

## STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

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### 1. **INTRODUCTION**

- 1.1. The terms and conditions of purchase and sale set out herein ("**Terms and Conditions**") shall apply to all contracts for the procurement and supply of goods ("**the Goods**") and services ("**the Services**") by the Supplier to SQUARE ONE COATING SYSTEMS, LLC, ("**the Company**"), where the contract has arisen from a purchase order ("**Purchase Order**") issued by the Company and accepted by the Supplier, including any such Purchase Order issued by the Company in response to a quotation from the Supplier.
- 1.2. This Agreement shall apply between the Supplier and the SQUARE ONE COATING SYSTEMS, LLC subsidiary issuing the Purchase Order.
- 1.3. The Company and the Supplier shall collectively be referred to as "**the Parties**" and "**Party**" shall refer to any one of them.

### 2. **WHOLE AGREEMENT**

- 2.1. The agreement between the Parties comprises of (a) these Terms and Conditions and (b) the provisions of any Purchase Order (collectively "**the Agreement**").
- 2.2. The Agreement is the sole record of the agreement between the Parties and may only be varied or waived in a written, signed document between the Company and the Supplier. Where however the Parties have concluded and signed a principal contract, the terms as contained in such contract shall take precedence over these Terms and Conditions.
- 2.3. The Supplier's standard terms and conditions and/or those contained in the Supplier's credit application, notwithstanding their reference to or inclusion in any quotation, order, invoice, or otherwise, shall not be binding on the Company.
- 2.4. No undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement and/or any Purchase Order shall be binding on either of the Parties.
- 2.5. The Parties agree that the Supplier is an independent contracting party and that the Agreement does not constitute a contract of agency, representation, employment or partnership with the Supplier. The Supplier shall not incur any liability whatsoever for or on behalf of the Company.

### 3. **PURCHASE ORDERS**

- 3.1. Purchase Orders will be system generated and placed by the Company electronically or by faxing or emailing a copy or by phone call thereof to the Supplier, and may contain details of the goods ordered (including the specification), details of the Services to be rendered (including scope of service and service levels) and confirmation of the Price.
- 3.2. Should there appear to be any discrepancy or ambiguity in description or quantities in a Purchase Order, the Supplier shall immediately submit the matter to the Company for its decision before proceeding to execute the Purchase Order.
- 3.3. Amendment to the Purchase Order shall be subject to the Company's prior written approval and the Supplier's acceptance. No amendment to a Purchase Order will be valid unless agreed to in writing by both Parties and incorporated in a revised and duly issued Purchase Order.
- 3.4. Purchase Orders may be cancelled by the Company at any time provided that the Company shall pay the Supplier for costs reasonably incurred up to the date of cancellation. The Supplier will use all reasonable and practical endeavours to mitigate its losses in this regard.

### 4. **PRICE AND PAYMENT**

- 4.1. The price for the Goods and/or Services ("**the Price**") shall be the price specified in the Purchase Order and shall be paid to the Supplier in the amount as indicated therein. Unless expressly stated to the contrary in the Purchase Order.
  - (a) the Price shall be exclusive of VAT and shall include standard packaging, delivery and installation (where applicable);
  - (b) no additional charges of whatever nature shall be recoverable from the Company unless the Supplier has, prior to the execution of the Purchase Order, obtained the Company's agreement in writing on such additional charges.

- 4.2. Price amendment shall be subject to agreement and acceptance by the Company in writing. Should the Purchase Order be issued on a basis of "price to be advised or agreed" or "estimate price", "subject to change" or any other similar description, the Purchase Order shall stipulate the agreed terms applicable in this respect. The Company may demand, before payment is made, that the price computation be substantiated by the Supplier.
- 4.3. No invoice shall be binding on the Company unless supported by a valid Purchase Order issued by the Company.
- 4.4. Payment shall be made by Check, Credit Card, or EFT into the account nominated in writing by the Supplier in accordance with the payment terms stated in the Purchase Order.

