



STANDARD TERMS & CONDITIONS OF SUPPLY AND SUPERVISION OF ERECTION

1. DEFINITIONS

“Goods” means the equipment, plant, machinery, accessories, spare parts, apparatus, materials and the like, which are to be supplied in terms of the Order.

“Work” means the work (if any) to be supplied in terms of the Order such as erection, installation, supervision, testing and commissioning, including (if applicable) Services and, where the context so admits, Goods.

“Services” shall mean the services mentioned in Clause 5.2 hereof.

“Seller” means Weir Warman Africa (*the legal entity being Warman Africa (Proprietary Limited)*) and its associated or subsidiary companies.

“Buyer” means the company, partnership or person who has contracted with Seller for the supply of Goods and/or Work.

“Order” means the order placed by or on behalf of Buyer for the supply of Goods and/or Work and/or Services and accepted by Seller.

“Tender” means the tender or bid made by Seller to the Buyer and will include any quotation.

2. TERMS AND CONDITIONS OF ORDER / TENDER

2.1 The Order or Tender shall be subjected to the terms and conditions set out herein (“The Order Terms”) and any terms and conditions which may be specifically agreed upon in writing between Buyer and Seller (“agreed terms”). Unless stated to the contrary, the agreed terms shall be deemed to incorporate the Seller’s written proposal in respect of the Goods and/or Work (“the Seller’s proposal”) and the Order terms. In the event of a conflict, the Seller’s proposal shall prevail over the agreed terms and the agreed terms shall prevail over the Order terms. Where there are no agreed terms, the Order shall be subject to the terms and conditions set out in the Seller’s proposal and to the Order terms and in the event of a conflict, the terms and conditions of the Seller’s proposal shall prevail. In the event of no terms and conditions having been stated in the Seller’s proposal or in the event of there being no such proposal, the Order shall be subject only to the Order terms.

2.2 Orders from Buyers are not binding on Seller until Seller’s acceptance has been notified to them in writing. These Order terms shall be deemed to have been accepted by Buyer unless specifically modified by agreed terms. Agreed terms will apply only to the specific purchase order or Tender involved.

3. PRICE

3.1 If VAT is applicable, the prices stated in the Seller’s Tender or in the Order are exclusive of Value Added Tax (VAT). VAT is indicated separately, calculated at the applicable rate at date of quotation. Should the buyer be exempt from VAT, the total basic price will be calculated exclusive of VAT. In event of a change to the VAT rate subsequent to the date of Order or Tender, the revised VAT rate applicable at the date of invoice will apply.

3.2 The prices in the Seller Tender or in the Order include for the complete design, supply, manufacture and delivery Incoterms 2000 *(terms of delivery), (Destination as agreed in



writing), ****Packing options – as agreed in writing **** of locally manufactured Weir Warman Africa pumps complete with pulleys and belts, guards, fabricated base-frames and electric motors.

***Delivery options:**

EXW EX WORKS (named place)*

FCA FREE CARRIER (named place)*

FAS FREE ALONGSIDE SHIP (named port of shipment)*

FOB FREE ON BOARD (named port of shipment)

CFR COST AND FREIGHT (named port of destination)

CCIF COST, INSURANCE AND FREIGHT (named port of destination)*

CPT CARRIAGE PAID TO (named place of destination)

CIP CARRIAGE AND INSURANCE PAID TO (named place of destination)*

DAF DELIVERED AT FRONTIER (named place)*

DES DELIVERED EX SHIP (named port of destination)

DEQ DELIVERED EX QUAY (named port of destination)*

DDU DELIVERED DUTY UNPAID (named place of destination)*

DDP DELIVERED DUTY PAID (named place of destination)*

****Packing option:**

- Uncrated
- Palletized
- Crated for export)

The price specifically excludes:

- System design
- Site installation
- Site performance testing
- Lifting equipment / spreader beams
- Electrical installations
- Piping
- Special tools
- Variable speed drives
- Off loading or supervision of off loading of equipment at site
- Instrumentation of any description
- Other items that may need special mention

All export orders are F.A.S. Durban Incoterms 2000, unless specified differently.

