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GENERAL CONDITIONS OF ORDER
 (FOR ORDERS EXCEEDING R20 000 IN VALUE)
 (Revision January 2003)

CONTRACTOR :
 PROJECT DESCRIPTION :
 CONTRACTORS REFERENCE :
 OUR PROJECT NUMBER :
 OUR BUYING ORDER NUMBER :
 OUR CONTACT :
 CONTRACT CONTACT :

SECTION A

Definitions

The following expressions shall, unless the context, otherwise requires, have the meanings hereby respectively assigned to them:

- (a) "COMPANY" means Demag Cranes & Components (Pty) Ltd;
- (b) "CONTRACT" means the contract governing the ORDER which CONTRACT shall come into effect by the CONTRACTOR'S acceptance of the ORDER.
- (c) "CONTRACT WORKS" means the materials, plant, equipment and all such other things as are used by the CONTRACTOR for the purpose of erection as contemplated under Section D hereof;
- (d) "CONTRACTOR" means the person who has undertaken to carry out the ORDER;
- (e) "DELIVERY" means the delivery of the GOODS in compliance with the terms of the ORDER at the point of delivery specified in the ORDER;
- (f) "DRAWINGS" means and includes all plans, sections and elevations signed relative to the ORDER, together with all modifications of those and any further working or detailed drawings or sketches that may from time to time be approved of in writing by, or supplied by the COMPANY'
- (g) "DUE DATE OF DELIVERY" means the date stipulated in the ORDER for DELIVERY;
- (h) "GENERAL CONDITIONS OF ORDER" means all the conditions set forth hereunder and in no way derogating therefrom shall include (where the Company itself is the main contractor under an agreement with a third party ("the Main Agreement"), and the Contractor hereunder is, therefore, a sub-contractor), all the conditions stipulated in such Main Agreement (which the Contractor acknowledges itself to be fully cognisant) save to the extent that same are inconsistent with the Contract, in which event the latter shall prevail. In the event of any conflict between the general conditions of order and any other conditions which the CONTRACTOR may seek to impose, then and in such event the general conditions of order shall be and remain the overriding conditions;
- (i) "GOODS" means whatever is to be supplied in terms of the ORDER and includes that which is to be done in the manufacture and/or construction and/or production and/or completion and/or erection of the GOODS and/or any other work to be done by the CONTRACTOR under the ORDER.
- (j) "ORDER" means and includes the GENERAL CONDITIONS OF ORDER read together with and incorporating that which is set forth on the face hereof and all documents attached hereto, and the SPECIFICATIONS and any schedules attached thereto and DRAWINGS;
- (k) "PRICE" means the price stated in the ORDER;
- (l) "SITE" means the buildings or grounds or any other place in which or on which or over which the CONTRACT WORKS are to be used for the purpose of the erection pursuant to the CONTRACT as contemplated under Section D hereof;
- (m) "SPECIFICATIONS" means the specifications annexed to and/or relative to the ORDER;
- (n) "TAKE OVER DATE" means (subject to the provisions of Sections B clause(p)(vii) hereof) the date upon which the ORDER has been completed by the CONTRACTOR to the COMPANY'S satisfaction. Alternatively, in the event of the COMPANY being obliged to supply or tender the GOODS to a third party, pursuant to the main agreement (vide clause (h) above), the TAKE OVER DATE shall then mean the date upon which such third party shall have formally accepted the GOODS as being to its entire satisfaction, and TAKE OVER shall a corresponding meaning.

Words importing the singular shall, where applicable, be deemed to include the plural and vice versa and reference to any one gender shall be deemed to include the other(s)., where applicable, and shall, where apposite, include bodies corporate or incorporate.

SECTION B

The following conditions shall apply to the CONTRACT:

- (a) **The CONTRACTOR to Satisfy Himself**
 The CONTRACTOR shall be deemed to have satisfied himself as to all the conditions and circumstances affecting the ORDER and the execution of the CONTRACT and the Main Agreement (vide Section A, clause (h)):
- (b) **Assignment**
 - (i) The CONTRACTOR shall not cede, assign or make over any of his rights or interests in and to the CONTRACT, nor delegate and/or assign any of his duties or obligations thereunder to any person whomsoever without the prior written consent of the COMPANY, which consent may be refused without any reason being assigned therefor;
 - (ii) The consent (if any, given in writing) of the COMPANY to the employment of any sub-contractor shall not relieve the CONTRACTOR of his obligations under the CONTRACT nor in any way affect the CONTRACTOR'S direct responsibility to the COMPANY, nor shall any privity of contract be deemed to be established between the COMPANY and such sub-contractor by the payment by the COMPANY of any monies to the sub-contractor or otherwise howsoever;
- (c) **Quality**
 The CONTRACTOR hereby unconditionally acknowledges and/or warrants in favour of the COMPANY that
 - (i) he is aware of the purpose for which the GOODS are intended and that they will be satisfactory in every respect for such purpose;
 - (ii) the GOODS and all the material used in the fabrication thereof shall be new;
 - (iii) the GOODS shall be of the best quality and class described and equal in all respects to the SPECIFICATION and DRAWINGS, patterns and samples specified in the ORDER. Should there be no description or sample or pattern exhibited, the GOODS shall be of the best quality and workmanship of their respective class;
- (d) **Risk and Ownership**
 Ownership of the GOODS shall pass from the CONTRACTOR to the COMPANY on the DELIVERY thereof but the CONTRACTOR shall nevertheless be responsible for any loss or damage to the GOODS whether total or partial of whatsoever nature and from whatsoever cause arising, until the TAKE OVER DATE and the CONTRACTOR acknowledges that the risk in and to the GOODS, or any portion thereof, shall only pass to the COMPANY on the TAKE OVER DATE;

