

## GENERAL CONDITIONS OF PURCHASE VOITH TURBO (PTY) LTD

### 1. DEFINITIONS

- 1.1 "Voith" means Voith Turbo (Pty) Limited, registration number 1982/010141/07.
- 1.2 "Supplier" means the person, firm, close corporation or company with which the Order is placed.
- 1.3 "Goods" means the articles, things or services supplied in terms of the Order.
- 1.4 "Order" means and includes these general conditions of purchase, the contents of Voith's order form and all documents attached thereto.

### 2. ORDERING

Only Orders placed or confirmed by Voith in writing shall be effective. An Order from Voith constitutes Voith's offer to the Supplier and becomes a binding contract subject to the terms and conditions set out herein, when accepted by acknowledgement or commencement of performance by the Supplier. No terms or conditions stated by the Supplier in accepting any order which in any manner conflict with or are in addition to those set out in the Order shall become part of or in any way alter the contract. All amendments require the express written approval of Voith.

### 3. DELIVERY

- 3.1 Delivery shall occur when the Goods are delivered to Voith in good condition to the address stated in the Order, and a receipt therefore has been given by Voith's representative. Voith shall have the right to reject any Goods found to be defective, unsatisfactory, not in accordance with the Order or unsuitable for the purpose for which they are intended.
- 3.2 Time is of the essence of an Order. All Goods shall be completed and delivered as specified in the Order and in the event of delivery not being made by the time specified or requested, Voith shall be entitled in its absolute discretion, to:-
  - 3.2.1 impose a penalty of 0.25% per day (or part thereof), of the contract price, in the event of the Supplier's default in terms of 3.2, subject to a maximum penalty of 5% of the contract price; or
  - 3.2.2 claim damages in lieu of the penalty; or
  - 3.2.3 to cancel the Order, in whole or in part, forthwith and to claim damages.
- 3.3 Should it appear to the Supplier that the delivery of the Goods to Voith will be delayed; the Supplier shall immediately notify Voith and shall obtain written confirmation from Voith that the Goods are still required. The acceptance of Goods by Voith which are late in delivery shall not be construed as a waiver of any of Voith's rights.

### 4. PACKING AND MARKING

The Supplier shall ensure that all packing and coverings are adequate for the safe transportation, handling and storage of the Goods. Unless otherwise stated in the contract, all packing cases and packing material shall become the property of Voith and the cost thereof shall be deemed to be included in Voith's contract price. The Supplier shall ensure that all Goods are marked in accordance with the requirements of the Order.

### 5. WARRANTY

- 5.1 In accepting any Order, the Supplier warrants and represents that all Goods will conform to the specifications, drawings, samples or descriptions, will be suitable in every respect for the purpose intended, of good material and workmanship, the best of their kind, free from defects and shall in all instances comply with the requirements of all laws and regulations applicable thereto.
- 5.2 Should Goods not conform to the provisions of 5.1, Voith shall be entitled to reject the same and require the Supplier at its expense, to correct or replace them. If required by Voith, the Supplier shall, with all possible speed, correct or replace the defective or non-conforming Goods. Any expense of whatsoever nature which Voith may incur in remedying defective material and/or workmanship shall be for the account of the Supplier.
- 5.3 The approval of Voith of any samples and any payments made by Voith shall not be construed as a waiver by Voith of any of its requirements.
- 5.4 The approval by Voith of any drawings, designs, specifications and/or calculations of whatsoever nature supplied by the Supplier ("the technical data") shall not in any way relieve the Supplier from responsibility for the accuracy and/or correctness of the technical data or derogate in any manner from the contractual obligations of the Supplier pertaining to the technical data.

## 6. INTELLECTUAL PROPERTY RIGHT

The Supplier hereby indemnifies Voith against all claims for damages, royalties, licence fees or any other costs of whatsoever nature incurred by Voith arising out of breach of copyright, infringement of any patent rights and/or infringement of the intellectual property rights of others by the Supplier, together with all legal costs incurred by Voith on the scale as between attorney and own client.

## 7. PREVENTION OF ACCIDENTS

If the Supplier has to render its services on Voith's premises, the Supplier shall ensure that all legal rules and regulations regarding the prevention of accidents at the place of work are observed by his representatives, employees and agents. The Supplier shall be liable for any harm inflicted on Voith, its employees and any third party due to a breach of this 7, and it indemnifies Voith accordingly.

## 8. PATTERNS AND TOOLS

8.1 All jigs, dies, tools, templates and patterns supplied by Voith or which are manufactured at Voith's expense by the Supplier for use in executing the Order remain the property of Voith. Such jigs, dies, tools, templates and patterns may not be used for any other purpose by the Supplier than to manufacture the Goods for Voith. Voith retains the right to remove any jigs, dies, tools, templates or patterns at any time and the Supplier agrees to store the same for Voith free of charge and with care.

8.2 Any plans, patterns, drawings, designs or other information entrusted by Voith to the Supplier in connection with the execution of the Order shall remain the property of Voith and any information derived therefrom or otherwise communicated to the Supplier shall not be copied, published or disclosed to any third party or made use of by the Supplier save for the purpose of executing the Order. The Supplier undertakes to maintain all such information on a strictly confidential basis and to return all such documentation, including copies, to Voith immediately upon demand.