- 3.3 The prices stated in the Seller's Tender or in the Order are based upon Seller being able to proceed with a continuous programme of design, manufacture and Work without interruption from Buyer and, where applicable, being permitted to utilise the sub-contractors listed in Seller's proposal or in the Order. Should Buyer at any time not approve of any of the listed sub-contractors he shall lodge his objection thereto in writing. Any additional costs incurred as a result of such change in sub-contractors shall



be for the account of Buyer. In addition to and as part of the price, Buyer shall pay to Seller

- a) the amount of any additional charges caused by changes required by Buyer in the design or construction of the Goods subsequent to the date of Seller's proposal or in the event of there being no such proposal, subsequent to the date of Order, or by delays in delivery and/or by failure to provide Seller with full details, information, instructions, plans and other documents required for supplying the Goods and preparing and carrying out the Work without interruption (such additional charges will be, at a minimum, the cost of the parts being substituted and the new parts, the cost of work done at standard rates applicable (overtime rate to be added where incurred) and a 15% (fifteen percent) administration surcharge on the additional charge)
 - b) the increase in the cost to Seller of executing the Order owing to the imposition or increase after the date specified in Clause 3.3 a) of rates of exchange, freight, loading charges, dock dues, insurance, lighterage, landing charges, duties, taxes, excises, railage, wages, statutory allowances and expenses, costs of material and charges of a like nature applicable to the manufacture, sale, purchase or delivery of the Goods or any part thereof, or by reason of and/or applicable to the Work
 - c) the cost of assuming at the request of Buyer any obligations in addition to those set forth in the Seller's proposal (if any) and on both sides hereof.
- 3.4 Notwithstanding any additional costs to be paid in accordance with 3.3 all prices quoted are subject to escalation in terms of an agreed formulation.
- 3.5 In the case of electric motors, the prices are based on published list prices ruling as at the date mentioned in Clause 3.3 a) and any variations between such prices and those ruling when Seller invoices Buyer, these items shall be for the account of Buyer.
- 3.6 Seller shall make no allowance for repairs to, alterations of or work done by Buyer upon Goods and Work, unless specifically authorised in writing.
- 3.7 Should the use of any parts or materials necessary for the manufacture of the Goods be prohibited or should it become impossible to procure them at generally prevailing prices or within the time specified for performance of the Order, suitable and available substitutes may be furnished and the purchase price specified herein shall be adjusted accordingly for any difference between Seller's costs of procurement in accordance with the specification and the costs of procuring substitutes. The substitutes procured shall be included in the term "Goods" and Seller shall have no further obligations relating to such substitutes other than those applicable to the Goods.
- 3.8 No allowance has been made in Seller's proposal or in the Order for storage of Goods to be supplied by Seller in terms of the Order. Should Buyer not take delivery or arrange forwarding instructions within seven (7) days of notification that Goods are ready for delivery, any such costs shall be for the account of Buyer.
- 3.9 In the event of variation or suspension of work by Buyer's instructions or lack of instructions the contract price shall be adjusted accordingly. Unconditional cancellation of the Order cannot be accepted once the order has been entered into Seller's production schedules and Seller reserves the right to charge for any work completed prior to cancellation on the following basis:



- a) 10% of the contract price if cancellation takes place after the order has been entered as aforesaid to cover preliminary overheads
- b) 15% of the contract price if cancellation takes place after drawings have been produced and issued to Buyer
- c) 25% of the contract price if cancellation takes place after drawings have been returned to Seller. Final engineering and the production parts list prepared, and the instructions issued to Seller's works
- d) Such higher proportion of the contract price as is reasonable if cancellation takes place after the production of the goods has commenced and Seller shall be entitled to retain the goods but shall allow the Buyer a reasonable credit in respect thereof
- e) Up to 100% of the contract price if the goods have been completed whereupon delivery shall be deemed to have taken

Notwithstanding any of the cancellation charges mentioned above, Seller shall in addition in respect of a cancellation which takes place under whether a), b), c) above be entitled to be reimbursed for any proper expenses incurred or paid away by Seller arising as a result of the establishment of the Contract.