(e) **Indemnity**

- (i) The CONTRACTOR shall take all precautions necessary for the protection of life and property in connection with the execution by it of the CONTRACT and shall deliver the GOODS in a safe condition;
- (ii) The CONTRACTOR shall be liable to the COMPANY for and hereby indemnifies and holds it harmless against any injury or damage occurring to any person or to any property of the COMPANY or any third party/ies, owing to the GOODS being delivered in an unsafe condition and/or not in accordance with any of the terms and conditions of the CONTRACT, and further indemnifies, holds harmless and absolves the COMPANY against all actions, suits, demands, costs or expenses arising in connection with or caused by or incidental to the negligence or the default of the CONTRACTOR or his servants, agents, workmen or sub-contractors or the non-compliance by the CONTRACTOR with any of the terms of the CONTRACT;

(f) **Patents**

The CONTRACTOR shall pay royalties and expenses and be liable for all claims of whatsoever nature in respect of the use of patent rights, trademarks or other productive rights and shall be deemed to have indemnified the COMPANY against any claims arising therefrom;

(g) **Discrepancies and inconsistencies**

- (i) Should there appear to be any discrepancies in description, dimensions or quantities in the ORDER, the matter shall be referred by the CONTRACTOR, to the COMPANY for decision before the CONTRACTOR proceeds to execute the ORDER or that part thereof in respect of which the said discrepancies appear to exist. The true intention and meaning of the ORDER is that the CONTRACTOR shall in all respects supply the GOODS and perform his obligations under the CONTRACT in a proper and workmanlike manner and to the satisfaction of the COMPANY;
- (ii) Should any of the GENERAL CONDITIONS OF ORDER be in conflict with the other conditions of the ORDER, the latter shall prevail.

(h) **Variation**

The COMPANY shall have the right from time to time to order the CONTRACTOR by notice in writing to alter, amend, omit, add to or otherwise vary the GOODS or portion thereof. No such variation/s shall be added to or deducted from the PRICE. The CONTRACTOR shall on receipt of such written instructions so to vary, and notwithstanding the fact that the value of the said variation may not have been determined as provided for hereunder, proceed with the CONTRACT as varied as though the said variation occurred in the CONTRACT. The amount by which the PRICE is to be increased and/or reduced by virtue of the said variation shall, failing agreement between the COMPANY and the CONTRACTOR, be determined in accordance with the rates (if any) specified in the SPECIFICATIONS, in so far as the same may be applicable, and in default of any applicable rates, the value of such variation shall be deemed to be the lesser of either the actual cost of labour and materials in carrying out the same plus 5% (five per centum) of such costs, or a fair and reasonable price. The COMPANY shall not become liable for any additions to the PRICE unless the instructions for the performance of any such variation shall have been given in writing by the COMPANY. The CONTRACTOR, shall be obliged whenever called upon by the COMPANY so to do, and whether prior and/or subsequent to the CONTRACTOR having received instructions to proceed with any variation, to furnish the COMPANY with a written quotation, setting forth therein the full details of his actual and/or estimated costs of any variation, and should such written quotation not be received by the COMPANY within a period of seven (7) days of the CONTRACTOR being called upon so to do, the CONTRACTOR shall be precluded from making any claims for any additional payment in respect of any variation which might thereafter be, or which may have been duly ordered. The COMPANY'S right to claim a reduction of the PRICE in respect of any such variation shall not however be effected. The COMPANY shall not be obliged to accept the quotation, in which event the value of the variations shall be determined in the manner provided for above. Should the COMPANY not accept the quotation in writing within fourteen (14) days after receipt of same, it shall be deemed not to have been accepted;

(i) **Progress Report**

The CONTRACTOR shall at all times and from time to time, as soon as reasonably possible after being called upon by the COMPANY so to do, furnish for the information of the COMPANY, a detailed statement of its proposed general and detailed arrangements for the construction and supply of the GOODS and the chronological order in which the

components and services constituting the GOODS will be supplied and executed. Similarly, progress reports shall be furnished indicating the state of completion of the design, supply of material, fabrication and construction of the various parts comprising the GOODS together with such detailed particulars relating to the GOODS to be supplied as the COMPANY may require.

