

Spill Tech – Procurement Terms and Conditions

1. Agreement

- 1.1 These terms and conditions (**Terms and Conditions**) are applicable to each purchase order placed by Spill Tech.
- 1.2 The supplier shall be deemed to have agreed to these Terms and Conditions by accepting the purchase order and/or providing the goods and/or performing the services.
- 1.3 The agreement between Spill Tech and the supplier shall consist of:
 - (a) these Terms and Conditions;
 - (b) the purchase order; and
 - (c) any terms and conditions provided by the supplier and agreed to by Spill Tech, save that if there is any conflict between the supplier's terms and conditions and these Terms and Conditions, these Terms and Conditions shall prevail (**Agreement**).

2. Delivery

- 2.1 The Supplier agrees to provide the goods and/or services to Spill Tech on the terms recorded in the Agreement.
- 2.2 The supplier shall, at its own expense, deliver the goods to the location specified in the purchase order or otherwise provided to the supplier in writing.
- 2.3 Quotations provided by the supplier to Spill Tech, including quoted rates, are all inclusive. Spill Tech shall only be liable for those charges recorded in the purchase order. No additional charges will be allowed, including charges for transportation, insurance, shipping, storage, handling, freight, demurrage, cartage, packaging or similar charges unless agreed to in writing by Spill Tech.
- 2.4 Given the inherently urgent nature of Spill Tech's business, time is of the essence with regard to the delivery of goods and performance of services.

Goods shall be delivered and services performed by the delivery date recorded in the purchase order or otherwise provided by Spill Tech to the supplier in writing (**Delivery Date**).

- 2.5 The supplier must immediately notify Spill Tech if it appears as if a Delivery Date will not be met. Spill Tech is entitled, at any time prior to a Delivery Date, to cancel or change a purchase order, for any reason whatsoever, including for the purpose of providing its emergency services.
- 2.6 Spill Tech shall not be liable to pay the amount recorded in the relevant purchase order in the event that a purchase order is cancelled by Spill Tech due to the supplier not meeting the obligations contained in the Agreement, including the Delivery Date.
- 2.7 The risk in and benefit of the goods shall pass to Spill Tech upon receipt of the goods at the delivery point specified in the purchase order or otherwise provided by Spill Tech to the supplier in writing (**Delivery Point**).

3. **Inspection**

- 3.1 Spill Tech is entitled to inspect all goods delivered and services provided. Delivery in terms of clause 2 shall not constitute Spill Tech's acceptance of the goods and/or services.
- 3.2 Spill Tech shall have 2 weeks following delivery to notify the supplier if the goods and/or services have been rejected due to a breach of any of the warranties provided by the supplier in clause 5 or in the terms and conditions provided by the supplier.
- 3.3 Spill Tech shall, at its election, be entitled to return rejected goods to the supplier, at the supplier's expense and risk of loss for:
 - (a) a full refund;
 - (b) a credit note for the full amount recorded in the purchase order; or
 - (c) a new replacement of the rejected goods, which goods are to be delivered on a delivery date and at a delivery location specified by Spill Tech.

3.4 The risk in and benefit of the rejected goods shall pass back to the supplier upon the collection of the goods from Spill Tech.

3.5 Spill Tech's right of inspection in terms of this clause 3 shall not affect the supplier's warranty obligations in terms of this Agreement.

4. **Payment**

4.1 Spill Tech shall only be liable to pay for goods and/or services if a purchase order has been issued to the supplier for such goods and/or services.

4.2 Spill Tech shall make payment for goods and/or services 30 calendar days from receipt of all of the following:

- (a) a purchase order signed by Spill Tech;
- (b) proof of delivery signed by Spill Tech;
- (c) a tax invoice referencing the applicable purchase order; and
- (d) a statement.

4.3 Spill Tech has the right to set-off any amounts owed to it by the supplier against any amounts due by Spill Tech to the supplier.

5. **Warranties**

5.1 The supplier warrants that:

- (a) goods provided, including any vehicles or equipment leased to Spill Tech, shall be:
 - (i) fit for the purpose for which they were acquired;
 - (ii) free from defects in design, material and workmanship;
 - (iii) free from liens or any encumbrances on title; and
 - (iv) compliant with all applicable legislation; and