4. TERMS OF PAYMENT

Unless otherwise agreed in writing,

- 4.1 payment for Goods shall be made in South African currency within one calendar month of the date of statement of deliveries effected or deemed to be effected for that month.
- 4.2 if delivery is delayed by Buyer directly or indirectly, whether by amendments to the Order or otherwise, the time for payment shall be calculated as if there has been no such delay;
- 4.3 if delays due to Buyer's fault exceed a total of 60 (sixty) days, all invoices previously rendered and any retentions held by Buyer shall be paid immediately and in such an event, payment in respect of Goods partly or completely manufactured but not yet delivered and in respect of work partly or completely performed, shall immediately become payable in full;
- 4.4 advance payments as agreed for Work and Services (if any) shall be made by Buyer in South African currency unless otherwise specified, within 30 (thirty) days of the date of Seller's invoice in respect thereof;
- 4.5 payment shall not be withheld on account of minor omissions or defects which do not affect the commercial use of the Goods and/or Work;
- 4.6 interest at the rate of 2% (two percent) above the prime overdraft rate of the Absa Bank of South Africa Limited shall be charged on all overdue amounts and shall be payable by Buyer to Seller.

5. EXCLUSION OF WORK

Where work is not included in the Order;

- 5.1 it shall be performed by Buyer at Buyer's risk and expense
- 5.2 Seller may make available at Buyer's request the services ("the Services") of a competent person or persons (Seller's representative/s") to advise on work in respect of the Goods. Buyer shall reimburse Seller at Seller's standard rate per standard working



day, and at applicable overtime rates for all time over standard working hours in a standard week, and for Saturdays, Sundays and recognised holidays, and shall pay the actual board and reasonable expenses of Seller's representative/s including transportation to and from the site and travel time.

Buyer hereby indemnifies and holds Seller harmless against all claims and losses arising out of injuries to persons, including Buyer's employees, and damage to property from fire or other causes resulting from any act of, or omission to act by, Seller's representative/s while on Buyer's property. Seller's representative/s will be insured in terms of the Compensation for Occupational Injuries and Diseases Act or in terms of an employers' liability policy.

6. DELIVERY

6.1 Terms of delivery shall be as stated in Clause 3.

6.2 Where Seller expressly agrees to effect delivery of Goods to Buyer's nearest available station, siding or site, Buyer or its agent shall be responsible for signing for, receiving and unloading the Goods from carriers. The cost of such receiving and unloading service and the cost of transporting the Goods to the installation site (where applicable) shall be for the Buyer's account.

6.3 Partial deliveries hereunder shall be allowed.

6.4 All Goods shall be examined on receipt by Buyer or its agent who will accept and sign for the Goods. No claims for shortages or for damage in transit shall be considered unless Seller is notified by Buyer in writing within 10 (ten) days of date of delivery.

6.5 If delay is caused by Buyer directly or indirectly, delivery will be deemed to have been effected on the date it would have been affected if there had been no such delay.

6.6 Where the price quoted is to nominate site, Seller will at its sole discretion repair or replace the goods involved in respect of damage or loss in transit provided the carriers and Seller receive written notification from the Buyer within three (3) days of delivery or non-delivery.

7. ERECTION

If supervision of erection and installation Work is included in the Order, every endeavour will be made by Seller to proceed promptly with such Work and, unless otherwise stated, Buyer shall

7.1 provide a safe and appropriate working environment;

7.2 provide tools, scaffolding and other necessary erection equipment other than that which Seller is required to supply in terms of the Order;

7.3 from time to time during the course of erection, clean up and remove from the immediate premises any waste material and debris resulting from Work hereunder and deposit it at an agreed location on Buyer's premises for further disposal by others and cost of such disposal shall be borne by Buyer.

8. PAINTING AND SAFETY DEVICES

Seller shall;



- 8.1 before delivery apply one coat of paint to all structures and platework. Standard machinery units will be coated with manufacturer's standard finishes, and a rust-preventative compound will be applied to all exposed finished machinery parts.
- 8.2 upon specific written request conform to special paint specifications subject to the Seller's quotation and subject to the understanding that curing time required for special paint applications will extend the lead times quoted.
- 8.3 supply only such safety devices as are stipulated in the Order terms. Should additional safety devices be required by law or by reason of Buyer's intended use, Seller shall, at the written request and expense of Buyer, furnish these upon receipt of proper specifications.
- 8.4 Buyer undertakes to take steps sufficient to ensure, as far as is reasonably practicable, that the Goods will comply with all prescribed safety requirements and will be used properly without any risk to any person's health or safety.