(i) **Payment**

- (i) Subject to any deductions and retentions authorised in terms of the CONTRACT and subject to the CONTRACTOR having complied with all his obligations in terms of the CONTRACT, payment of the PRICE will as far as possible be made on or about the 25th day of the month following the TAKE OVER DATE. If payment is effected through the post, the GENERAL Post Office shall be deemed the agent of the CONTRACTOR, this notwithstanding anything to the contrary;
- (ii) Before becoming entitled to any payment as hereinbefore provided for, the CONTRACTOR shall lodge with the COMPANY at its business premises, a statement in duplicate reflecting full and precise details as to how the sum claimed therein is arrived at;
- (iii) No sum which might have been paid by the COMPANY to the CONTRACTOR shall affect or prejudice the rights of the COMPANY against the CONTRACTOR or release the CONTRACTOR of his obligations for the due fulfillment of the CONTRACT or be interpreted as an approval of the GOODS and/or a discharge of the liability of the CONTRACTOR in respect of any damages whether due, ascertained or not, or a waiver by the COMPANY of any of the rights of whatsoever nature which it may have against the CONTRACTOR;
- (iv) the CONTRACTOR irrevocably agrees and undertakes at any time during the subsistence of this agreement to furnish the COMPANY within seven (7) days after written demand thereof, with a certified copy of the CONTRACTOR'S most recent financial statements-audited and/or unaudited or with such other or additional financial information of and concerning the CONTRACTOR as the COMPANY may require in order to satisfy itself as to the viability and/or financial stability of the CONTRACTOR.

(k) **Price Variation** (if applicable)

Should the PRICE be subject to any variation whatsoever, the annexures E (Escalation) and R (Rate of Exchange) will apply and shall be deemed to constitute an integral part thereof.

(l) **Rejection**

- (i) The GOODS will be deemed to be accepted at the place of delivery only as regards number of packages and notwithstanding any receipt that may have been given, the GOODS shall be liable to rejection if not in accordance with the ORDER;
- (ii) The COMPANY shall have the right at all times and notwithstanding the TAKE OVER DATE to reject the GOODS, or any parts thereof, which do not comply with the terms of the contract and/or which are defective and/or unsatisfactory and/or unsuitable for the purpose for which they are intended to be used by the COMPANY and/or which are of inferior quality, and/or which are not in accordance with the Main Agreement (if applicable);

(m) **Failure to Perform**

Should it appear to the COMPANY that the CONTRACTOR is not executing the CONTRACT in accordance either the true intent and meaning of the CONTRACT, or that he is refusing or delaying to execute the CONTRACT in accordance with the instructions of the COMPANY and to its satisfaction, or that the CONTRACTOR is not proceeding with the erection and/or fabrication of the GOODS at such rate of progress as to ensure completion by the DUE DATE OF DELIVERY, then and in such event the COMPANY shall be entitled, in addition to and without prejudice to any other rights and/or remedies which it has in terms of the CONTRACT, to cancel the CONTRACT in its sole and absolute discretion, either wholly or in part and the CONTRACTOR shall be obliged to accept to accept such cancellation;

(n) **Material Provision of the CONTRACT**

The CONTRACTOR acknowledges that all the provisions and conditions of the CONTRACT shall be deemed to be material and his failure to comply with any or all of the same shall be deemed to be a material breach of the CONTRACT. The CONTRACTOR further acknowledges that time for compliance by him with each and every obligation undertaken in terms of the CONTRACT, is of the essence of the CONTRACT;

(o) **Default and Damages**

- (i) Should application be made for the liquidation or judicial management or sequestration of the CONTRACTOR, or should the CONTRACTOR:
 - (aa) being a natural person, die, or
 - (bb) fail to satisfy any judgement entered against him within seven (7) days of such judgement: or
 - (cc) compromise or attempt to compromise with any of his creditors; or
 - (dd) commit any act of insolvency; or
 - (ee) fail to execute the CONTRACT on or before the DUE DATE OF DELIVERY; or
 - (ff) commit any breach of the CONTRACT;

then the COMPANY shall have the right to cancel the whole or any part of the CONTRACT at its sole discretion;

- (ii) In the event of the COMPANY rejecting the GOODS and/or any part thereof, as it shall be entitled to do in terms of clause (I) above, then the COMPANY, at no additional cost to itself, shall be entitled without prejudice and/or in addition to and not in substitution for any other rights which it may have, either to require the CONTRACTOR immediately to replace and/or reconstruct the GOODS and/or any part thereof which have been so rejected at the CONTRACTOR'S expense and without any additional cost to the COMPANY and the CONTRACTOR shall further be liable to refund to the COMPANY the purchase price of all charges incurred by the COMPANY in respect of such GOODS, and/or the COMPANY shall be entitled to cancel the CONTRACT in whole or in part;
- (iii) It is recorded that for the purpose of determining the rights of the COMPANY in event of any default by the CONTRACTOR, including those enumerated above, this CONTRACT shall be severable and divisible at the sole option of the COMPANY and the COMPANY shall be entitled to uphold the CONTRACT in part only and cancel in part only, irrespective of whether the PRICE is a composite or not, in which latter case the PRICE shall be adjusted *pro rata* in relation to that portion of the CONTRACT upheld;
- (iv) In the event of the COMPANY being entitled to cancel the CONTRACT or any reason whatsoever, and whether or not it exercises this right either in whole or in part, the COMPANY shall be entitled but not obligated to cancel any other contracts which it might have entered into with the CONTRACTOR and which shall not have been completely fulfilled, in which event the CONTRACTOR hereby acknowledges that he shall not be entitled to make any claims of whatsoever nature against the COMPANY by reason of the COMPANY having cancelled such other contracts, and he hereby waives any such claims;
- (v) On cancellation the ownership of those GOODS relating to that portion of the CONTRACT which has been cancelled and which may have been passed to the COMPANY, shall revert to the CONTRACTOR but the COMPANY shall nevertheless be entitled to retain possession of the same as security for the payment by the CONTRACTOR to the COMPANY of all amounts which the CONTRACTOR shall become liable to pay to the COMPANY in terms of the CONTRACT as the result of any breach of the CONTRACT by the CONTRACTOR;
- (vi) In the event of the CONTRACTOR committing any breach of the CONTRACT and irrespective of whether the COMPANY cancels the CONTRACT or not, the COMPANY shall be entitled to claim from the CONTRACTOR all damages of whatsoever nature and whether direct or indirect that the COMPANY may suffer as the result of the CONTRACTOR'S said breach and including all amounts that the COMPANY may become liable to pay to any third party arising out of such breach in addition to and not in substitution for any other rights which the COMPANY may have against the CONTRACTOR;
- (vii) The CONTRACTOR hereby renounce any lien which he may have at any time over the GOODS from whatsoever cause arising;

