

Thermaspray (Pty) Ltd.

GENERAL TERMS AND CONDITIONS OF CONTRACT

1. DEFINITIONS

- 1.1 "Goods Supplied" shall mean any materials, apparatus, parts and/or equipment to be supplied to Thermaspray, for treatment or spraying by Thermaspray in terms of this Contract;
- 1.2 "Processed Goods" shall mean Goods Supplied which had been treated or sprayed by Thermaspray in terms of this Contract;
- 1.3 "Thermaspray" shall mean Thermaspray (Pty) Ltd;
- 1.4 "Client" shall mean the party entering into this Contract with Thermaspray;
- 1.5 "Contract" means the Quotation as accepted, containing the Scope of the Work, Purchase Order plus the General Terms and Conditions of Contract contained herein;
- 1.6 "Quotation" means the Thermaspray's written proposal for the price and the expected date of delivery as well as the Scope of Work;
- 1.7 "Delivery Date" means the date or dates agreed between the Parties with regard to the performance of the Scope of Work in the Contract or as modified in accordance with these Terms and Conditions of Contract;
- 1.8 "Scope of Work" means the work to be performed under the Contract, as set out in the Quotation and as may have been amended by any subsequent written agreements and correspondence referred to in clause 3;
- 1.9 "Contract Price" means the price for the Work, as set out in the Quotation read with the Client's order; and as may have been amended by any subsequent written agreements and correspondence referred to in clause 3;
- 1.10 "Purchase Order" means a Purchase Order as described in Clause 20;
- 1.11 "Work" means the work set out in the Scope of Work to be performed by Thermaspray in terms of the Contract.

2. OPERATING ENVIRONMENT AND PURPOSE OF GOODS

It shall be incumbent upon the Client to inform Thermaspray fully about the service conditions and purpose of the Goods Supplied to be treated or sprayed by Thermaspray. Any costs arising from insufficient information made available to Thermaspray, shall be for the Client's account.

3. DISCREPANCIES AND VARIATIONS

- 3.1 As far as practical, discrepancies between the Client's Purchase Order and Thermaspray's Quotation which affect the cost of the operation and/or the technical integrity of the coating, shall be resolved by discussions between Thermaspray and the Client and, if resolved, the agreed variation shall be reduced to writing by either one of the parties before Thermaspray proceeds with the Work.
- 3.2 Thermaspray shall not be responsible for any delays resulting from any discussions or correspondence pursuant to clause 3.1.

4. PAYMENT OF CONTRACT PRICE

- 4.1 Unless otherwise agreed in writing, payment terms are strictly 30 (thirty) days from statement date.
- 4.2 Where the Client is responsible for collecting of Processed Goods after completion of work, the Contract Price shall be payable within thirty (30) days of the date at which the Client was notified that the Processed Goods are ready for collection at Thermaspray.
- 4.3 It is hereby expressly agreed that all Valued Added Tax (VAT) in respect of the Work shall be for the account of the Client and shall be included in payment to be made by the Client in terms of this Contract.
- 4.4 Any amount not paid on the due date shall bear interest at a rate of 2% (two percent) above the prime overdraft rate charged by First National Bank – a division of FirstRand Bank Limited, calculated and compounded monthly in arrears as from the due date.
- 4.5 The parties agree that Thermaspray, in its sole and absolute discretion, may refer any dispute arising out of or relating in any manner to this Contract, including non-payment of any indebtedness by the Client, to arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa.
- 4.6 Thermaspray does not appoint anybody as its agent for payments by post or otherwise. All payments shall either be made to Thermaspray's physical place of business or transferred directly to Thermaspray's nominated bank account. In the event of any payments being mislaid or lost in the post or elsewhere the Client shall still be and remain liable to Thermaspray for payments.
- 4.7 Please take note that the Client is not entitled to any discount unless allowed by Thermaspray in writing.

5. CONDITION OF GOODS

- 5.1 All Goods Supplied shall be delivered by or on behalf of the Client to Thermaspray's premises in a condition that shall not require any cleaning by Thermaspray.
- 5.2 In the event that Thermaspray should decide, in its sole discretion, that the Goods Supplied require additional cleaning, any costs associated with such cleaning shall be for the Client's account.
- 5.3 Goods Supplied will be assumed to be in good condition, and should unexpected problems be revealed on commencement of Work (such as bent components, run-outs requiring re-centering, etc.) Thermaspray retains the right to decline the Work, re-quote or change the original completion date.

