect throughout the duration of the Purchase Order.

## **15. Assignment**

The Purchase Order shall not be assigned and/or ceded to any third party without the prior written consent of the AGSA, which consent shall not be unreasonably withheld by the AGSA.

## **16. Tools and equipment**

(Applicable to on-site services)

All tools used on any AGSA site and/or premises to render any on-site service shall conform to an acceptable and traceable standard. All special tools shall at all material times be accompanied by an approved certificate issued by the relevant authority (where applicable).

## **17. Personal protective equipment**

(Applicable to on-site services)

The Suppliers shall at all material times wear the correct Personal Protective Equipment ("PPE") for specific on-site services rendered whilst on the AGSA site and/or premises.

## **18. Waste management**

(Applicable to on-site services)

All scrap and hazardous waste generated by the supplier during the rendering of on-site services must be removed from the AGSA site and/or premises immediately during or after the completion of the job and disposed of in compliance with the relevant regulatory disposal methods (where applicable).

## **19. Termination**

19.1. The AGSA may terminate this Purchase Order in whole or in part at any time for its convenience, by providing the Supplier with written notice at least seven (7) prior to termination. In the event of such termination, the Supplier shall immediately stop all work and shall be entitled to compensation only for work completed prior to the termination.

19.2. The Purchase Order/s may at the sole discretion of AGSA, be cancelled or suspended in whole or in part. The AGSA shall deliver a written notice to the Supplier specifying the extent to which its further performance and/or deliveries of goods and services under the Purchase Order/s is cancelled and/or suspended and the date upon which such action shall become effective.

## **20. Default and breach**

Either party shall be deemed to be in default of its obligations under the Purchase Order/s in the event of bankruptcy, insolvency, or failure to remedy a material breach within thirty (30) days of written notice. In case of default by the Supplier, the AGSA may procure similar goods or services from another source and hold the Supplier liable for any excess costs incurred.

## **21. Governing law and dispute resolution**

21.1. This Purchase Order shall be interpreted and governed by the laws of the Republic of South Africa.

21.2. The Supplier shall comply with all applicable laws, regulations, and standards in the performance of this Purchase Order, including but not limited to labour laws, environmental regulations, and anti-corruption legislation.

21.3. In the event of a dispute between the parties arising from or in connection with this Purchase Order, and if such dispute cannot be resolved by the immediate persons involved, it shall be referred, within three (3) days of such failure, to:

21.3.1. The respective Business Unit Leader (BUL) of the procuring Business Unit,

21.3.2. A senior manager of the Corporate Legal Services at the AGSA, and

21.3.3. Two (2) representatives of the Supplier.

21.4. At a joint meeting, which the procuring BUL shall chair, the attendees of the meeting shall attempt to resolve the dispute within five (5) business days of the dispute being referred to them. Based on the resolutions agreed to in principle between the parties, the BUL shall issue a written directive thereafter to the party or parties required to resolve the dispute, as deemed appropriate. The directive issued by the BUL shall be final and binding upon the parties for the purposes of resolving the dispute.

21.5. Should the party or parties required to resolve the dispute fail to follow the written directive of the BUL within two (2) business days of receipt of the directive in writing (electronic mail included), or if it is not reasonably possible to follow the directive within two (2) business days, within such further period as the BUL has directed, then the aggrieved party shall be entitled, without notice and in addition to any other remedy available to it under law or this Purchase Order, to cancel the Purchase Order or to claim specific performance for any obligation, without prejudice to the aggrieved party's right to claim damages.

21.6. If the dispute remains unresolved after following the process outlined in these Terms and Conditions, either party may refer the matter to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa (AFSA). Such arbitration shall be held in English and the seat of arbitration shall be Pretoria, South Africa. The arbitral award shall be final and binding on the parties.

## **22. Intellectual Property**

(Applicable to goods, services, software licenses, and development work)

22.1. The Supplier warrants that the goods, services, software licenses, and development work provided do not infringe any intellectual property rights of third parties.

22.2. The Supplier shall indemnify and hold the AGSA harmless from any claims, damages, and costs arising from any alleged or actual infringement.