9. PERFORMANCE

- 9.1 Seller reserves the right to employ the services of sub-contractors.
- 9.2 Time shall not be of the essence of the Contract. If a time for performance is stated on the reverse hereof, Seller shall deliver the Goods, and (if applicable) complete the Work within the time stated, provided that Buyer complies with all its obligations in terms of the Order and the Order is accompanied by full details, information, instructions, plans and all other documents required to enable Seller to commence and proceed with supplying the Goods and with planning and carrying out the Work without interruption.
Any delay in supplying any of the above, or any delay due to the fault of Buyer shall entitle Seller to an extension of time for performance, sufficient to make up such delay.
- 9.3 Seller estimates delivery of the equipment shall be as stated in the Tender. This delivery is, however, based on the present day factory commitments of Seller, as well as our sub-contractors and is subject to confirmation at the time of the order being placed. We reserve the right to invoice and deliver any item of equipment that is being delayed by free issue items.
- 9.4 Seller shall not be liable for any delay or inability to comply with its obligations should such delay or inability arise from a cause beyond its control, including (without in any way derogating from the generality of the foregoing) Acts of God, acts of the public enemy, riot or civil commotion, Government orders, rules, regulations, suspensions or requisition of any kind, strikes or other stoppages of labour or shortages in the supply thereof, inability to obtain fuel, material or parts, default by sub-contractors, fire, casualties or accidents and transport facilities or any other circumstances of force majeure. In such event, the time for performance shall be extended by a period sufficient to make up any delay on account of any of the causes mentioned. Delay in delivery of any instalment shall not relieve Buyer of its obligation to accept remaining deliveries.
- 9.5 Seller shall only accept liability for later performance where its liability for such late performance is not excluded in terms of the foregoing and where it has specifically agreed in writing to the payment of a penalty or liquidated damages for such late performance, in which case its liability shall be limited to the amount specifically agreed



- to in writing. Should the Buyer and Seller agree on payment of a penalty, Seller shall be specifically entitled to a sum agreed with the Buyer as a bonus for early performance.
- 9.6 Notwithstanding anything stated to the contrary, should Seller be in default in terms of the Order in any manner whatsoever, Buyer shall not cancel the Order nor shall it claim any other remedies which may avail it without having first given Seller written notice to rectify the default within a reasonable time and Seller having failed to do so.
- 9.7 The party establishing a breach of the terms and conditions of the Order shall be under a duty to take all necessary measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or cost. Should it fail to do so, the party in breach may claim a reduction in damages.
- 10 **SERVICE & FACILITIES TO BE PROVIDED BY BUYER IF BUYER'S ORDER INCLUDES ERECTION OR INSTALLATION WORK**
Buyer shall provide and pay for the following services and/or facilities where applicable:
- 10.1 All necessary permits and licenses.
- 10.2 A clear and level site, with sufficient space adjacent thereto for the placing of material, free from water, debris and other obstructions and hazards to the safe and expeditious supplying of the Goods and performance of the Work and with adequate access.
- 10.3 A site ready in accordance with the load diagram and drawings, including the cutting and repairing of any floor, wall or roof openings in accordance with the clearance diagram, requirements and drawings.
- 10.4 The necessary surveying information and services.
- 10.5 Safe and convenient storage room on the erection site, watchman services and other theft protection for the Goods and erection tools, and adequate bench and working space for the installation crew.
- 10.6 All necessary excavations, drainage, piling, foundations, masonry and concrete (including any concrete linings or cement grouting) and any drawings for the design thereof.
- 10.7 The setting of all foundation bolts, anchor bolts and clips, in accordance with the appropriate drawings.
- 10.8 The installation of all piping and wiring necessary for the processing, lighting and power incidental to the operation of the Goods and/or Work.
- 10.9 All service connections, including all electrical current, power, compressed air, fuel, water, heat, light and drains which may be needed for carrying out the Work and for fire protection of the Goods.
- 10.10 Suitable sanitary field toilet facilities.
- 10.11 Power and lifting tackle necessary in connection with the Work.
- 10.12 Filling in or making good of floors and roofs, provision of cover plates over inspection pits and any other civil engineering work.
- 10.13 Lightning protection.
- 10.14 All necessary civil work including civil design, templates or patterns.
- 10.15 Any other items specified by Seller in writing.