## 9. RISK AND OWNERSHIP

9.1 Risk in the Goods shall remain with the Supplier until such Goods are delivered to Voith in accordance with the provisions of the Order.

9.2 Upon payment by Voith to the Supplier of any portion of the purchase price in respect of the Goods, ownership therein shall be deemed to have passed to Voith and the Supplier shall henceforth hold such Goods for and on behalf of Voith at no extra cost or charge.

## 10. PRICING INVOICING AND PAYMENT

10.1 Unless otherwise stated in the Order, all prices shall be fixed and firm and in the currency stated, and shall include all costs, duties, fees, insurance and transport to the named destination.

10.2 The Supplier shall only invoice Voith once all the terms and conditions of the Order have been fulfilled. Invoices shall be submitted in duplicate together with copies of all relevant signed delivery notes and documents and Voith's order reference number shall be quoted. Invoices are to be addressed to Voith's accounts department.

10.3 Unless otherwise stated in the Order, payment by Voith shall only be effected on the last working day of the month following the month of receipt of the Supplier's statement, provided that the statement is received by Voith on or before the 25th day of the month prior to the month in which payment is to be effected.

10.4 Voith shall be entitled to set off the amount of any claims which it may have against the Supplier against all amounts due by Voith to the Supplier.

## 11. DOCUMENTATION AND TECHNICAL INFORMATION

11.1 The Supplier shall provide Voith with the documentation specified in the Order. Such documentation shall comprise, but need not be limited to, operating and maintenance instructions, and drawings of the Goods in sufficient detail to enable Voith to maintain, dismantle, reassemble and adjust all parts of the Goods and spares lists. The documentation shall be presented to Voith by the Supplier as specified in the Order.

11.2 The Supplier shall be responsible for all discrepancies, errors or omissions including defective design and/or detailing in any of the documentation irrespective of whether or not such documentation has been approved by Voith.

## 12. GUARANTEE

- 12.1 The Supplier shall make good at its cost and within such period as Voith may stipulate, any defects in the Goods arising from defective design, materials and/or workmanship or from any act or omission of the Supplier that may become apparent under proper use of the Goods during the period of 12 months from the actual date of operational usage or 18 months from the date of delivery, whichever is the earlier.  
Any variation of the aforesaid warranty periods as contained in the Order shall take precedence over those stated in this 12.1.
- 12.2 If the Supplier repairs or replaces any part of the Goods, the provisions of clause 12.1 shall apply to such repairs or replacements from the date so repaired or replaced.
- 12.3 If any defects are not remedied by the Supplier within the time stipulated by Voith, Voith may proceed to carry out such remedial work or cause such work to be done at the Supplier's risk and expense, without prejudice to any other rights which Voith may have against the Supplier in respect of the failure of the Supplier to remedy such defects.
- 12.4 Nothing in this clause shall derogate from the Supplier's liability for patent or latent defects.

## 13. SUPPLIER'S DEFAULT

- 13.1 Should the Supplier fail to comply with any of the terms and conditions herein, Voith shall be entitled, without prejudice to any other rights that it may have, whether under this Order or in law, to treat such non-compliance as a breach of contract and may terminate this Order in whole or in part or claim immediate specific performance of all the defaulting party's obligations, whether or not due for performance, in either event without prejudice to Voith's right to claim damages.
- 13.2 Should Voith institute any action (including arbitration) arising out of the Supplier's default, Voith shall be entitled to recover all legal and other expenses, determined on the attorney and client scale.

## 14. INSOLVENCY

If the Supplier before completing the entire Order, shall become insolvent and/or shall be placed under a provisional or final winding up order or shall endeavour to compromise with its creditors, or if the Supplier shall resolve to be wound up, or be placed under a provisional or final order of judicial management, Voith shall be entitled to cancel the Order forthwith and at Voith's discretion give the liquidator, judicial manager or any other person charged with the administration of the Supplier's affairs the option of carrying out and completing the contract subject to terms to be agreed upon between the parties.

## 15. TERMINATION AND SUSPENSION OF PERFORMANCE OF THE CONTRACT

- 15.1 Voith shall have the right to terminate the contract\Order or any portion thereof in its absolute discretion by written notice at any time. Provided such termination is not given under 3.2 (late delivery), 13 (Supplier's default) or 14 (Insolvency), Voith shall pay to the Supplier compensation for all actual expenditure and liabilities properly incurred by the Supplier, who shall not however be entitled to any further or additional payments of whatsoever nature.
- 15.2 In the event of the termination of the contract by Voith as provided for in 15.1, the Supplier shall immediately upon receipt of such notice of termination or on such later date as may be specified in the said notice, deliver to Voith all documentation prepared by the Supplier up to the date of receipt of the said notice and all technical information supplied to the Supplier by or on behalf of Voith.
- 15.3 Voith shall have the right, in its absolute discretion, to suspend the performance of the Order. The Supplier shall, during the period of such suspension, store, preserve, protect and/or otherwise secure any free issue material and work in progress. The Supplier shall not be entitled to make any claims against Voith as a consequence of the suspension of the Order for any period of time under 30 days. Should the performance of the Order be extended for more than 30 days, any additional costs incurred by the Supplier shall be added to the contract price, provided that such additional costs shall be limited to the direct costs incurred by the Supplier, excluding any provision for the recovery of fixed costs and/or overheads.