22.3. Any intellectual property created by the Supplier in the course of providing goods or services under this Purchase Order and paid for by the AGSA shall be the property of the AGSA, unless otherwise agreed in writing. The Supplier agrees to execute any documents and take any actions necessary to perfect the AGSA's ownership of such intellectual property

### **23. Force majeure**

Neither party shall be liable for any delay or failure to perform its obligations under this Purchase Order due to events beyond its reasonable control, provided that the affected party promptly notifies the other party and makes reasonable efforts to mitigate the effects of such event.

### **24. Data protection and privacy**

24.1. The Supplier shall comply with all applicable data protection and privacy laws, including but not limited to the Protection of Personal Information Act (POPIA).

24.2. The Supplier shall implement appropriate technical and organizational measures to ensure the security of any personal information processed on behalf of the AGSA.

24.3. The Supplier shall not use, disclose, or process any personal information obtained in connection with this Purchase Order for any purpose other than to fulfil its obligations under this Purchase Order.

### **25. Right to audit**

25.1. The Supplier shall maintain accurate and complete records relating to its performance under this Purchase Order, including financial records, quality control documents, and other relevant documentation.

25.2. To ensure transparency and accountability, the AGSA shall have the right, upon reasonable notice, to audit and inspect the Supplier's records related to this Purchase Order to verify compliance with its terms and conditions. The Supplier shall cooperate fully with any such audit or inspection

### **26. Subcontracting:**

The Supplier shall not subcontract any of its obligations under this Purchase Order without full disclosure and the prior written consent of the AGSA. In the event that subcontracting is approved, the Supplier shall remain fully responsible for the performance of the subcontracted obligations and shall ensure that the subcontractor complies with all relevant terms and conditions of this Purchase Order.

### **27. Relationship of the Parties**

The Supplier is an independent contractor, and nothing in the Purchase Order shall be construed to create a partnership, joint venture, agency, or employment relationship between the AGSA and the Supplier. Neither party shall have the authority to bind the other

party or to incur any obligation on behalf of the other party without the other party's prior written consent."

**28. Business continuity and disaster recovery**

The Supplier shall maintain and implement appropriate business continuity and disaster recovery plans to ensure the continued provision of goods or services in the event of a disaster or other business interruption. Upon request, the Supplier shall provide the AGSA with copies of such plans and evidence of testing.

**29. Severability**

29.1. If any provision of these Standard Purchase Order Terms and Conditions, is found to be invalid, illegal, or unenforceable, such provision shall be deemed severed from the Purchase Order and these Terms and Conditions, and the remaining provisions shall continue in full force and effect.

29.2. In the event of severance, the parties shall negotiate in good faith to replace the severed provision with a valid, legal, and enforceable provision that achieves, to the greatest extent possible, the same economic, business, and other purposes as the severed provision.

**30. Survival**

Those provisions of the Purchase Order Terms and Conditions that, which by their nature, are intended to survive the termination or expiration of the Purchase Order shall survive such termination or expiration, including but not limited to the following clauses: Confidentiality, Indemnification, Limitation of Liability, Intellectual Property, Governing Law, Dispute Resolution, and Warranty.

**31. Notices**

Any notice required or permitted under this Purchase Order shall be in writing and shall be deemed to have been given when delivered personally or transmitted by email to the nominated addresses specified in the Purchase Order, quote and invoice, or to such other addresses as either party may designate in writing to the other party. Notices transmitted by email shall be deemed to have been received on the date of transmission, provided that the sender has received a delivery confirmation

**32. Waiver**

No waiver of any provision within the Purchase Order or these Terms and Conditions shall be effective unless it is in writing and signed by the party granting the waiver. No failure or delay by either party in exercising any right, power, or remedy under the Purchase Order shall operate as a waiver thereof, nor shall any single or partial exercise of any such right,

power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.

**33. Version control and right to revise:**

- 33.1. The Auditor-General South Africa (the AGSA) reserves the right to review and revise these Terms and Conditions from time to time. The current version of these Terms and Conditions is always available on the AGSA's official website.
- 33.2. The online version of these Terms and Conditions shall control in the event of any conflict with printed versions. Suppliers are encouraged to check the online version regularly for any updates or changes. Any revisions to these Terms and Conditions will be effective immediately upon posting on the AGSA's website. Continued provision of goods or services to the AGSA after such changes constitutes acceptance of the revised Terms and Conditions by the Supplier.