## **5. OWNERSHIP AND RISK IN AND TO THE GOODS**

- 5.1. Where the Goods will be **delivered** by the Supplier:
  - (a) Ownership of and risk in and to the Goods shall pass to the Company upon the physical delivery or the installation thereof, as the case may be, at the Company's premises as set out in the Purchase Order. A Purchase Order shall not be considered fulfilled until the certificates of conformance/analysis and technical data sheets have been satisfactorily supplied with each delivery.
  - (b) In addition, for the passing of risk to take place, the following shall be required:
    - i. in respect of the delivery of the Goods, the signature of an unendorsed delivery note by the Company; and
    - ii. in the case of the installation of the Goods, a written certification by the Company of the completion of the installation.
- 5.2. Where the Goods will be **collected** by the Company:
  - (a) Ownership of and risk in and to the Goods shall pass to the Company upon the physical collection thereof by the Company.
- 5.3. The Company shall have the right to inspect the Goods and to measure progress on the execution of the Services at all reasonable times and to reject Goods and/or Services that do not comply with the terms of the Agreement. Any inspection, checking or approval by the Company shall not relieve the Supplier from any obligation under the Agreement.

## **6. WARRANTIES BY SUPPLIER**

- 6.1. The Supplier warrants that (a) the Services will be rendered in an efficient, workmanlike, prompt, professional, hygienic and safe manner, in accordance with good industry practice and (b) the Supplier shall exercise that degree of skill, care and diligence which could reasonably and ordinarily be expected from a skilled and experienced operator complying with all applicable laws, engaged in the same or a similar type of undertaking.
- 6.2. The Supplier warrants that its premises, its production and packaging systems, processes, machinery, facilities, Goods, Services, ingredients and materials comply with all relevant laws and industry standards, special RoHS certification (where applicable), including, without limitation, all laws relating to consumer protection, occupational health and safety, and environmental laws.
- 6.3. The Supplier warrants that Goods shall (unless otherwise stated in the Purchase Order) be new, merchantable, of agreed quality and description, in working order, fit for their intended purpose and free from contaminants, defects in materials, workmanship and design and shall be usable and durable for a reasonable period of time.
- 6.4. The supplier warrants that they shall not supply any counterfeit parts or chemicals, and that they shall put measures in place that prevent counterfeit parts or chemicals from being supplied to them.
- 6.5. The Supplier warrants that the Goods are not subject to any lien, hypothec, pledge, mortgage, notarial bond, judicial attachment or other encumbrance and that the Supplier is entitled to transfer ownership thereof to the Company.
- 6.6. The Supplier warrants that there are no circumstances, facts or reasons which are known, or ought to be known by the Supplier, which should have been disclosed to the Company and which would have influenced the Supplier's decision in appointing the Supplier to supply the Goods and/or Services.

## **7. SUPPLIER'S GENERAL OBLIGATIONS**

The Supplier shall:

- 7.1. furnish the Company with copies of all relevant certification in respect of relevant chemical analysis and shall comply with the requirements of the relevant authorities and bodies in respect of such certification.
- 7.2. Endeavor to use good statistical techniques in the manufacture of product to assure consistency and applicability of use.
- 7.3. maintain regular contact with the representatives of the Company at the sites at which it is required to provide the Services for the duration of this Agreement;
- 7.4. take all necessary steps to ensure that its staff do not engage in any demonstrations, or other disorderly or riotous conduct on or near the perimeter of the premises of the Company;
- 7.5. refrain from any conduct which may be detrimental to the image, good name and reputation of the Company;

- 7.6. supply the Company with any information or documentation relating to the Goods and/or the Services which it requires within a reasonable time, including any reports which may be requested from time to time in the manner, format and frequency required; and
- 7.7. comply with all applicable laws including relevant statutes, ordinances, by-laws and regulations having any bearing on the Agreement and will obtain all necessary licenses, permits and approvals that it requires to perform its obligations and shall ensure that its employees do the same;
- 7.8. take all reasonable steps to ensure that Goods and/or Services are delivered timeously without any undue delay acknowledging that time is of the essence in the performance of its obligations under this Agreement.

## **8. HEALTH AND SAFETY**

- 8.1. The Supplier shall access the premises of the Company only in accordance with the Company's established access control procedures.
- 8.2. All work performed by the Supplier in terms of this Agreement shall be conducted in a safe and responsible manner and, where applicable, in accordance with applicable laws and the site rules implemented by the Company to ensure the safe and orderly conduct of business on its premises (the "**Site Rules**"). The Supplier shall ensure that its employees are fully conversant with and comply with the Site Rules prior to coming onto any of the Company's premises;
- 8.3. The Supplier shall co-operate with the Company, and any safety officer, and/or any other person in charge of the relevant premises and the Supplier shall implement any instructions and directives issued by such person.
- 8.4. The Company shall be entitled to conduct periodic audits at its discretion, to ensure compliance by the Supplier with the provisions of this clause and the Site Rules, and the Supplier shall co-operate with such audit.