(viii) The COMPANY shall have the right, notwithstanding anything to the contrary in this agreement, to retain all amounts whether due, ascertained or not, which the COMPANY may be obliged to pay the CONTRACTOR from whatsoever cause arising, until such time as all damages of whatsoever nature and whether direct or indirect that the COMPANY may suffer and/or all claims of whatsoever nature that the COMPANY may have against the CONTRACTOR from whatsoever cause arising, have been liquidated and/or ascertained. In no way derogating from the foregoing the CONTRACTOR does hereby cede and assign to the COMPANY its rights to such sums pending the determination of such damages, whereupon a set off shall apply to such extent;

(p) **General**

- (i) Unless otherwise provided in the ORDER all cost and charges of whatsoever nature incurred in DELIVERY including all charges at sending station such as weighing, loading, crating, sheeting, packaging, storage and demurrage, shall be the responsibility and the account of the CONTRACTOR;
- (ii) No approval given by the COMPANY to any DRAWINGS, samples or patterns and/or SPECIFICATIONS submitted by the CONTRACTOR or by the COMPANY shall in any way exonerate the CONTRACTOR from his liability to supply the GOODS in accordance with the requirements of the CONTRACT, and the parties record that the COMPANY relies on the expert knowledge and skill of the CONTRACTOR upon which his ORDER has been founded;
- (iii) In the event of the COMPANY being obliged to supply or tender the GOODS to a third party pursuant to a contract entered into between the COMPANY such third party, and should such third party:
 - (a) object to the CONTRACTOR, the COMPANY shall be entitled to terminate the CONTRACT and the CONTRACTOR shall only be entitled to receive payment for such GOODS as the CONTRACTOR may have delivered to and which have been accepted by the COMPANY as being to its satisfaction;
 - (b) object to any employee of the CONTRACTOR, such employee shall immediately cease to perform any further work in connection with the ORDER.

On the happening of either of the two events described in (a) and (b) above, the CONTRACTOR acknowledges that he shall have no claim or damages and/or compensation of whatsoever nature against the COMPANY other than for the payment as provided for in (iii) (a) above;

- (iv) The CONTRACTOR acknowledges that he shall commence to perform his obligation and insofar as the GOODS are to be fabricated by himself will commence with the fabrication thereof immediately the CONTRACT is concluded and shall proceed continuously therewith until the same is properly completed;
- (v) The CONTRACTOR shall in execution of the CONTRACT conform with all Government or other legislation and with any regulation promulgated thereunder, in force from time to time, in respect of the machinery, plant, equipment, apparatus or materials to be supplied or work (if any) to be done in terms of the CONTRACT;
- (vi) The CONTRACTOR acknowledges that he shall not be entitled to effect DELIVERY of the GOODS prior to DUE DATE OF DELIVERY without the written consent of the COMPANY;
- (vii) Notwithstanding the fact that the COMPANY and/or any third party as referred to under the definition of TAKE OVER DATE shall have signified their satisfaction of the GOODS and/or notwithstanding the fact that the TAKE OVER DATE shall have come into effect, the COMPANY shall not in any way be precluded from making any claims of whatsoever nature against the CONTRACTOR in the event of any defects or malfunctions manifesting themselves subsequent to the TAKE OVER DATE, and which existed prior to, and which the COMPANY was unaware of at the TAKE OVER DATE. The COMPANY shall in such circumstances and notwithstanding anything to the contrary be entitled to make all claims and exercise all its rights as if these defects or malfunctions manifested themselves prior to the TAKE OVER DATE and the CONTRACTOR shall be specifically precluded from raising as a defence the fact that the COMPANY and/or the third party shall have signified their

satisfaction of the GOODS and the CONTRACTOR hereby waives such defence;

- (viii) The CONTRACTOR acknowledges that no warranties, representation, promises or inducement of whatsoever nature have been made or held out to him in connection with the entering into by him of the CONTRACT;
- (ix) No addition/s to or variation/s of the terms or conditions of the CONTRACT, shall be of any force or effect unless such addition/s or variation/s shall be contained in writing and signed by the COMPANY, and no relaxations or indulgences that the COMPANY may grant the CONTRACTOR shall be regarded as a waiver of any of the COMPANY'S rights under the CONTRACT, which rights can only be waived by the COMPANY in writing
- (x) The parties acknowledge that there are no conditions precedent suspending the coming into effect of the CONTRACT;
- (xi) Whenever the COMPANY contends that the CONTRACTOR has breached any of the terms and conditions of the CONTRACT, the onus shall be and remain on the CONTRACTOR to prove the contrary;

(q) **Laws to be Complied With**

The Laws of the Republic of South Africa shall govern all aspects of the CONTRACT and the CONTRACTOR undertakes to comply with all such laws, as amended from time to time, in the execution of the CONTRACT.