11 INSURANCE

If the Order includes Work, Seller shall carry policies of insurance as follows and such insurance shall not be terminated until performance hereunder is completed.

- 11.1 Compensation for Occupational Injuries and Diseases, in accordance with the laws of the Republic of South Africa, or employers; liability insurance.
- 11.2 Public liability insurance with a minimum limits of R100,000.00 (one hundred thousand rands).
- 11.3 Comprehensive Contractor's all risks insurance cover of Goods delivered and Work performed.

12 WARRANTY*

- 12.1 Seller shall be liable to obtain performance figures only where such figures have been guaranteed within specified tolerances, PROVIDED that any claim for damages for breach of such guarantee is lodged by Buyer within 6 (six) months of the expiry of the guarantee period specified in Clause 12.2 and Seller has been afforded sufficient time and opportunity prior to such claim being lodged to implement such guarantee. Damages will be limited as stipulated in Clause 12.7. Should Buyer and Seller agree to a sum greater than that referred to in 12.7, Seller shall be specifically entitled to a sum agreed with the Buyer as a bonus where the performance figures are exceeded, subject to agreed tolerances applicable to such performance figures. Any additional process guarantee shall be separately specified by Seller.
- 12.2 The Goods and Work shall conform to the description contained in Sellers proposal and in the Order and shall be fit for the normal purposes for which such Goods and Work are used, and shall be free of defects in workmanship and materials (fair wear and tear excepted) for a period of 12 (twelve) months from delivery of the Goods or (if applicable) 6 (six) months from commissioning of the Work, whichever is the shorter.
- 12.3 In the event of a breach of any of the foregoing guarantees, then subject to the provisions of Clause 12.1, Seller's liability shall be limited to repair or replacement of defective Goods and/or rectification of defective Work as the case may be. In such event the cost of gaining access to the defective Goods or defective Work shall be for the account of Buyer. A reasonable time shall be allowed to Seller to affect such repair, replacement and/or rectification. In no event shall Seller be liable for consequential losses or consequential damages (including but not limited to loss of production, loss of revenue or loss of profits) suffered by Buyer and arising out of or in connection with the Order in any manner whatsoever and Buyer releases Seller from any such liability.
- 12.4 Goods not manufactured by Seller shall not be subject to the Seller's warranty.
- 12.5 Repairs or alterations or work done on Goods or Work without Seller's prior written authorisation, shall render void all guarantees applicable thereto.
- 12.6 Save as aforesaid, Seller gives no guarantee, express or implied, of material, workmanship, merchantability or fitness of Goods or Work for any particular purpose, whether such purpose be known to Seller or not.
- 12.7 In no event shall Seller's liability exceed the purchase price of the defective item.
- 12.8 In the event of Buyer using in or in conjunction with Goods any spare part or spare parts not supplied by Seller, or supplied from a source not approved by Seller in writing, any commitments in terms of the foregoing guarantee provisions shall be null and void.



- 12.9 Seller shall not be responsible for the actions and omissions of employees of Buyer. Seller's liabilities in terms of the Order and particularly in terms of the foregoing guarantees shall be conditional upon the Goods and/or Work and/or any part and/or ancillaries thereto being operated and maintained diligently by trained and competent personnel strictly in accordance with operating and maintenance instructions and in accordance with generally accepted standards.
- 12.10 Notwithstanding anything stated to the contrary, where Work is included in the Order, should Buyer use the Work beneficially at any stage prior to the issue of a takeover certificate, the Work shall be deemed for all purposes to have been taken over by Buyer at the end of a three month period following the first such use. The maintenance period shall be deemed to have commenced from the end of the said three (3) months period. Buyer shall not use the Work prior to takeover against the advice of Seller or to the detriment of the Work.