## **9. INDEMNITY**

The Supplier indemnifies and absolves the Company from any claims, damages, losses and any other liability (whether jointly or individually) arising from any cause whatsoever or based on any ground of liability (including liability without fault) to the extent that such liability is attributable, whether wholly or in part, to any defect or deficiency in any of the Goods/Services supplied by the Supplier or is due to the Supplier's failure to comply strictly with the provisions of this Agreement and/or applicable laws. This indemnity shall specifically apply in respect of any claims arising from unsafe, defective, contaminated, hazardous or deficient Goods/Services brought against the Company in terms of the Consumer Protection Act 68 of 2008.

## **10. ETHICAL BUSINESS PRACTICES**

- 10.1 The Company is committed to conducting its business ethically and to achieving and maintaining the highest standards of corporate governance. The Company requires all of its business partners, suppliers, vendors, contractors and service providers, who play an important and valued role in its continuing business success, to behave ethically and to avoid engaging in corrupt business activities.
- 10.2 The Supplier undertakes to comply with Section 10.1 above, and all applicable laws and specifically all anti-Bribery and corruption laws.
- 10.3 The Supplier shall not give or offer to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or any other thing of value for obtaining favourable treatment or taking any action for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or to direct business to any person.

## **11. GIFTS AND ENTERTAINMENT**

Save for gifts of minimal value, the Company discourages the exchange of gifts between the Parties. The prior written approval of the Company is required for the exchange of significant gifts between the Company, its employees, representatives or agents and the Supplier.

## **12. PRIVACY AND DATA PROTECTION**

- 12.1. The Supplier shall at all times during the performance of its obligations in terms of these this Agreement ensure that (a) no data collected from any person during the supply of the Goods/Service is sold, disclosed, commercially exploited, or used in any way other than as expressly authorised by the Company and (b) ensure that it processes data for only the express purpose for which it was obtained.
- 12.2. The Supplier consents to the collection, processing and further processing of its personal information (including personal information contained in electronic communications) by the Company for the purposes of implementing this Agreement and facilitating the supply of Goods and/or Services.

### **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1. The Supplier warrants that its supply of Goods and/or Services to the Company does not infringe any intellectual property rights and hereby indemnifies and holds harmless the Company against any loss, damages or expense sustained by the Company as a consequence of any breach of this warranty.
- 13.2. Any and all intellectual property owned, developed or acquired by a Party prior to this Agreement coming into effect shall remain the sole and exclusive property of the Party who is the lawful proprietor thereof and any and all rights of the Parties in terms of this Agreement shall be subject to the other Party's intellectual property rights.
- 13.3. Any intellectual property made, created or discovered by the Supplier in the course and scope of this Agreement in connection with or relating to the business of the Company, shall be disclosed to the Company and shall belong to and be the absolute property of the Company.

### **14. CONFIDENTIALITY**

The Supplier agrees to treat as strictly confidential the operations, business and affairs of the Company and not to divulge any information relating thereto to any third party, agent or employee without the prior written consent of the Company, save as is required by law.

### **15. AUDIT**

The Supplier's production processes will be operated within a structured and documented quality management system, which will be continuously updated, and kept current. The Company, its customers, or pertinent regulatory agencies may inspect and audit the facilities and premises of the Supplier for any purposes associated with the manufacture, distribution and/or supply of the Goods and/or Services at any time during normal business hours on reasonable notice to the Supplier to measure its implementation of the quality management system, compliance with applicable laws and/or the Agreement.