SECTION C

It is recorded that should the CONTRACT impose an obligation on the CONTRACTOR to perform and execute any work and/or to supply any GOODS and/or parts to be used for engineering work, the CONTRACT shall be governed by the following conditions which shall be in addition to and not in substitution for those set in Sections A and B above.

(a) **Execution of Work**

- (i) All work shall be carried out strictly in accordance with the DRAWINGS and SPECIFICATIONS executed to measurements, machined and manufactured from material as specified;
- (ii) It is specifically recorded that the COMPANY shall not be obliged to supply the CONTRACTOR with materials and/or components until the CONTRACTOR has satisfied the COMPANY that he has reached the stage of work for which such materials and/or patterns and/or core boxes and/or parts and/or components are required for fitting and/or installation and/or other purposes;
- (iii) In the event of any delay arising out of the inability of the COMPANY to deliver any materials and/or patterns and/or core boxes and/or parts and/or components to the CONTRACTOR where such obligations exist in terms of the CONTRACT, then the CONTRACTOR shall be entitled to an extension of the DUE DATE OF DELIVERY provided that the CONTRACTOR shall have reached that stage of the work where such materials and/or patterns and/or core boxes and/or parts and/or components are required for the purpose of completing the work and has notified the COMPANY in writing to that effect and is able to establish the same to the satisfaction of the COMPANY and then only to the extent of the delay caused;
- (iv) No extension of the DUE DATE OF DELIVERY will be granted as a result of the CONTRACTOR'S failure to notify the COMPANY in writing of the non-receipt by him of any materials and/or components and/or core boxes and/or parts and/or patterns;

(b) **The CONTRACTOR acknowledges that:**

- (i) whenever the COMPANY supplies him with any components or parts and/or any other materials which the COMPANY has undertaken to do in terms of the CONTRACT, he is responsible to check the contents of all crates in which such parts are forwarded to him and that mere signature of DELIVERY on the delivery note by the CONTRACTOR or any of his agents and/or workmen and/or nominee/s will

constitute *prima facie* evidence that all such crates contain that which is specified as being contained therein on such delivery note;

- (ii) the risk in any such components or parts and/or other materials referred to in (I) above shall pass to the CONTRACTOR on DELIVERY of the said components or parts and/or other materials;

(c) **Inspection and Testing**

- (i) The COMPANY and/or its nominee/s shall at all times have the right to inspect and test all GOODS and the workmanship and/or manufacture and/or construction and/or production and/or erection and/or fabrication, at any stage of progress, either before or on completion and (where applicable) as packed or prepared for DELIVERY;
- (ii) The CONTRACTOR shall be obliged at his own cost and expense and whenever called upon by the COMPANY up to and until the TAKE OVER DATE, to:
 - (a) conduct such tests on the GOODS or any portion thereof as the COMPANY in its sole discretion may direct and to provide, if required by the COMPANY, competent personnel approved of by the COMPANY for this purpose;
 - (b) permit the COMPANY and/or its nomee/s to test the GOODS in such manner as the COMPANY in its discretion may deem fit at all times and wherever the GOODS may be, and for this purpose acknowledges that the GOODS or any portion thereof may be treated in any manner that the COMPANY may deem necessary;

- (iii) The CONTRACTOR undertakes to furnish facilities for the inspection and/or testing and/or treatment of the GOODS by the COMPANY and/or its nominee/s and to afford the COMPANY and/or its nominee/s access at all times and from time to time to the GOODS wherever same may be situated;

- (iv) The CONTRACTOR shall be liable for the cost of any inspection and/or testing and/or treatment and acknowledges that all tests and/or treatment of whatsoever nature shall be carried out at the CONTRACTOR'S risk;

- (v) The failure by the COMPANY to inspect and/or treat and/or test, or on inspecting and/or treating and/or testing, to reject the GOODS or any portion thereof, shall not constitute a waiver by the COMPANY of its rights to subsequently inspect and/or test and/or reject the GOODS or any portion thereof, or a waiver of any other of the COMPANY'S rights as set forth in the CONTRACT nor shall any failure to inspect and/or treat and/or test and/or reject constitute a release of the CONTRACTOR'S obligations under the CONTRACT;

(d) **Guaranteed Period**

The CONTRACTOR hereby unconditionally warrants and guarantees that:

