

## TERMS AND CONDITIONS OF PURCHASE

### Definitions

Unless the context indicates otherwise:

'ORGANISATION' shall mean Mothers2mothers and its authorized employees and/or agents

'VENDOR' shall mean the organization, company, person or body and its authorized employees and/or agents offering to supply goods and/or services to the ORGANISATION.

'PRINCIPLE CONTRACT' shall mean the main contract, or agreement concluded in writing between the ORGANISATION and the VENDOR in the respect of the goods and or services and can also mean the Purchase Order.

'TENDER DOCUMENT' shall mean the tender/quotations submitted by the VENDOR to and accepted by the ORGANISATION in response to Tender, Request for Proposal or Request for Quotation in respect of the goods and or services and which in the absence of a principle contract constitutes a binding contract between the ORGANISATION and the VENDOR.

'DELIVERY DATE' shall mean the date specified in the purchase order by which the delivery is to be completed. If the goods are to be installed, and/or commissioned by the VENDOR, then delivery date shall mean the date specified by which such installation and/or commissioning, inclusive of any tests or inspections required shall have been completed to the satisfaction of the ORGANISATION.

'DELIVERY' shall mean the physical delivery to the designated delivery point, and if installation and/or commissioning are included in the scope of work, the completion of such work inclusive of the passing of all tests and inspection required to the satisfaction of the ORGANIZATION.

'GOODS AND OR SERVICES' shall mean the items detailed on the Purchase Order, and shall be inclusive of all work necessary to achieve delivery by the required delivery date.

'PURCHASE ORDER' shall mean the formal legal document allocated a valid Purchase Order Number, authorizing the VENDOR to effect delivery of the respective goods and/or services, and all attachments thereto as listed in the text thereof.

'PROPER INVOICE' shall mean an invoice with the required information prescribed by SARS and detailed on the face of the Purchase Order.

'EXPRESSION' denoting the singular shall include plural and vice versa.

### Procedures

In the absence of a principal contract or tender document, these general conditions of purchase shall take precedence over all other terms and conditions submitted by, or included with any quotations from the VENDOR, except that any terms and conditions appearing on the face of the Purchase Order, shall take precedence over these general conditions of purchase. Where there is a principal contract or tender document, the terms and conditions contained therein shall take precedence over these general conditions of purchase.

### Variations

No deviations from the specification and/or terms and conditions of the Purchase Order are permitted without the ORGANISATIONS prior written consent. The ORGANISATION reserves the right to add to, deduct from or otherwise alter requirements of the Purchase Order. Any such alterations to the Purchase Order shall be issued as an amendment to the Purchase Order, shall form part of the original Purchase Order, and all requirements thereof except as may be altered by the amendment, will apply to such variation. Either party shall not proceed with any such variation until advised in writing to proceed.

### Terms of payment

Unless otherwise specified in the Purchase Order, all invoices received at the ORGANISATION stated postal address or via email to [accounts@m2m.org](mailto:accounts@m2m.org) will be paid within 30 days from the date of the invoice provided that the invoice was received within a week from the date of the invoice. Payment of all invoices is subject to full delivery being completed.

### Purchase Order

The VENDOR shall not supply goods and/or services to the ORGANISATION without being in possession of a valid Purchase Order issued by an authorized ORGANISATION official. The ORGANISATION enforces a Pay as per Purchase Order Policy, as a result the onus shall be on the VENDOR to verify the pricing details on the Purchase Order prior to delivery and report any inconsistencies to the responsible Procurement Official displayed on the Purchase Order as the "m2m Contact Person". Post delivery invoice variations will only be entertained with the written consent of the ORGANISATIONS Financial Manager. Such variations may result in a delay in payment and all costs associated (interest, forward cover, etc) shall be for the VENDOR's account.

### Escalation

Unless otherwise specifically stated in the Purchase Order, prices are fixed and free from any and all escalation.

### Foreign Exchange

Unless otherwise specifically stated in the Purchase Order, variations in foreign exchange rates which affect the Purchase Order value will not be for the ORGANISATIONS account. Prices quoted and Purchase Orders must be in South African Rand. The onus is on the VENDOR to bear the risk of foreign exchange when quoting in South African Rand.

### Import Duties: Custom Charges

Unless otherwise specifically stated in the Purchase Order, prices are deemed to include all applicable duties, import charges, landing & wharfage fees and other costs incurred or likely to be incurred in importation of the goods.

### Insurance

The VENDOR shall be responsible for the insurance of the goods up to the time of delivery of the goods to the ORGANISATION.

### Delivery, Passing of Risk and Ownership

Goods shall be deemed to have been delivered to the ORGANISATION on completion of delivery of the goods to the designated delivery point, and acceptance thereof the goods by the ORGANISATION or its designated assignee. Delivery shall be effected on a VENDOR delivery note, waybill, and or shipping notification or similar document signed by the ORGANISATION for proof of delivery purposes. The ORGANISATION shall not process payments for any goods/services supplied by the vendor unless a valid Proof of Delivery exists.

### Delivery

The VENDOR shall deliver the goods to the designated delivery point, not later than the stated delivery date, unless such date is altered by the ORGANISATION, and mutually agreed upon with the VENDOR. Risk in the goods shall remain with the VENDOR until completion of delivery as defined above.

### Cession and Assignment

The VENDOR shall neither cede nor assign all or part of the Purchase Order without prior written authorization from the ORGANISATION.

### Inspection and Expediting – Prior to Delivery

As deemed necessary by the ORGANISATION, from time to time, the goods to be supplied in terms of the Purchase Order will be subject to inspection and/or expediting. An appointed ORGANISATION inspector /expeditor/purchaser shall have access at all reasonable times to the premises of the VENDOR for the purpose of such inspection and/or expediting and shall be given access to any relevant documentation, except



priced orders, necessary to fulfill said representative's function.