## 16. VARIATION ORDERS

Voith shall have the power by notice in writing to instruct the Supplier to make any variations to the Goods. As soon as possible after having received any such instruction, the Supplier shall notify Voith, if in the Supplier's opinion, the variation order will involve an addition to or deduction from the contract price. The Supplier shall not commence work in terms of any such variation order under the addition to or deduction from the contract price has been agreed upon between the parties in writing. Should the

Supplier fail to notify Voith within 14 days of the date of receipt of any such notice of the amount of any addition to the contract price, the Supplier shall be precluded from making any claims against Voith as a consequence of such variation order.

## 17. GOVERNING LAW AND LEGAL PROCEEDINGS

- 17.1 The contract shall be governed and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 17.2 Voith shall be entitled, in its absolute discretion, to refer any disputes between the parties to arbitration in terms of the Rules of the Arbitration Foundation of Southern Africa in force from time to time or to any court of law having jurisdiction to determine such dispute.
- 17.3 The Supplier shall be obliged to give Voith not less than 30 days written notice of its intention to launch proceedings for the recovery of any amount alleged to be due to the Supplier by Voith in terms of the Order (or any amendment thereto) within 180 days of the date on which that cause of action arose; to enable Voith to exercise its discretion in terms of 17.2, failing which such claim shall be deemed to have lapsed. The written notice shall give full and precise details of the amount claimed and the cause of action. Invoices and statements issued by the Supplier shall not constitute valid written notice in terms of this clause.
- 17.4 The Supplier shall not be entitled to cease work pending the outcome of any dispute between the parties.

## 18. TAXES AND DUTIES

The contract price shall include all Value Added Tax applicable to the Goods in terms of the Republic of South Africa's Value Added Tax Act 1991, as amended. Such Value Added Tax shall be shown as a separate component of the contract price. The Supplier shall be responsible for the payment to the relevant Authorities of any and all customs and excise duties or statutory levies or any other costs incurred by the Supplier in respect of the execution of the contract.

## 19. INSPECTION AND TESTING

- 19.1 Voith shall have the right to inspect and test or to arrange for the inspection and testing of any Goods before despatch by the Supplier, but such inspection and/or testing shall not relieve the Supplier from any responsibility or guarantee and shall in no way prejudice Voith's right to reject the Goods at a later stage if they are found to be defective, unsatisfactory or not in accordance with any technical standards, specifications and/or other provisions of the Order.
- 19.2 Voith shall have the right to demand the rectification of any Goods which are found not to comply with the Order.

## 20. NOTICES

- 20.1 The Supplier chooses as its domicilium citandi et executandi for all purposes in terms of the contract, the address of the Supplier set out in the Order.

## 21. CONDITION/QUALITY OF PRODUCTS

The radioactivity of the deliverable products must not exceed the value which is prescribed from the legal regulations of the respective country of the product's site of operation, however in no event, the value which is prescribed in the South African/German Radiation Protection Ordinance (applicable version at the time of delivery of the products).

## 22. QUALITY INSPECTION REQUIREMENTS

The supplier certifies that the materials/services delivered under this order have been inspected before delivery to Voith. The supplier certifies that all materials are in conformance with the drawings, specifications and other applicable documentation and that all process certificates and test reports are on file reflecting Voith's purchase order number and are available for review on request. The certificates and test reports shall be dated and signed by an authorised representative of the supplier.

## 23. GENERAL

- 23.1 These conditions and those of the Order supersede any prior written or verbal arrangements between Voith and the Supplier.
- 23.2 All conditions herein are material terms and any breach thereof shall be a material breach.
- 23.3 No charges other than those specified in the Order will be paid by Voith.

- 23.4 The Supplier shall not cede, assign, subcontract or make over any of its rights or obligations in terms of the Order without the prior written consent of Voith and then only on such terms and conditions as Voith may stipulate.
- 23.5 The Supplier is responsible for the execution of the Order upon the terms stipulated by Voith which shall include these conditions and the terms and conditions appearing on the Order, together with the specifications, drawing schedules and any other documents referred to in the Order. Voith shall not be obliged to accept or pay for any Goods supplied, or services rendered, otherwise than strictly in accordance with the terms set out above.
- 23.6 The Supplier is deemed to have satisfied himself as to all the conditions and circumstances affecting the Order and the contract price. No additional allowance except as otherwise expressly provided for in the Order will be made. The Supplier shall be responsible for any misunderstanding or incorrect information however obtained except information given in writing by Voith.
- 23.7 No addition to, variation of, or agreed cancellation of this Order shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 23.8 No relaxation or indulgence which Voith may grant to the Supplier shall constitute a waiver of Voith's and shall not preclude Voith from exercising any rights which may have arisen in the past or which might arise in future.