

**LINCOLN LUBRICATION SOUTH AFRICA PROPRIETARY LIMITED  
GENERAL CONDITIONS OF CONTRACT**

**1. INTERPRETATION AND APPLICABILITY**

- 1.1 For purposes of these conditions the following words and phrases shall have the following meanings ascribed to them:
- 1.1.1 "Company" means Lincoln Lubrication South Africa Proprietary Limited, registration number 2008/019629/07 or any parent, subsidiary or affiliate of the Company.
- 1.1.2 "Customer" means the entity, person or company who purchases Goods from the Company.
- 1.1.3 "Customer Documentation" means any documentation issued by the Customer to the Company including but not limited to a Purchase Order, delivery or consignment notes, written specifications and drawings.
- 1.1.4 "Contract" means the contract for purchasing Goods from the Company and comprises these conditions and any documentation or terms expressly referenced in the Quotation duly accepted by the Customer.
- 1.1.5 "Delivery Point" means the place within South Africa where the Goods must be delivered.
- 1.1.6 "Equipment" means such components in the Customer's plant or equipment in respect of which the Company provides any Products or Services.
- 1.1.7 "Goods" means the goods and Spares purchased from the Company, including ancillary services as may be described in the Contract in relation to the supply and delivery of the Goods.
- 1.1.8 "Interest" means interest payable on any overdue amount due to the Company by the Customer which shall be calculated that the prime rate of interest charged by the Company's bankers plus two per cent, calculated from the due date to date of full payment, compounded monthly.
- 1.1.9 "Purchase Order" shall mean the Customer's written instruction or order submitted to and accepted by the Company for the supply of the Goods and any ancillary services.
- 1.1.10 "Quotation" means a written proposal, offer or tender to provide Goods and Services given by the Company to the Customer.
- 1.1.11 "Services" means maintenance services in respect of Equipment and related components as expressly described in a Purchase Order.
- 1.1.12 "SKF Privacy Policy" means the Privacy Policy issued by SKF South Africa Proprietary Limited and which is applicable to the collection, use and storage of all personal data and information which the Company may obtain from the Customer.
- 1.1.13 "Spares" means replacement parts supplied by the Company to the Customer for the repair and maintenance of Equipment or provided in the course of providing the Services
- 1.1.14 "Specifications" means the specifications for the Goods and Services issued by the Company to the Customer from time to time and as may be more fully described in any technical literature which the Company may elect to issue with the supply of any Goods and Services.
- 1.1.15 "Warranty Period" means the period during which the Goods or Services are guaranteed against defects which shall be a period of 12 months from the date of delivery of the Goods or in the case of providing Services, from the date of conclusion of the Services.
- 1.2 These conditions –
- 1.2.1 apply to all sales by the Company of Goods which the Company manufactures, sources, supplies, sells, assembles, or installs and to all Services it supplies;
- 1.2.2 may not be deleted, cancelled, or amended except by written agreement signed by a director of the Company;

- 1.2.3 overrides any terms stipulated, incorporated or referred to by the Customer or contained in any Customer Documentation or referenced during negotiations between the Customer and the Company; and
- 1.2.4 shall be construed in accordance with the laws of South Africa.
- 1.3 Any unsigned documentation provided to the Customer, such as illustrations, are estimates only, are not binding on the Company, remains the property of the Company and must be returned to the Company on demand.
- 1.4 The Contract constitutes the entire agreement with regard to the sale of the Goods and supply of Services. No representations, terms, conditions or warranties not contained in the Contract will be binding on the parties.
- 1.5 No indulgence granted by the Company to the Customer will constitute a waiver of any of the Company's rights and the Company will not be precluded from exercising any rights against the Customer which may have arisen in the past or which may arise in the future as a result of having granted any indulgence to the Customer.
- 1.7 The Customer may not assign the Contract or any rights and obligations in terms of the Contract to any third party without the prior written consent of the Company. Any purported assignment in conflict with this provision shall be invalid and unenforceable.
- 1.8 Any provision in this agreement which contemplates performance or survival after termination of the Contract will survive expiry or termination of the Contract.

