

1. General :

The acceptance of our tender includes the acceptance of these conditions unless any variation is agreed in writing and signed by a person authorised to sign this tender.

2. Period of validity of tender :

Unless stated to the contrary, this tender is open for acceptance within 30 days from the date of the tender and is thereafter subject to confirmation by us within 14 days after acceptance.

3. Delivery :

- (a) The time of delivery is dependent upon full details, information, plans and all other documents required for carrying out the work to be commenced and proceeded without interruption. Any delaying in supplying the above shall entitle us to an automatic extension of the time of delivery equivalent to such delay and, at our option, to revision of the tender.
- (b) No liability shall attach to us if completion or delivery is rendered impossible or delayed by reason of fire, war, strikes, lock-outs, non-availability of labour and materials, or other cause beyond our control.
- (c) Tenders for goods stated to be for delivery from stock are subject to our not having sold or committed ourselves to third parties in respect of such stock before receipt of acceptance and to such stock being available at such date.
- (d) Delivery shall be made at the station, railway siding or other point named in the tender. Notwithstanding any pre-payment of transport charges, our responsibility shall cease on delivery to this point.
- (e) If you fail to give us forwarding instructions within seven days after notification that the goods are ready for despatch or fail to take delivery after you have given us forwarding instructions, we shall be entitled to arrange storage either at our own works or elsewhere on your behalf and at your risk and all charges for storage or any insurance which we might effect shall be for your account. Should you fail to take delivery within a reasonable time of our having by notice in writing required you to do so, we shall be entitled to terminate the contract and recover from you any loss suffered by reason of such failure.
- (f) We shall only accept liability for late delivery where our liability for such late delivery is not excluded in terms of the foregoing and where we have specifically agreed in writing to the payment of a penalty or liquidated damages for such late delivery, in which case our liability shall be limited to the amount so agreed.

4. Limits of Contract :

Our tender includes only such goods, accessories and work as are specified therein.

5. Drawings, etc. :

All illustrations, descriptive matter, drawings, dimensions, quantities, weights and specifications accompanying this tender or relating to any material which is the subject of this tender, are approximate and do not form part of the contract.

6. Tests :

- (a) Our products are carefully inspected and, where practicable submitted to our standard tests at our works before dispatch. Where tests other than those specified in our tender or tests in the presence of your representatives are required these will be charged for. In the event of any delay on your part in attending such tests after three days notice that we are ready to test, the test will proceed in your absence and shall be deemed to have been made in your presence.
- (b) Any figures given for performance are based on our experience and are such as we expect to obtain on test, but we will only accept liability for failure to obtain the figures within specified margins known as "tolerances" and agree to pay a penalty or liquidated damages for such failure, in which case our liability shall be limited to the amount so agreed.

7. Guarantee :

- (a) We guarantee that the goods supplied by us will conform to specification and to any requirements specifically accepted by us in writing in regard to each order, but except as aforesaid, we give no warranty, express or implied, of material, workmanship, or fitness of goods for any particular purpose whether such purpose be known to us or not. In the event of the goods proving to be not in accordance with the specifications or requirements aforesaid, or should defects under proper use appear in the goods within a period of six (6) calendar months after the goods have been delivered caused solely by faulty design, materials or workmanship we shall, if requested to do so within a reasonable time, but not later than six (6) calendar months from the date of delivery, repair such goods, or at our option replace the goods or the defective parts thereof, free of charge by supplying other goods or replacement parts at the initial place of delivery which do comply with the specifications or re-requirements aforesaid and/or which are free of the defects complained for.
- (b) It is a condition of this guarantee:
 - (i) that any defective parts are returned to our works at your expense,
 - (ii) in respect of parts or components not of our manufacture, our guarantee shall be limited to the guarantee, if any, which we may have received from the supplier of such parts or components in respect thereof but so that our liability in terms of such guarantee shall be no greater than our liability in terms of our own guarantee as set out in this clause;
 - (iii) we shall be given reasonable time and opportunity to comply with the terms of the guarantee before you call upon us to pay any sums in respect of liquidated damages;
 - (iv) same as provided in this clause, we shall be under no liability, whether in contract, delict or otherwise in respect of defects in goods delivered or for any injury, damage or loss resulting from such defect or from any work done in connection therewith.