- (i) for a period of twelve (12) months after the TAKE OVER DATE, the CONTRACTOR shall be responsible for any defects malfunctions or faults that may develop or appear in the GOODS arising from faulty materials, design or workmanship, or assembly or from materials or workmanship not being in accordance with the DRAWINGS or SPECIFICATIONS or warranties, and shall remedy and/or replace at his own cost any such defects and faults immediately upon being called upon to do so by the COMPANY;

- (ii) If it becomes necessary for the CONTRACTOR to replace or renew any defective portions of the GOODS as set forth in this clause, the provisions of this clause shall apply to the portions of the GOODS so replaced or renewed until the expiration of twelve (12) months from the date of such replacement or renewal;

- (iii) If any defects are not remedied by the CONTRACTOR forthwith upon being called upon to do so, the COMPANY shall have the right to proceed to replace the GOODS or any portion thereof at the CONTRACTOR'S risk and expense, but without prejudice to any other rights which the COMPANY may have against the CONTRACTOR;

- (iv) all rights which the COMPANY may have prior to TAKE OVER DATE as set forth in the CONTRACT, shall apply *mutatis mutandis* to the guarantee period, or any extension thereof;
- (v) the CONTRACTOR specifically acknowledges that the reference to his own expense in this clause shall include *inter alia* the cost of transport, dismantling and re-assembling;
- (vi) the CONTRACTOR shall further be obliged during the aforesaid guarantee period, or any extension thereof, to continuously maintain and/or service the GOODS;
- (vii) the provisions of this clause shall not be construed in any way as limiting or affecting any of the rights which the COMPANY may have against the CONTRACTOR;

(e) **Castings**

- (i) Any castings supplied in terms of the ORDER shall be sound, clean, out-of-twist and free from blow-holes (whether plugged or otherwise), distortion and all surface and other defects. They shall be well dressed and shall be machinable by normal methods. Blow-holes which show up during machining shall render the castings liable to rejection;
- (ii) The CONTRACTOR acknowledges that he is aware of the purpose for which the castings are being supplied and warrants that the castings are suitable for such purpose. Any formula furnished to the CONTRACTOR and/or any other SPECIFICATIONS contained in the ORDER relative to the castings shall not exonerate the CONTRACTOR from his obligations to supply castings satisfactory in every respect for the purpose for which they are intended to be used;

(f) **It is Specifically Recorded That:**

- (i) the provisions relating to inspection and testing shall apply up to the expiration of the guarantee period as it may be extended from time to time;
- (ii) the risk to be covered by any insurance policies to be taken out by the CONTRACTOR in terms of the CONTRACT, shall extend up to the expiration of the guarantee period as it may be extended from time to time;

(g) **DRAWINGS and Other Informative Literature**

- (i) The CONTRACTOR shall at any time was required by the COMPANY, submit to the COMPANY for its approval, as soon as is reasonably practicable after being so requested, one velograph print on cloth of all DRAWINGS;
- (ii) The CONTRACTOR shall not depart from the DRAWINGS without the COMPANY'S prior written instructions;
- (iii) All DRAWINGS, SPECIFICATIONS, patterns and samples furnished by the COMPANY to the CONTRACTOR shall remain the sole and exclusive property of the COMPANY and shall be returned by the CONTRACTOR to the COMPANY whenever called upon to do so. The CONTRACTOR acknowledges the same or the contents thereof, either directly or indirectly, to any other person save in the scope and course of his work under the CONTRACT and further undertakes to use the same solely for the COMPANY'S benefit;
- (iv) The CONTRACTOR shall at all times and from time to time whenever called upon by the COMPANY so to do, furnish the COMPANY with any informative literature that the COMPANY may require relating to the maintenance, service, method of dismantling and re-assembling or adjusting of any of the GOODS as also with any catalogues, price schedules, documents of recommended spares in respect of the said GOODS;

(h) **Insurance**

- (i) The CONTRACTOR shall take out such insurance policy or policies with an insurance company to be nominated by the COMPANY at his own expense and for his own account, should the COMPANY so require him to do, in such amount and covering such risks in respect of damages to the GOODS for the period commencing on the DUE DATE OF DELIVERY thereof to the TAKE OVER DATE, and also in respect of such other risks

as are contemplated I Section B, clause (e) as the COMPANY may in its sole discretion require the CONTRACTOR so to take out;

- (ii) All insurance policies which are to be taken out by the CONTRACTOR in terms of the CONTRACT and whether under Section C and/or Section D shall be taken out in the name/s of the CONTRACTOR and/or the COMPANY and/or of its nominee/s and the CONTRACTOR hereby undertakes to cede all his right title and interest in and to such insurance policies to the COMPANY immediately after the same shall have been taken out, and no claim under the said policies shall be made by the CONTRACTOR without the prior written consent of the COMPANY;

- (iii) All proceeds which might be payable under any such insurance policies shall first be allocated towards effecting payment of any claims which the COMPANY may have against the CONTRACTOR and/or any claims which may have been made against the COMPANY by any other person or persons and which latter claims are confirmed in writing by the COMPANY. The CONTRACTOR shall further be obliged, whenever called upon so to do, to furnish proof to the satisfaction of the COMPANY that all insurance policies which he shall be obliged to take out shall have been taken out and all premiums paid therefor, and should the CONTRACTOR fail to furnish such proof to the satisfaction of the COMPANY, the COMPANY at its option and without prejudice to its other rights, shall be entitled to take out the necessary insurance policy and/or policies and deduct the cost thereof from the PRICE.