13 PATENTS

- 13.1 Seller hereby holds Buyer harmless against any liability for infringement of any South African patent, registered as at the date mentioned in Clause 3.3 a), and arising out of the sale or use in the form supplied by Seller, of Goods designed and/or manufactured or Work performed by Seller.
- 13.2 Seller assumes no liability with respect to patents applicable to Goods or Work not designed and/or manufactured by Seller whether specified by Seller or Buyer.
- 13.3 Buyer hereby indemnifies and holds Seller harmless against any liability for infringement of any patent, current at the date of the Order and involving Goods supplied and Work performed by Seller, in accordance with drawings and/or specifications furnished by Buyer.
- 13.4 The party assuming liability as above stated shall be notified in writing immediately of any assertion of infringement and shall have the absolute control of the defence thereto, including the right to settle, defend against legal action, or make changes in the Goods or Work to avoid infringement.

14 DEFAULT

In the event of Buyer's default in making any payment herein provided for, or of the actual or threatened imposition of a lien upon property of Buyer, or adverse claims of any kind against Buyer, the entire unpaid balance of the price of the Goods delivered as aforesaid, and Services rendered and Work performed as at the date of such default, shall immediately become due and payable. Furthermore, in such an event, any commitments in terms of the guarantee provisions in Clause 12 above shall be null and void and payment for Goods partly or completely manufactured, but not yet delivered, and of the Services rendered in terms of Clause 5.2, whether partly or completely performed, shall be made immediately in full.

15. SPECIFICATIONS, DRAWINGS AND BILLS OF MATERIAL

Where Work is included in the Order, Seller shall not supply detailed manufacturing drawings or design calculations of Seller's proprietary equipment but shall, however, allow authorised representatives of Buyer to inspect such drawings At Seller's offices at any reasonable time until the completion of the Order and shall in any event supply general arrangement drawings and such other drawings as may be required for the maintenance of the Work and for the identifications of spare parts.



Seller reserves to itself the right to effect minor modifications and/or improvements to Seller's proprietary equipment during the course of effecting the Order, provided that such changes shall not be detrimental to the functioning of the Work.

Specifications, drawings and bills of material pertaining hereto are Seller's property and nothing contained herein shall by implication or otherwise grant Buyer rights under existing or future copyright, patents and other rights owned by or licensed to Seller. Buyer shall respect the confidentiality of such documentation, shall not dispose of it to others, not use it for building or construction purposes without Seller's prior written consent, nor shall Buyer use such documentation directly or indirectly in any way detrimental to Seller's interests.

16. QUALITY ASSURANCE

Seller has, over a period of time, developed a quality planning system to ensure that equipment manufactured by it complies with its required quality standards.

The order is accepted on the basis that Seller's inspection, quality planning and testing system is accepted by Buyer as being fair and sufficient for the purposes of the Order and that all costs incurred in performing additional tests or inspection shall be for the account of Buyer whether such tests are performed by servants or representatives of Buyer or by independent persons or bodies.

17. IMPORT PERMITS

Acceptance of the Order is conditional upon the issue of any necessary import permits and foreign exchange approval by the Government of the Republic of South Africa. Buyer shall be responsible for obtaining such permits or approval.

18. TITLE

18.1 Ownership in Goods delivered by Seller shall remain vested in Seller 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.

18.2 Ownership of all tools, dies and special equipment manufactured by or acquired by Seller for the purposes of the Order shall remain vested in Seller even if Buyer is charged with a sum in respect thereof.

19. ADDITIONS TO OR VARIATIONS IN THE ORDER

No addition to or variation in the Order or to any contract between Buyer and Seller shall be of any force or effect unless reduced to writing and signed by a person authorised to sign on Buyer's and Seller's behalf.

In the event of any contract change, Seller reserves the right to put on hold the affected equipment until such time as any necessary price and delivery change is agreed.

Should the Seller and the Buyer be unable to agree on price and delivery of changes or should the variation in the Order be unreasonable in the opinion of the Seller and the Order be cancelled, Buyer shall remain liable for payment for work completed as per Clause 3.9.

20. DRAWINGS, ILLUSTRATIONS, ETC.



All drawings, descriptive matter, weights, dimensions and shipping specifications submitted in respect of Goods and Work and the descriptions and illustrations contained in Seller's catalogues, price lists and other advertising matter, are approximate only and are intended merely to represent a general idea of and to give general information with regard to the Goods or Work described therein, and none of these shall form a part of the Order.