6. TRANSPORT AND PACKAGING COSTS

- 6.1 It is hereby recorded that, unless otherwise stated in the Quotation or Purchase Order, the Contract Price is ex Works Thermaspray, Olifantsfontein, and that all transport costs to and from Thermaspray's premises shall be for the Client's account.
- 6.2 There shall be no obligation on Thermaspray to pack Processed Goods in any way otherwise than the way in which they were packed when received by Thermaspray.
- 6.3 Where Goods Supplied need to be imported for a Client, the Client will be liable for all import and customs costs unless explicitly excluded in the Quotation and Purchase Order.

- 6.4 Thermaspray will make every reasonable endeavour to ensure timeous delivery of the Processed Goods on the terms and conditions agreed between the Client and Thermaspray. Thermaspray shall not be liable for late deliveries due to circumstances which are beyond Thermaspray's control such as, but not limited to, the events set out in clause 21.
- 6.5 Signature by the Client or by any representative of the Client of Thermaspray's delivery note, shall be regarded as acceptance by the Client that the Processed Goods reflected in such delivery note have been properly and completely delivered.

7. ADDITIONAL TASKS

It is hereby recorded that Thermaspray will not undertake any additional machining, grinding, heat treatment, sealing or further treatment, assembly or finishing of the Goods Supplied or coatings unless specifically provided for in the Quotation and Purchase Order.

8. RISK AND LIMITATION OF LIABILITY

- 8.1 All Goods Supplied shall be transported, accepted, handled, retained, treated and returned at the Client's risk.
- 8.2 The Client accordingly hereby indemnifies Thermaspray against any claim for damages to the Goods Supplied whilst they are in Thermaspray's possession.
- 8.3 In the event that the Client should require Thermaspray to take out insurance against damage which may be caused to any of the Goods Supplied whilst in the possession or under the control of Thermaspray, then the Client shall request Thermaspray in writing to do so, before delivering such Goods Supplied to Thermaspray.
- 8.4 Any insurance premiums payable by Thermaspray as a result of a request made by the Client pursuant to clause 8.3, shall be for the Client's account, and shall be reimbursed by the Client within 30 (thirty days) of Thermaspray invoicing the Client in respect thereof.
- 8.5 Any claim for damages against Thermaspray based on this Contract or on any other cause of action in relation thereto or arising therefrom or from Thermaspray's employees' activities in relation to the Work, whether directly or indirectly, and whether for ordinary, consequential or special damages, shall be limited to an amount not exceeding the amount actually paid by the Client to Thermaspray in terms of this Contract.

9. CONFIDENTIALITY

- 9.1 Neither party may disclose any information about the existence of this Contract, the detail thereof or about any results flowing therefrom, without the written consent of the other.
- 9.2 In particular, the Client undertakes not to use or to disclose to a third party any information obtained from Thermaspray to prepare a specification for the treatment of goods which are the same as or similar to the Goods Supplied, using technology which is the same as or similar to the technology used by Thermaspray.
- 9.3 By entering into this Contract, the Client agrees never to disclose to third parties any information regarding the Thermaspray coating materials, processes and procedures, which may come into its possession or to the knowledge of any of its employees, as a result of the Quotation or the Work subsequently carried out by Thermaspray.

9.4 The Client hereby undertakes that, in the event that it should become aware of any of Thermaspray's confidential business information or the procedures to be followed by Thermaspray in the treatment of the Goods Supplied or of any other objects, it will not utilize any such information for its own benefit, and that it will maintain such information confidential for a period of fifteen years from receipt thereof.

10. ADVERTISING

No reference may be made to Thermaspray in any advertisements by the Client or in promoting any sales, or for publicity purposes, whether or not such sales or publicity purposes are for the benefit of the Client, without Thermaspray's prior written consent.

11. DOMICILIUM CITANDI ET EXECUTANDI AND NOTICES

11.1 The parties hereto respectively choose as their domicilium citandi et executandi for all purposes of, and in connection with this Contract, the addresses stated in the Quotation.

11.2 Any notice to be given hereunder shall be given in writing and may be given either personally or may be sent by post or telex and addressed to the relevant party at its domicilium or to such other address as shall be notified in writing by either party to the other from time to time.

11.3 Any notice given by post shall be deemed to have been served on the expiry of (7) seven working days after the same is posted by registered post or airmail. Any notice delivered personally or sent by email shall be deemed to have been served at the time of delivery or sending.