## **2. SALE OF GOODS AND SERVICES**

- 2.1 The Customer shall obtain a written Quotation from the Company prior to placing a Purchase Order for the supply of any Goods.
- 2.2 The Customer acknowledges that selecting any Goods purchased from the Company requires the Customer to use its own skill and judgment as to which of the Goods and any services it orders meet the Customer's requirements and that it is the Customer's responsibility for ensuring that the Goods and any Services it orders are fit or suitable for the Customer's purposes.
- 2.3 The Company will not be liable for damages resulting from specialist or unusual requirements of the Customer except as expressly accepted in writing by the Company. The Company accepts no returns in respect of any Products engineered in accordance with a Customer's specification. The Company's sole responsibility in respect of such products will be to reperform any defective Services.
- 2.4 If the Customer accepts a Quotation, it must place a Purchase Orders for the Goods with the Company. Purchase Orders are only binding on the Company once accepted in writing and may not be cancelled or modified, unless the Company consents to such cancellation or modification in the Company's sole and absolute discretion.
- 2.5 To the extent that the supply of the Goods and Services require that the Company perform work at a work site of the Customer, the Company will comply with health, safety and environmental legislation applicable as at the date of the supply of the Goods (including site rules applicable at the premises of the Customer where any Services may be rendered). Except as may be expressly provided to the Contrary in any Quotation the cost, if any, in respect of compliance as set out in this clause are not included in the prices for the Goods.

## **3. SUPPLY OF SERVICES**

- 3.1 The Company will provide the Services described in the Company's Quotation and/or the Purchase Order as accepted by the Company. Unless expressly stated to the contrary in the Company's Quotation the cost of Spares is not included in the price for the Services. Any additional work requested by a Customer is subject to a separate Quotation and Purchase Order, or Purchase Order Amendment.

- 3.2 The Services may include, but is not limited to, the monitoring, inspection and testing of Equipment and the supply and installation of Spares. The Company does not make any representations, guarantee or warranty that the Services will improve the operation of the Equipment or that as a consequence of providing the Service that the Equipment will be fit for a particular purpose.
- 3.3 The Customer may not permit any third party to provide maintenance services for the Equipment without the Company's prior written consent during the period which the Company provides the Services. If the Customer breaches this provision, any warranty in respect of the Services will lapse.
- 3.4 The Company has no responsibility and makes no representation of whatsoever nature with regard to the Customer's operations, and the performance of the Customer's Equipment. The Customer must provide confirmation to the Company prior to commencement of any Services to be provided at a Customer's premises that the Company is a co-insured under the Customer's works insurance, alternatively that all rights of subrogation under the Customer's works insurance policies have been waived.
- 3.5 The Company may appoint subcontractors to perform some of the Services, but shall remain responsible for the conduct and performance of its subcontractors.
- 3.6 The Customer must –
- 3.6.1 provide the Company with free and safe access to the Equipment for the performance of the Services.
- 3.6.2 provide any facilities and utilities reasonably required for the performance of the Services, including the facilities and utilities as may be expressly specified in the Quotation and/or Purchase Order;
- 3.6.3 carry out regular maintenance on the Equipment in accordance with the Company's instructions and Specifications;
- 3.6.4 immediately notify the Company if the Equipment breaks down or performs unsatisfactorily;
- 3.6.5 at its expense ensure the safety of the work site and the safe operation of the Equipment in accordance with all applicable laws;
- 3.6.6 promptly notify the Company in advance of any alterations at the work site or to the Equipment or any other conditions affecting or likely to affect the Services provided by the Company.
- 3.6.7 supply the Company with the technical information that the Customer has and as may be reasonably required or which may be useful in connection with the maintenance of the Equipment and the provision of the Services;
- 3.6.8 give the Company advance written notice of all health, safety and environmental and other site rules applicable at the work site where the Services are rendered;
- 3.6.9 maintain ongoing records relating to the operation and performance of the Equipment and provide written reports to the Company on a regular basis.
- 3.7 If the Customer transfers, replaces or modifies the Equipment the Company may at its option either terminate the Services, or adjust the cost of the Services in respect of that Equipment, which shall be communicated to the Customer in writing. If the Customer does not accept the proposed change to the cost of the Services the Company may terminate the Services on written notice to the Customer.
- 3.8 The Company will comply with the rules applicable at the Customer's work site, subject to the provisions of clause 2.5 of these conditions.