SECTION D

Insofar as engineering work involves erection on the SITE, the CONTRACT shall be governed by the following conditions which shall be in addition to and not in substitution for those set forth in Sections A, B and C above.

(a) **Superintendence of Work, Etc**

During the execution of the work CONTRACTOR shall keep on the SITE a competent supervisor (with thorough experience of similar work). The aforementioned supervisor shall superintend the work, receive instructions from the COMPANY and be responsible for the behaviour of the CONTRACTOR'S employees and/or its nominee/s. The COMPANY can object to the supervisor at its discretion and the CONTRACTOR shall replace the person so objected to;

(b) **Unloading of Materials, Etc**

The CONTRACTOR shall provide all labour for the unloading at the SITE of the GOODS and shall provide his own tackle for such unloading as well as for erection;

(c) **Transport and Welfare of Labour**

The CONTRACTOR shall be solely responsible for the transport to and from the SITE, the welfare and accommodation of all labourers engaged by him for completion of the CONTRACT;

(d) **SITE to be left clear**

On completion of the work, the CONTRACTOR shall make good and reinstate to the satisfaction of the COMPANY anything which he or his employees may have disturbed as a result of the work and shall ensure the SITE is left perfectly clean to the entire satisfaction of the COMPANY;

(e) **Non-Interference**

The CONTRACTOR shall not interfere with any other person or persons not in his employ and who might be working on the SITE in the execution of their work

(f) **Insurance**

- (i) The CONTRACTOR shall be obliged whether or not specifically required by the COMPANY so to do, to take out insurance policies with a reputable insurance company (in the event of the COMPANY not having nominated the insurance company) against all risks of whatsoever arising in and to the said GOODS from a date commencing from the time the CONTRACTOR delivers the GOODS and/or commences the preparation of any work on or about the SITE, to a period extending up to the expiration of the guarantee period, and shall further be obliged to take out such additional insurance policies to cover each and every risk as contemplated in Section B Clause (e) even if not specifically required by the COMPANY so to do;

- (ii) The CONTRACTOR hereby undertakes and agrees to ensure himself against all claims by workmen employed by him in terms of the Workmen's Compensation Act of 1941, or any amendment or amendments thereof, or any Act passed in substitution thereof in the event of its repeal, and also under the common law, with an insurance company to be approved of by the COMPANY to an amount or amounts sufficient to satisfy

any and all claims for compensation which such person, or his dependants, in the case of accident, may make under the said Act or by common law;

- (iii) The CONTRACTOR shall report any and every accident to the COMPANY immediately after they occurrence thereof;

(g) **CONTRACT WORKS-Ownership-rejections and cancellations**

The COMPANY apart from any rights which it may have against the CONTRACTOR shall in addition thereto, in the event of its cancelling the CONTRACT, be entitled to:

- (i) immediately reject the CONTRACTOR from the SITE;
- (ii) Use the CONTRACT WORKS brought to or delivered upon the SITE by the CONTRACTOR, which CONTRACT WORKS shall from time to time of their being so brought or delivered, vest in and become the property of the COMPANY, and shall be used solely for the purpose of the CONTRACT and shall not on any account be removed or taken away by the CONTRACTOR or any other person without the express permission of the COMPANY, but the CONTRACTOR shall nevertheless be solely liable and responsible for the loss destruction thereof, or damage thereto. On the TAKE OVER DATE, ownership in and to the CONTRACT WORKS shall revert to the CONTRACTOR provided he shall have complied with all his obligations undertaken in terms of the CONTRACT. In the event of the COMPANY being entitled to cancel any part of the CONTRACT, then and in addition to and not in substitution of any rights which the COMPANY has in terms of the CONTRACT, the COMPANY shall be entitled to:
- (aa) immediately eject the CONTRACTOR from the SITE;
- (bb) use the CONTRACT WORKS on the SITE free of charge for the purpose of completing the contract the CONTRACT, save and except that the value of any materials forming part of the CONTRACT WORKS that may have been used and incorporated into the GOODS to form a part thereof shall be credited to the account of the CONTRACTOR, and a certificate by the director of the COMPANY certifying the value of such materials so used and incorporated shall be final and binding; and/or
- (cc) sell and dispose of so much of the CONTRACT WORKS as the COMPANY in its sole discretion may deem necessary to satisfy each and every claim which it might have against the CONTRACTOR and the ownership of any remaining CONTRACT WORKS shall thereafter revert to the CONTRACTOR.

It is specially recorded that notwithstanding the fact that the CONTRACT may be cancelled, the CONTRACTOR shall have no right to claim delivery of any portion of the CONTRACT WORKS until every claim which the COMPANY has against him has been discharged in full and then only in respect of such portion of the CONTRACT WORKS that shall not have been disposed of and/or used and incorporated as contemplated above.