8. Price variation :

- (a) You undertake to refund to us any extra cost incurred by us as a result of your instructions or lack of instructions and for the purpose of this paragraph "extra cost" shall mean any amount which we become liable to pay, whether in wages, for materials or otherwise howsoever in respect of the work which we would not have been liable to pay but for your action or default and in the event of dispute on the amount of the extra cost the decision of The President of the South African Institute of Mechanical Engineers shall be binding.
- (b) When the goods offered or any part thereof have to be imported, our price is based on the rates of exchange, freight, insurance premiums, lighterage, landing charges, port dues, customs duty and railage at the date of tender or as specially stated. Should these rates vary between the date of our tender and the date upon which the charges are incurred, the price shall be varied by the amount of the increase or decrease in such charges.
- (c) Any variation in the cost of labour and materials between the date of the tender and the date of delivery will be added to or deducted from the tender price as the case may be and the amount of such increase or decrease shall be established in accordance with the SEIFSA Contract Price Adjustment Clause and Formula for use in contracts for manufacture and erection of pumps and/or any recognized formula pertaining to the country of origin.
- (d) Our tender has been based on the current rates of exchange at the date of tender submission. On receipt of payment from you we shall immediately instruct the bank to remit to our principals. Any difference between the rates of exchange on which our tender was based and the rates at which the money is remitted shall be for your account.

9. Terms of payment :

Unless otherwise stated in this tender or otherwise agreed, terms of payment shall be by way of either:

- (a) **Cash against invoice**, namely payment in full in respect of the goods shall be due on presentation of invoices and notification from us that the goods have been delivered, or, if for any cause beyond our control we are unable to despatch the goods then upon presentation of invoices and notification from us that the goods are ready for despatch, or
- (b) **Progress payments** Payment shall not be set-off against or withheld on account of any counter claims have been admitted to us in writing. Any liability of ours under these conditions is subject to your adhering to our terms of payment and all other obligations to us. Without prejudice to our right to payment as hereinbefore provided you shall pay interest on any sum due to us at the rate of 2% per month from the date of such payment until payment is actually made.

10. Title :

Ownership in any goods delivered by us remains vested in us until the entire purchase price shall have been fully paid. All such goods, whether affixed to immovable property or

not, shall be deemed to remain movable property and severable without injury to such immovable property.

11. Patents :

We will indemnify you against any claim of infringement of Letters Patent of Registered Design (published at the date of the Contract) by the use of sale of any article or material supplied by us to you and against all costs and damages which you may incur in any action for such infringement or for which you may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to or having followed a design or instruction furnished or given by you or to the use of such articles or materials in a manner or for a purpose or in a foreign country not specified by or disclosed to us. And provided also that this indemnity is conditional on your giving to us the earliest possible notice in writing of any claim being made or action threatened or brought against you and on your permitting us at our own expense to conduct any litigation that may ensue and all negotiations for a settlement of a claim. You on your part warrant that any design or instruction furnished or given by you shall not be such as will cause us to infringe any Letters Patent, Registered or Trade Mark in the execution of your order.

12. Consequential damages :

Under no circumstances whatsoever shall we, at any time, be liable for any claims for consequential loss or damage that may be sustained by you or for any claims made by any other person whatsoever, in connection with any contracts made by us or the use of goods sold by us and whether due to delay, defects, negligence or otherwise.

13. Amendments :

No amendments or variation of the contract of these conditions will be of any force or effect unless recorded in writing by us and approved by one of our authorised officials.

14. Jurisdiction of the Magistrate's Court :

You hereby agree and consent that we shall be entitled to our option to institute any legal proceedings which might arise out of or in connection with this contract in any magistrate's court in Kenya having jurisdiction in respect of your person, notwithstanding that the claim or the value of the matter in dispute might exceed the jurisdiction of such magistrate's court.

15. Legal construction and arbitration :

Even should one or more of these conditions be invalid, such remaining conditions as are applicable shall remain in force. Unless otherwise agreed in writing, the contract shall in all respects be construed and operate as a Kenyan contract and in conformity with Kenyan Law.

This document has been drawn up in conjunction with the South African Pump Manufacturer's Association.