#### **4. PRICES**

Unless specified to the contrary in the Company's Quotation:

- 4.1 Quotations shall be valid for 30 days from the date of the Quotation.
- 4.2 prices quoted include the cost of delivery FCA at the Delivery Point, as defined in *Incoterms 2010*;
- 4.3 the cost of travelling between the Company's premises and the Customer's work site for the purposes of performing Services are included in the price to the extent stated in the Quotation. The Company may charge for any additional travelling at the Company's prevailing rates for such costs;

- 4.4 prices are exclusive of all consumption taxes such as value added tax, and other taxes and duties or imposts that may be payable in respect of the sale of the Goods.
- 4.5 except where stated to the contrary in a Quotation, the price does not include, non-standard packaging materials, freight, insurance, travel and subsistence, costs of visas and permits required for any site services, offloading, assembly, or installation; and
- 4.6 any increase in the price quoted as a result of exchange rate fluctuations between the date of the Quotation and the date when the Company becomes liable to pay a supplier of the relevant Goods, shall be for the Customer's account.

## 5. PACKAGING

- 5.1 The Company will ensure that the Goods are packaged in accordance with applicable laws and in compliance with the packaging instructions in the Contract. The Goods will be suitably packed for conditions of normal delivery/shipment. The cost of any non-standard packaging required by the Customer is payable by the Customer to the Company in addition to the price for the Goods.
- 5.2 All packaging shall become the property of the Customer and is not returnable to the Company unless otherwise agreed to for a specific Purchase Order.

## 6. DELIVERY AND ACCEPTANCE OF THE GOODS

- 6.1 The Company will deliver the Goods in terms of the Purchase Order FCA at the Delivery Point, unless expressly specified to the contrary in a Purchase Order accepted by the Company.
- 6.2 The Company will deliver the Goods and supply the Services within a commercially acceptable time. Any delivery or service dates given are best estimates and the Company will use its best endeavours to deliver on or by the specified delivery dates but it is agreed that time is not of the essence. The Customer is not entitled to cancel the Contract and the Company will not be liable for damages or penalties if any delivery date is not met. The Company is entitled to offer part delivery or delivery in instalments to the Customer to fulfil a Purchase Order.
- 6.3 The Customer must accept delivery when tendered by the Company. If the Customer refuses delivery or delivery is interrupted or delayed at the request of the Customer, the Company will retain the Goods at the risk of the Customer. The Company is entitled to claim for the cost of storage of the Goods of any suspended or delayed delivery. Any cost related to re-delivery will be for the account of the Customer.
- 6.4 The Customer or a representative authorised by the Customer at the Delivery Point must inspect the Goods upon delivery who must sign the delivery documentation which accompanies the delivery. Until the contrary is proven, such signature shall constitute proof that the Goods have been delivered in good condition to the Customer. The Customer must give prompt written notice, not exceeding 30 days from the date of delivery at the Delivery Point, to the Company of any missing objects or defective or damaged Goods.
- 6.5 The Company may suspend delivery of any Goods or the supply of Services if the Customer is in default with its obligations under the Contract.