- (v) in accordance with the purchase order and any other specifications provided by Spill Tech.
- (b) services performed shall:
- (i) be in accordance with the purchase order and any other specifications provided by Spill Tech;
 - (ii) be exercised using the degree of professionalism, skill, diligence, care, prudence, judgment and integrity which would reasonably be expected from a skilled and experienced service provider providing services under the same or similar circumstances; and
 - (iii) use only personnel with the skills, training, expertise, and qualifications necessary to carry out the services in the manner described in clause 5.1(b). Considering the inherently urgent nature of Spill Tech's business, Spill Tech may object to any of the supplier's personnel engaged in the performance of services who, in the opinion of Spill Tech, are lacking in the appropriate skills or qualifications, engage in misconduct, constitute a safety risk or hazard or are incompetent or negligent, and the supplier shall immediately remove such personnel from the performance of any services upon receipt of such notice and shall not re-employ the removed person in connection with the services without the prior written consent of Spill Tech.
- (c) it has, and shall maintain, at its own cost, insurance to the satisfaction of Spill Tech which covers any loss or damages the supplier may suffer as a result of providing the goods and/or services, or any other obligation in terms of the Agreement, including cover for:
- (i) public liability;
 - (ii) the supplier's own assets, including its material, vehicles and equipment on an all-risk basis;
 - (iii) Spill Tech's assets that may be transported by the supplier;

- (iv) workmen's compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.

5.2 The supplier shall provide a copy of its insurance policy referred to in clause 5.1(c) upon written request from Spill Tech.

6. **Indemnity and Limitation of Liability**

6.1 Spill Tech shall have no liability of any nature for any damages, losses or expenses arising from or connected with the Agreement and/or the provision of the goods and/or services, except where such damages or expenses are directly caused by Spill Tech's gross negligence or wilful default.

6.2 Should Spill Tech become liable to the supplier for any losses suffered by the supplier or expenses incurred by the supplier in the circumstances contemplated in clause 6.1 above, the total aggregate liability of Spill Tech for any such claims shall be limited to the aggregate sum of all amounts paid by Spill Tech to the supplier under this Agreement.

6.3 The supplier hereby indemnifies Spill Tech and holds Spill Tech harmless against any and all loss of whatsoever nature arising from or connected with the Agreement and/or the provision of the goods and/or services (other than by virtue of Spill Tech's gross negligence or wilful default), including:

- (a) the death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of, or any actual or alleged defect in, the goods and/or services, or from the failure of the goods and/or services to comply with the warranties in the Agreement;
- (b) any intentional, wrongful or negligent act or omission of the supplier or any of its affiliates or subcontractors;
- (c) the supplier's breach of any of its warranties or obligations under the Agreement; and/or
- (d) any liens or encumbrances relating to any goods and/or services.

6.4 This indemnity is without prejudice to any rights of Spill Tech arising under the Agreement or under applicable law.

6.5 Spill Tech shall not pay for any downtime, including as a result of breakdowns or maintenance, unless such downtime was caused due to the gross negligence or wilful misconduct of Spill Tech.

7. **Amendments to these Terms and Conditions**

7.1 The supplier agrees that Spill Tech has the right to unilaterally amend these Terms and Conditions at any time.

7.2 The latest version of the Terms and Conditions shall be accessible via Spill Tech's website: www.spilltech.co.za.

8. **POPIA**

Spill Tech may have to record and retain certain information about the supplier. Spill Tech takes the privacy and the protection of all suppliers' personal information very seriously, and will only use the personal information as stated in the Spill Tech POPIA policy, which shall be accessible via Spill Tech's website www.spilltech.co.za.

9. **Dispute Resolution**

9.1 Any dispute arising from or in connection with these Terms and Conditions will be finally resolved by arbitration in accordance with the Rules of the Association of Arbitrators (Southern Africa) or its successor current at the date of the dispute arising.

9.2 The arbitrator will be a person mutually agreed on or, in the absence of agreement, appointed by the Association of Arbitrators (Southern Africa) or its successor.

9.3 Subject to the provisions in clauses 9.1 and 9.2, the arbitration proceedings will be conducted in accordance with the provisions of the Arbitration Act, 1965, or its successor.

10. **General**

- 10.1 These Terms and Conditions are governed by and must be interpreted and construed in accordance with the laws of the Republic of South Africa.
- 10.2 You may not cede any rights under these Terms and Conditions without the prior written consent of Spill Tech.
- 10.3 Any indulgence by Spill Tech, or failure strictly to enforce these Terms and Conditions, must not be construed as a waiver or be capable of founding an estoppel.
- 10.4 If any part of these Terms and Conditions is, for any reason whatsoever, declared or becomes unenforceable, invalid or illegal, these Terms and Conditions must be interpreted so as to exclude the offending provision but retain the essential terms of these Terms and Conditions.

11. **Contact Details**

Any notices can be brought to the attention of Spill Tech at info@spilltech.co.za.