SECTION E

(a) **Jurisdiction**

Notwithstanding anything to the contrary in this Contract or elsewhere contained, it shall be interpreted and construed according to and governed by the Laws of the Republic Of South Africa and the CONTRACTOR and the COMPANY consent to the jurisdiction of the Supreme Court Of South Africa (Witwatersrand Local Division) in respect of all proceedings of whatsoever nature arising hereout;

(b) **Non-Waiver**

A relaxation of any of the terms of this Contract or any indulgence shown by the COMPANY to the CONTRACTOR shall in no way prejudice the

rights of the COMPANY and shall not be construed as a waiver or novation thereof;

(c) **Domicillium**

The CONTRACTOR selects the address set forth in the Buying Order as the CONTRACTOR'S *domicillium citandi et executandi* for all purpose arising hereout and the COMPANY, for similar purposes, selects the address 60 Atlas Road, Boksburg North, Benoni 1500 2003, for attention of the Managing Director as its *domicillium citandi et executandi*.

(d) **Right to Appropriate/Set-Off**

Notwithstanding anything to the contrary in this Contract contained, the COMPANY shall have the right and option:-

- (i) to appropriate any monies received by it from the CONTRACTOR to any other indebtedness of the CONTRACTOR to the COMPANY at the time of such appropriation;
- (ii) to set off any monies received by it from the CONTRACTOR to any amount due by the latter to the COMPANY at the time of such set-off;

(e) **Heads of Agreement**

The heading of this contact are for reference purposes only and shall not affect the interpretation thereof. If any provision in a definition is a substantive provision conferring rights or imposing obligations on either party, notwithstanding that it is only in definition, effect shall be given to it as if it were a substantive provision in the body of the CONTACT;

(f) **Costs**

Should any action be taken by the Company against the Contractor in consequence of a breach by the Contractor of any of its obligations under the Contract, then and in such event the Contractor shall be obliged to affect payment on demand of all attorney and own client costs incurred by the Company in such regard, irrespective of whether proceedings have actually been instituted.

(g) **Whole Contract**

This CONTRACT (and the separate sections thereof shall in the sole and absolute discretion of the COMPANY be deemed divisible or indivisible parts of the whole) constitutes the entire contract between the COMPANY and the CONTRACTOR and it whatsoever nature or kind were given which induced the contract and no variation of this Contract shall be of legal efficacy save insofar as the same is reduced to writing and signed by the COMPANY and the CONTRACTOR.

(h) **Adjudication of Disputes**

In the event of any dispute between the COMPANY and the CONTRACTOR, the former shall in its sole and absolute discretion be entitled to have such dispute resolved in the manner hereinafter set forth:-

- (i) if the question involved be one of law, the dispute shall be referred to adjudication by any retired Appeal Court Judge or any Senior Counsel practising at the Johannesburg Bar (who shall be nominated by the parties to the dispute, or failing agreement shall be nominated by the Chairman for the time being of the Bar Council), alternatively any practising attorney of not less than 15 (fifteen) years standing having expertise in commercial work (who shall be nominated by the parties to the dispute or, failing agreement, shall be nominated by the President of the Transvaal Law Society), who shall act as an expert and whose decision on the dispute shall be final and binding on the parties thereto. The decision as to whether to refer the matter to the retired Appeal Court Judge or any Senior Counsel or any practising attorney, shall be determined by the attorneys to the parties. It is within the contemplation of the parties that such disputes which shall be resolved in the manner aforesaid shall include disputes as to the meaning, effect and interpretation of this CONTRACT;
- (ii) if the dispute relates to matters, of an accounting or business nature, then such dispute shall be referred to a senior partner in an independent firm of public accountants and auditors practising at Johannesburg, who shall be nominated by the parties or, failing agreement, shall be nominated by the President for the time being of the Transvaal Society of Accountants, who shall act as an expert and whose decision on the dispute shall be final and binding on the parties thereto;
- (iii) if the dispute relates to any other matter, an independent person agreed upon between the parties and failing agreement the impartial nomination provisions in (i) supra shall apply, *mutatis mutandis*, hereto;

- (iv) should the parties at any time be unable to determine whether the dispute fails to be determined by the provisions of sub-paragraphs (i), (ii) or (iii) supra, then and in such event the same shall be dealt with in accordance with the provisions of sub-paragraph (i) supra;
- (v) the adjudication envisaged as aforesaid shall be of an informal nature with the intention of having same dealt with I toto within 30 (thirty) days from date of the declaration of the dispute and shall otherwise be subject to such terms and conditions as may be determined by the nominated expert
- (vi) this paragraph shall continue each party's irrevocable consent to the adjudication proceedings and neither of the parties shall be entitled to withdraw herefrom or to claim at such adjudication proceedings that he/it is not bound by this paragraph;

- (vii) each of the parties hereby irrevocably agrees that the decision of the adjudicator in the adjudication proceedings:-
 - (aa) shall be final and binding on each of them;
 - (bb) will be carried into effect; and
 - (cc) can be made an order of any court to whose jurisdiction the parties are subject;
- (viii) the provisions of the whole of this paragraph shall be severable from the remainder of the CONTRACT and will, therefore, remain effective between the parties even in the event of the termination of the CONTRACT.

ACKNOWLEDGEMENT

The CONTRACTOR herewith accepts Buying Order Number on the conditions herein before contained.

Signature (who warrants that he is duly authorised hereto).

Date

Place