Buyer shall utilise only written dimensions and quantities from Seller's drawings. Seller does not accept any liability for errors, deficiencies or costs should Buyer or its representative's scale from Seller's drawings.

Sellers's signature on any drawings issued by Buyer shall signify only that Seller has checked and approved the dimensions directly affecting the mechanical positioning and operation of equipment supplied or to be supplied by the Seller in terms of the Order.

21. SECRECY

Buyer agrees to treat as secret and not to disclose to any person not in its employ and/or not authorised by Seller to receive it, any information pertaining to Seller's affairs or any of its documentation or advices.

22. LEGAL CONSTRUCTION

The terms and conditions of the Order shall in all respects be construed in accordance with and governed by the laws of the Republic of South Africa.

23. NOTICES

All notices shall be in writing and delivered by hand or sent by prepaid registered mail to the domicilium of the addressee. The post office shall be the agent of the Buyer.

24. CONSTRUCTION PLANT AND EQUIPMENT

When Work is included in the Order, notwithstanding anything stated to the contrary, Buyer shall not be entitled to restrict the removal of the construction plant or equipment of Seller or Seller's sub-contractors prior to takeover, nor to take possession of such construction plant or equipment in the event of the cancellation of the Order.

25. FREE ISSUED COMPONENTS

The Seller reserves the right to accept or reject the option of free issued components. All equipment of a free issue nature must be delivered to Alrode works at least two (2) weeks prior to the agreed delivery date. Should this requirement not be met, pumps will be re-scheduled for building. If, however, pumps are required on an urgent basis, the pumps will be invoiced on completion and the delivery period will be extended by two (2) weeks, from date of receipt, of a complete set of free issue equipment.

Seller reserves the right to accept or reject free issue equipment, after the inspections process. Items rejected will be returned to source for rectification. Costs incurred in the rectification of free issue equipment will be for Buyer's account.

Regarding the establishment of the take-out price for components where agreement was reached regarding free issues, the Seller reserves the right to establish the amount of adjustment it deems to be fair. Seller reserves the right to charge a handling fee on all free issue components.

26. REASONABLE BEHAVIOUR

Any approval, consent, agreement or permission required shall not be withheld unreasonably, any rights or discretions exercisable shall be reasonably exercised and any decisions made or formed shall be reasonably made or formed.



27. SEVERABILITY

If any clause or provision of these Terms and Conditions of Order is invalid, illegal or unenforceable, all other clauses or provisions shall nevertheless remain in full force and effect.

28. LIABILITY AND CONSEQUENTIAL DAMAGES

Neither party hereto shall be liable to the other for any indirect, special or consequential damages including, but not limited to, damages for loss of product, loss of revenue, and loss of profits regardless of the negligence (either sole or concurrent) of either party and each party hereby releases the other in this regard.

Notwithstanding anything contained herein to the contrary, it is understood and agreed to by and between the parties that in no event shall Seller's liability for loss or damage to the Buyer's property or to any other property situated at or adjacent to the job site exceed the sum of R1,000,000.00 per occurrence and/or in the aggregate, including any such loss or damage caused by the negligence of the Seller. The Buyer agrees to release indemnify and hold Seller harmless from and against any such liability in excess of the said R1,000,000.00 and also in respect of any such loss or damage to the extent caused by the negligence of the Buyer.

The maximum aggregate liability of the Seller in relation to the supply of the Goods and the Work, whether arising under the Order or from breach of any duty owed by the Seller, shall be limited to the amount of the price paid to the Seller for the Goods and the Work.

29. CONTINUED SUPPLY OF SPARE PARTS

Seller reserves the right without prior notice, from time to time, without incurring any obligation to Buyer to discontinue any Products or type thereof, to alter the design or construction thereof, and/or add new and additional types thereof to its line. Any product change shall not affect any pending orders placed by Customers or Buyers.

30. RATE OF EXCHANGE VARIANCES

Any price difference caused by fluctuations between the local currency and the forward cover exchange rate (determined at the time of Order placement), as well as any changes to the value of imported duties, surcharges or levies, will be for the customer's account.

At your request, forward cover will be purchased, the cost of which will be for your account.