## 7. PAYMENT

- 7.1 The Company will submit tax invoices to the Customer for all Purchase Orders executed. Unless the Customer has current available credit facilities granted to it by the Company, all invoices are payable on presentation. No payment terms in the Customer's Documentation will be binding on the Company.
- 7.2 If the Customer has credit facilities and payment of any invoice is overdue, the Company may at its discretion withhold deliveries and the supply of Services until outstanding payments have been made. The Company's conditions applicable to credit facilities apply to all sales of the Goods and Services on credit.
- 7.3 Payment must be made in full without any set-off or deduction, on the due date, and in the currency specified on the invoice

7.4 Payments must be made by electronic funds transfer into the Company's Bank account specified in the Company's tax invoice. Payments are deemed received when credited to the Company's bank account.

7.5 The Customer is liable for Interest on overdue payments.

7.6 If the Customer fails to make timeous payment of the Company's invoices or the Company has reasonable grounds to conclude that the Client's financial position has deteriorated, the Company may require payment in advance of delivery of the Goods or Services or require upfront payment or security for such payment and pending receipt thereof, the Company may suspend outstanding deliveries or work.

## **8. RISK OF LOSS AND DAMAGE AND OWNERSHIP**

8.1 Ownership in the Goods remains vested in the Company until the full amount due in respect of the sale of the Goods have been paid in full.

8..2 The risk of loss or damage in and to the Goods pass to the Customer on delivery thereof in terms of the Purchase Order.

8.3 The Company has a lien over all Goods in its possession in the event of the Customer's insolvency or failure to pay the price or any sum due under the Contract or any other contract with the Company for any sums due and unpaid under the Contract or under any contract between the Company and the Customer, and for the reasonable costs of storing, handling and insuring the Goods during the exercise of such lien.

## **9. PERMITS, DUTIES AND CHARGES**

9.1 The Customer shall at its cost obtain all necessary permits and pay all duties as may be required by any competent authority in connection with the purchase of the Goods and Services, including for effecting payment for the Goods and Services.

9.2 Any increase in customs duties, tariffs, levies or other imposts after acceptance by the Company of the Purchase Order shall be for borne by the Customer.

## **10. DRAWINGS AND SPECIFICATIONS**

10.1 All documents, drawings, samples, designs, specifications, inclusive of the incorporeal rights therein, and instructions supplied by the Company to the Customer, shall remain the property of the Company and the Customer shall not use or copy the same except to the extent necessary to enable the Customer to use the Goods and Services. The Customer will keep such drawings, specifications and designs confidential and not disclose them to any third party except as may be authorised by the Company in writing.

10.2 The Customer warrants that any design or specification provided to the Company for the purposes of supplying Goods to the Customer will not cause the Company to infringe any patent, copyright, design right or other incorporeal rights of third parties.

## **11. TESTS**

Should the Customer require any tests to be conducted to prove the performance level of the Goods, or for any other purpose, the Company will be entitled to charge for the full cost of such tests.

## **12. WARRANTIES AND LIMITATION OF LIABILITY**

12.1 The Company warrants that the Goods provided by it will –

12.1.1 comply with the Contract, Specifications and any deviation thereof to the extent expressly accepted in writing by the Company;

12.1.2 be fit and sufficient for regular use in accordance with the Specifications.

12.2 Warranties provided in respect of the Goods and Services do not cover:

12.2.1 defects arising from unauthorised alterations to any Goods;