#### **Inspection – ORGANISATION Premises**

Goods and/or services supplied to the ORGANISATION are subject to inspection by designated responsible officials, the ORGANISATION reserves the right to return/reject non-conforming goods/services if quality standards are not met. All costs associated with such return/rejection as a result of non-conformance shall be for the VENDOR's account.

#### **Quality and Guarantee**

Unless otherwise specifically stated in the Purchase Order all goods shall be new. All goods shall be of the best quality and suitable for the purposes of which they are required, and if specification is part of the Purchase Order, shall be in strict conformity with such specification. The VENDOR shall guarantee the goods from all defects for 18 months from delivery, or 12 months from commissioning, whichever shall occur first.

#### **Discrepancies**

Should any discrepancy or ambiguity arise in relation to the goods/services to be supplied against the Purchase Order, it shall be referred to the ORGANISATION for resolution thereof. Any failure to agree upon such resolution shall constitute a dispute to be resolved by arbitration on the basis referred to hereunder. The ORGANISATION shall not be liable for any additional cost resulting from abortive or wasted work arising prior to the discovery of such discrepancies or ambiguity.

#### **Consignment**

VENDOR shall adequately and properly pack the goods for transit. The packaging shall clearly state the Purchase Order number, consignee and destination.

#### **Drawings and Manuals**

Delivery shall not be deemed to be complete until all manuals and/or drawings required to be supplied in terms of the Purchase Order have been delivered to and accepted by the ORGANISATION.

#### **Force Majeure**

Neither the ORGANISATION nor the VENDOR shall be liable for failure to perform in the event such failure is caused by force majeure. Force majeure shall include, but is not limited to war, riots, civil commotions, natural physical disaster, strike or industrial action by VENDOR employees, action by government or public authority. Notice of occurrence of force majeure shall be given by the affected party as soon as possible, with details of the likely event.

#### **Termination**

Should the ORGANISATION so wish, the ORGANISATION shall have the right to terminate the Purchase Order in whole or part, by written notice to the VENDOR. On receipt of such notice the VENDOR shall immediately cease all work in connection with the Purchase Order. The VENDOR shall then advise the ORGANISATION of any costs appertaining to said termination. Such costs shall not exceed the amount of the original Purchase Order. The ORGANISATION reserves the right to terminate the Purchase Order in whole or part, if the promised delivery dates is not executed within a reasonable period of time.

#### **Breach**

If, in the opinion of the ORGANISATION, the VENDOR breaches any of the terms and conditions of the Purchase Order then the ORGANISATION shall advise the VENDOR in writing of such breach and instruct the VENDOR to remedy such breach within 3 days of said notice. Should the VENDOR fail to remedy, then the ORGANISATION shall be entitled, without prejudice to any other rights the ORGANISATION may have in law, to cancel the Purchase Order in whole or in part.

#### **Insolvency and Death**

If the VENDOR, being an individual, dies or being an individual or a Trust is sequestrated, finally or provisionally, or being a company or close corporation or any other corporate entity, is placed in liquidation or under judicial management, either finally or provisionally, and the ORGANISATION shall be entitled without prejudice to any of its rights in law, to cancel the Purchase Order in full or in respect to goods not yet delivered, without incurring any liability to the VENDOR.

#### **Confidentiality**

All details of the Purchase Order, and the, shall be considered as confidential, and shall not be imparted to any third party in any form whatsoever without prior written authorization of the ORGANISATION, expecting that any necessary information required by a third party for execution of the Purchase Order may be imparted. Whilst performing duties associated with the Purchase Order, the VENDOR may become privilege to certain information that they would not have been exposed to in any normal circumstances. Such information shall remain confidential and shall not be divulged in any way, means or form without the written consent of the ORGANISATION.

#### **Indulgences**

No indulgences by the ORGANISATION in respect to any part of the Purchase Order shall or shall be deemed to release the VENDOR from its obligations in terms of the Purchase Order, or constitute a waiver of ORGANISATION'S rights.

#### **Whole Agreement**

The Purchase Order and documents, specifications and shipping documents forming part thereof, constitutes the whole agreement between the VENDOR and the ORGANISATION and no modification shall be valid or binding unless incorporated in a written document signed by the VENDOR and an authorized official of the ORGANISATION.

#### **Sub-Contractors**

All terms and conditions of the Purchase Order shall be incorporated by the VENDOR in any agreement between the VENDOR and its sub-contractors in such manner that all such terms and conditions shall be binding upon the VENDOR and the sub-contractors.

#### **Patent Rights**

The VENDOR hereby agrees that the ORGANISATION has the free right to maintain, repair or replace any broken or worn part of any patented article supplied by the VENDOR to the ORGANISATION. The VENDOR shall indemnify the ORGANISATION against any claim made for infringement of patent rights.

#### **Ethical Conduct**

The VENDOR is required to act ethically and to comply with all local laws and regulations at all times. By the same token the ORGANISATION resolves to do likewise.

#### **Arbitration**

Any dispute which arises in regard to the interpretation, carrying into effect, rights and obligations of the ORGANISATION or VENDOR, the termination or rectification of the Purchase Order or any of the documents forming part of or deemed to form part of the Purchase Order (other than where an interdict is sought to urgent relief may be obtained from a Court of competent jurisdiction\_ shall be submitted to and decided by Arbitration in accordance with the rules of an by an Arbitrator/s appointed by the Arbitration Foundation of South Africa.

#### **Applicable Laws**

The agreement resulting from acceptance of the Purchase Order shall be governed and construed in accordance with the laws of the Republic of South Africa.

#### **End of Terms and Conditions**