### **16. BREACH**

- 16.1. In the event of either Party breaching any of its obligations under the Agreement, and such Party failing to remedy such breach within a period of fourteen (14) days of receipt of written notice from the aggrieved Party calling upon it to do so, the aggrieved Party shall be entitled without further notice to (a) cancel the Agreement and/or cancel the Purchase Order and (b) claim specific performance, in either event without prejudice to the aggrieved Party's rights to claim damages or to enforce any other remedy to which it may be entitled whether in terms of the Agreement or in law.
- 16.2. In addition the Company shall be entitled to cancel the Agreement and/ or any Purchase Order forthwith if:
- (a) the Supplier is either provisionally or finally wound-up/sequestered or seeks to make a compromise with its creditors; or
  - (b) the Supplier applies for deregistration or is deregistered in terms of sections 81 to 83 of the Companies Act, No. 71 of 2008 or section 26 of the Close Corporations Act 69 of 1984; or
  - (c) any business rescue proceedings are commenced in respect of the Supplier in terms of Chapter 6 of the Companies Act No. 71 of 2008; or
  - (d) the Supplier is provisionally or finally liquidated, is placed under judicial management or becomes financially distressed; or
  - (e) the Supplier commits a breach of the Agreement which cannot be rectified; or
  - (f) the Supplier is guilty of any act of fraud, bribery, corruption, intentional misrepresentation or contravention of good, ethical practices; or
  - (g) during the course of supplying the Goods and/or the Services, the Supplier contravenes the provisions of any applicable law.
- 16.3. In the event of any legal proceedings against the Supplier, the Company shall be entitled to recover its legal costs on an attorney-and-client scale.

### **17. FORCE MAJEURE**

- 17.1. "**Force Majeure Event**" means an event that prevents or delays a Party from being able to perform an obligation other than the payment of money under this Agreement, where such event would constitute force majeure, such as wars, insurrections, strikes, acts of God, governmental actions or controls, water restrictions or other causes beyond the control of a Party;

- 17.2. Should any Party be prevented by reason of Force Majeure from performing its obligations in terms hereof, then such failure shall not be regarded as a breach of its obligations in terms hereof provided that:
- (a) the Party hereto subject to Force Majeure shall give prompt notice to the other Party hereto of the nature and estimated duration of the Force Majeure concerned;
  - (b) the Parties hereto shall co-operate and collaborate together and use all reasonable efforts to overcome the Force Majeure concerned and/or nullify its effect; and
  - (c) any suspension of performance within the provisions of the above shall be limited to the period during which such inability shall exist and the period of this Agreement shall be interrupted by the period of such suspension.
- 17.3. If the aforementioned inability substantially or permanently prevents the continued performance by either Party of its obligations in terms of this Agreement for a period exceeding fourteen (14) consecutive days, then either Party shall be entitled, by giving notice in writing, to terminate this Agreement in respect of any of its obligations still to be performed hereunder.

## **18. PLACE OF EXECUTION OF SERVICE**

- 18.1. The Company nominates its registered address for service upon it of all processes in connection with any claim arising from the Agreement. The Supplier nominates as its address as stipulated in the Purchase Order for service upon it of all processes in connection with any claim arising out of the Agreement.
- 18.2. All notices and communications under the Agreement shall be given in English and in writing. For the purposes of the Agreement, "**writing**" means e-mails that have been acknowledged by the recipient or facsimiles with proof of transmission or letters sent by registered post with proof of delivery. Oral agreements, notices or instructions are not binding on either Party.

## **19. CESSION AND SUB-CONTRACTING**

- 19.1. The Supplier shall not, without the prior written consent of the Company, (a) sub-contract any of its obligations or (b) cede or assign any of its rights or obligations in terms of this Agreement (including but not limited to, the right to receive payment from the Company). Notwithstanding any such consent, the Supplier shall at all times be liable for the acts or omissions of its employees, agents, sub-contractors, cessionaries, assigns or any other associated party utilised by it, as if they had been acts or omissions of the Supplier.
- 19.2. Any practice designed to interpose a third party or to introduce a third party in a transaction between the Company and the Supplier or any other form of "fronting" shall, in the absence of express consent from the Company, be deemed to be a deliberate misrepresentation on the part of the Supplier and shall constitute a material breach of the Agreement.

## **20. GENERAL**

- 20.1. This Agreement shall be governed by the laws of the State of New York.
- 20.2. No failure or neglect by a Party to exercise any rights hereunder or to insist upon strict compliance with or performance of another Party's obligations under the Agreement, shall constitute a waiver of the provisions of the Agreement and a Party may at any time require strict compliance with the provisions of the Agreement.
- 20.3. No indulgences or extensions of time or latitude which one of the Parties may allow to the other Party shall constitute a waiver by that Party of any of its rights, and it shall not thereby be prevented from exercising any of its rights which may have arisen in the past or may arise in the future.
- 20.4. Each of the provisions of the Agreement shall be considered as separate terms and conditions. In the event that the Agreement is affected by any legislation or any amendment thereto, or if the provisions herein contained are by virtue of such legislation or otherwise held to be illegal, invalid or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if such illegal, invalid or unenforceable provision was not a part hereof.

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