- 12.2.2 damage caused to any Goods in transit;
- 12.2.3 unauthorised repairs to any Goods;
- 12.2.4 lack of maintenance, overloading, using unsuitable or insufficient lubricant;
- 12.2.5 normal wear and tear to Goods;
- 12.2.6 faulty erection or installation or storage of any Goods;
- 12.2.7 the use or mounting of the Goods contrary to any instructions issued by the Company;
- 12.2.8 modifications to the Services not authorised by the Company;
- 12.2.9 any alterations or specialist requirements of the Customer except to the extent expressly warranted in writing by the Company.
- 12.3 The Company will employ suitably qualified persons to perform the Services, warrants that the Services will be performed in a professional and workmanlike manner and that the Services will conform with the Specifications.
- 12.4 Claims arising out of the warranties will only be recognised if given to the Company within 30 days after any defect or unsuitability in the Goods or Services become apparent during the Warranty Period. The Company's obligations are strictly limited to the repair or replacement of defective Goods or the reperformance of defective Services. The warranties given by the Company exclude the cost of Spares dismantling, transport or reinstallation of any defective Goods unless expressly agreed to the contrary with the Customer.
- 12.5 The warranties in these conditions are given *in lieu* of any representations and all other warranties, including warranties of fitness for a particular purpose, and whether oral, written, express, implied or statutory in respect of any Goods and Services supplied to the Customer.
- 12.6 If any claims are made by the Customer based on the warranties provided by the Company and the Goods or Services in question are found to be satisfactory, or if defective in circumstances for which the Company is not liable, the Company may charge a reasonable fee for the examination of the Goods or Services and shall provide the Customer with a Quotation for the repair of the Goods or reperformance of the Services before effecting any repairs to the Goods or reperforming such Services.
- 12.7 Notwithstanding any contrary provision in the Contract or at law the Company's cumulative liability to the Customer for any loss or damage sustained by the Customer for any cause whatsoever shall be strictly limited to an amount equal to 10% of the Purchase Order value in respect of which the claim arose or 100% of the price of the defective item of the Goods or the cost of the defective Services, whichever is the lesser.
- 12.8 Neither party shall be liable for any consequential damages to the other party arising out of this contract. "Consequential damages" shall mean all indirect damages or special damages (whether within the contemplation of the parties at the time of entering into the Contract or not) which shall include, without limitation, any loss of profit, loss of business or trade, or loss of business reputation or business opportunities, loss of products, production or profit, suffered by the either party howsoever arising. Each of the parties hereby expressly waives the right to claim any consequential damages howsoever arising.

### **13. ANTI-CORRUPTION AND BRIBERY**

- 13.1 The Company conducts its business with integrity and honesty and has a zero-tolerance approach to unethical business practices, bribery, corruption, collusion and coercive business practices. All business partners, suppliers, customers and consultants and contractors are required to comply with applicable anti-corruption and ethical conduct rules. For purposes of these conditions:
  - 13.1.1 "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence the action of a public official in the context of any procurement process or contract execution;
  - 13.1.2 "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;



- 13.1.3 “collusive practice” means a scheme or arrangement between two or more suppliers or customers with or without the knowledge of the Company, aimed at setting prices at artificial, non-competitive levels;
- 13.1.4 “coercive practice” means any act or omission which harms or threatens harm, whether directly or indirectly, to persons or their property to influence their decisions or participation in a procurement process or execution of a contract; and
- 13.1.5 “applicable anti-corruption laws and ethical rules” includes, but is not limited to the following:
  - 13.1.5.1 The Prevention and Combating of Corrupt Activities Act of 2004;
  - 13.1.5.2 Organisation for Economic Cooperation and Development (OECD) Rules;
  - 13.1.5.3 any act or omission which constitutes a corrupt, fraudulent, collusive or coercive practice as defined above;
  - 13.1.5.4 any foreign laws aimed at combatting corruption and bribery which are applicable to the Contract.
- 13.2 The Customer must–
  - 13.2.1 comply with the applicable anti-corruption laws and ethical rules;
  - 13.2.2 ensure that it implements and enforces policies and procedures to ensure compliance with the provisions of this clause 13;
  - 13.2.3 promptly notify the Company of any request or demand for financial or other advantage of any kind received by the Customer in connection with the supply of the Goods or if any foreign public official is appointed as an officer or employer or acquires an interest in the Customer.
- 13.4 The Customer indemnifies and holds the Company harmless against any and all claims, losses damages, expenses or costs incurred as a result of a breach of the provisions of this clause 13.