11.4 The parties undertake to notify the other relevant party immediately in writing of any change of address.

11.5 The Client undertakes to notify Thermaspray, in writing, within 7 (seven) days of any change of ownership of the Client. The Client acknowledges that upon any change of ownership in the Client any outstanding amount whether due or not shall be deemed to be immediately payable by the Client to Thermaspray.

12. GOVERNING LAW AND JURISDICTION

The parties consent to submit to the jurisdiction of any court of competent jurisdiction located in the Republic of South Africa, in any action proceeding arising out of or relating in any manner to this Contract.

Despite any clause in this Contract to the contrary, despite any delivery to a place outside the Republic of South Africa, the Client and any guarantor for the Client consent to the jurisdiction of the appropriate Court of South Africa having jurisdiction over Thermaspray's business. The provisions of this clause are inserted solely for the benefit of Thermaspray which may exercise the provisions in its sole and absolute discretion.

The Contract shall be governed by and interpreted in all respects in accordance with the Laws of the Republic of South Africa. The parties hereby consent to the jurisdiction of any competent Magistrate's Court for the adjudication of any claim based on this Contract.

13. WAIVER

Failure by either party hereto at any time to require performance of any provision of the Contract shall not affect its rights to require full performance thereof at any time thereafter and a waiver by either party of a breach by the other of any such provision shall not be taken to be a waiver of any subsequent or similar breach or as nullifying the effectiveness of such provision.

14. BREACH AND CANCELLATION

In the event that either party is in breach of a material term of this Contract, then the other party may cancel this Contract after the defaulting party has failed to remedy such breach within a period of at least seven days of receipt of written notification drawing attention to the breach complained of.

15. GUARANTEE

Thermaspray undertakes to guarantee against faulty materials and workmanship for a period of 12 months from date of commissioning, or 18 months from date of delivery, whichever is sooner. Normal wear of components, damage due to abnormal operating conditions, and damage from incorrect assembly and/or maintenance, are excluded from this guarantee.

No guarantee will be considered unless the complete component is available for inspection, and all relevant operational information is made available.

16. COMMISSIONING

Thermaspray will not undertake the commissioning of Processed Goods unless expressly specified in the Quotation and Purchase Order.

17. CANCELLATION OF ORDER

If the Client cancelled an order, Thermaspray retains the right to charge the customer for all reasonable costs incurred to date, and all costs associated with returning any Goods Supplied.

18. QUALITY ASSURANCE

All work will be done in accordance with Thermaspray's DQS ISO 9001:2008 certified quality management system [certificate registration number 504585 QM08].

19. PROOF OF AMOUNT DUE, OWING AND UNPAID TO THERMASPRAY

A Statement reflecting the amount owing by the Client to Thermaspray in relation to the Client's dealings with Thermaspray and the fact that such amount is due, owing and unpaid shall be prima facie (on the face of it) proof of such facts for the purpose of any action (whether by way of provisional sentence or otherwise), proof of debt on insolvency or for any purpose where the amount of such claim is required to be established and it shall rest entirely with the Client to prove that such amount is not owing, due and/or payable.

Statements will be emailed, posted or faxed to the Client on a monthly basis.

20. PURCHASE ORDERS

Thermaspray will not commence with any Work , Breakdown or otherwise , unless a written Purchase Order has been received via email, fax or post.

A Purchase Order must contain the Client's details, a Purchase Order number, the quantity and a description of the Goods Supplied, and the price of the Work (if a Quotation has been received by the Client). As soon as the Client receives the Quotation, the Client must resend the Purchase Order stating the price as stipulated on the Quotation received from Thermaspray.

Subject to any applicable law, in the event of any order being given to Thermaspray on an order form reflecting the Client's name as the entity from which the order arises, such Purchase Order shall be deemed to have emanated from the Client, despite the fact that such order has been given or signed by a person not authorized by the Client and such Purchase Order will be deemed to constitute a valid order.

21. FORCE MAJEURE

No failure by either party to perform in accordance with any provision of this Contract shall constitute a breach of this Contract if the failure arose as a result of force majeure, including acts of God, war, strike, sanctions or changes in laws, regulations, ordinances or the like made by any competent authority or other circumstances outside the control of the parties.

22. COSTS

All costs incurred by Thermaspray in the course of any action against the Client, including costs on an attorney and own client scale and attorney's collection commissions, will be paid by the Client should Thermaspray be successful in such action or proceeding. The Client will reimburse Thermaspray for all costs incurred in recovering any amount owing by the Client to Thermaspray, including but not limited to its legal costs incurred in proceeding against the Client, howsoever those costs are incurred and whether they are incurred prior to the institution of action, after the entry of judgment or at any other time.