#### **14. DATA PROTECTION**

- 14.1 The parties acknowledge and agree that all data provided by one party to the other, or to which either party may be exposed or acquire in terms of the Contract, may constitute confidential information and where applicable, “personal information” in terms of applicable laws. All information provided to the Company will be used and processed subject to the SKF Privacy Policy which is available on request.
- 14.2 The parties undertake in favour of each other that they shall at all times, strictly comply with the Protection of Personal Information Act 4 of 2013 and other legislation protecting the right to privacy (the “**Applicable Data Protection Laws**”) in force from time to time. Without limiting the foregoing obligation, each party will ensure that its systems and operations, including all systems on which data is processed or stored as part of fulfilling its obligations, shall at times be of a minimum standard required by all Applicable Data Protection Laws.
- 14.3 The parties undertake to promptly notify each other of:
  - 14.3.1 any legally binding request for disclosure of the other party’s data by a law enforcement authority unless otherwise legally prohibited from notifying that party (such as a prohibition under criminal law so as to preserve the confidentiality of a law enforcement investigation);
  - 14.3.2 any security compromises or suspected security compromises of which it becomes aware or suspects, immediately on becoming so aware or forming such a suspicion;
  - 14.3.3 any request received directly from a data subject without responding to that request, unless it has been otherwise authorised to do so.
- 14.4 The parties undertake to deal promptly and properly with all reasonable enquiries from each other relating to the processing of the data provided by each party.
- 14.5 The Customer –
  - 14.5.1 consents to the disclosure of information by the Company which the Company may be legally required

to disclose;

- 14.5.2 consents to the Company disclosing information pertaining to the Customer's conduct in complying with its payment obligations to the Company to other suppliers of the Customer and to credit information agents or bureaux for purposes of the granting of credit, fraud prevention and credit risk management; and
- 14.5.3 authorises the Company to perform any bank or credit check in respect of the Customer's conduct of its credit and banking facilities.

## 15. FORCE MAJEURE

- 15.1 Neither party shall be liable to fulfil part or all of its obligations in terms of this Contract (except for an obligation to make payment to the other party) if the failure to do so results from major situations such as natural disasters, industry wide strikes, war, fire, flood, epidemics, pandemics, state interference or any other cause reasonably beyond the control of the parties ("force majeure events").
- 15.2 Should a force majeure event arise, the affected party shall promptly notify the other party of the nature, extent, cause and expected duration of the force majeure event. The affected party shall use its best endeavours to counteract the event and to give effect to the provisions of the Contract as soon as possible.
- 15.3 If the force majeure event persists for more than 30 days, the party not relying on the force majeure event shall be entitled to cancel the Contract on 30 days' written notice. No party shall have any claim against the other based on a claim of breach or unlawful termination due to cancellation arising from force majeure events.

## 16. DISPUTE RESOLUTION

- 16.1 The parties shall use their best endeavours to resolve any disagreement or dispute that may arise between them out of the Contract.
- 16.2 In the event of the parties being unable to resolve any dispute between them, a party may by written notice to the other party, given within 30 days from the date when either party declared in writing that a dispute is not capable of amicable settlement, require that the dispute be referred to arbitration.
- 16.3 Any arbitration pursuant to the Contract shall be –
- 16.3.1 held in Johannesburg;
- 16.3.2 conducted in the English language;
- 16.3.3 held before a single arbitrator; and
- 16.3.4 procedurally held in accordance with the UNCITRAL Arbitration Rules.
- 16.4 The arbitrator shall be a practising senior counsel or retired judge. The appointment of the arbitrator shall be agreed upon between the parties but failing agreement between them within a period of 14 days after the arbitration has been demanded, either of the parties shall be entitled to request the Chairman for the time being of the Johannesburg Bar Council of South Africa to make the appointment, who, in making his appointment, shall have regard to the nature of the dispute.

## 17. FUTURE CONTRACTS

In the absence of an express agreement to the contrary, these conditions shall apply to all future contracts between the Company and the Customer relating to the Goods and Services.

## 18. Link To SKF South Africa Website

<https://www.skf.com/africa/en/organisation/about-skf-south-africa>