

# PLAIN LANGUAGE STANDARD TERMS AND CONDITIONS OF ENGAGEMENT

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## 1. Introduction

- 1.1 OMV is a leading supplier of aggregates, ready-mix concrete and gypsum in the North-West Province with its core business being manufacturing and supplying various such construction materials.
- 1.2 OMV typically engages with its Clients in various manners, including by way of quotation, orders placed, simple offer and acceptance followed by an invoice and/or delivery note, or other written agreement.
- 1.3 Any form of agreement between OMV and any Client at any time is subject to these standard terms and conditions which may operate ancillary to any other form of agreement entered into between OMV and any Client, but which may not be contracted out of in any manner at any time.
- 1.4 Any Client may request an explanation of any of these terms and conditions from OMV at any time, and any Client by contracting with OMV acknowledges that these terms and conditions have been read, understood and accepted by such Client.

## 2. Definitions

- 2.1 In any form of agreement between OMV and any Client, the following words will have the meanings ascribed to each such word:

- 2.1.1 "Client" means the natural or legal person with whom OMV engages in any form of agreement, and includes any reference to "purchaser", "applicant", "customer" or any other similar description;
- 2.1.2 "Delivery" means the moment when any Product ordered by and Client is loaded onto any vehicle at any Site and "Delivered" and "Deliver" will have the same meaning;
- 2.1.3 "OMV" means OMV Proprietary Limited, a private company with registration number 2014/011295/07, and includes any reference to "supplier", "seller", "vendor" or "provider";
- 2.1.4 "Parties" means OMV and Client;
- 2.1.5 "Product" means any aggregates, ready-mix, gypsum or any other product produced by OMV;
- 2.1.6 "POPI Act" means Protection of Personal Information Act 4 of 2013, as amended from time to time;
- 2.1.7 "Site" means any one of the sites at which OMV operates which is clear from the factual circumstances in any case, currently being two (2) crushing plants in the North-West Province; one (1) Ready-mix concrete plant each in Stilfontein, Potchefstroom and Kimberley and one (1) gypsum plant in Potchefstroom;
- 2.1.8 "Specifications" means the specific details of Product sold and delivered by OMV to Client including quality, size, quantity, and composition of such Product as well as details regarding Delivery.
- 2.2 Words importing the singular shall include the plural and vice versa, words importing any gender shall include the other gender/s and words importing persons shall include partnerships and bodies corporate.
- 2.3 The head notes to the paragraphs herein are inserted for reference purposes only and will not affect the interpretation of any of the provisions to which they relate.
- 2.4 These terms and conditions will be binding on and enforceable by the permitted assigns or liquidators of the Parties as fully and effectually as if they accepted the terms and conditions contained herein in the first instance and reference to any Party will be deemed to include such Party's permitted assigns or liquidators, as the case may be.
- 2.5 Where any term is defined within the context of any particular clause herein, the term so defined will, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of the terms and conditions, notwithstanding that such term has not been defined in this clause 2.
- 2.6 When any number of days is prescribed, they shall be reckoned inclusive of the first and exclusive of the last day.
- 2.7 Any reference to these terms and conditions or any other agreement or document must be construed as a reference to these terms and conditions or such other agreement or document (as the case may be) as each may have been or may, from time to time, be amended, varied, novated or supplemented.

- 2.8 Any reference to legislation or subordinate legislation is to such legislation or subordinate legislation at the date that a valid agreement is formed between the Parties and as amended and/or re-enacted from time to time.
- 2.9 The rule of interpretation that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.
- 2.10 Any references to the term “include” and “including” shall be interpreted as meaning “include without limitation” and “including without limitation”.

### **3. General terms of supply**

- 3.1 Any Product ordered by any Client from OMV and/or supplied by OMV to any Client will reasonably conform to the Specifications provided.
- 3.2 OMV does not give any express or implied warranty regarding the Product other than that it will reasonably conform to the Specifications.
- 3.3 All risk in and to the Product will pass to the Client upon Delivery.
- 3.4 OMV will not accept any liability for any person entering onto any Site. All persons entering onto any Site do so at their own risk and must strictly adhere to all directions given at any Site regarding safety and security, including wearing the necessary personal protective equipment.
- 3.5 OMV may not be held liable for any damage occasioned by any person entering any Site and/or the use of any Product, consequential or otherwise.
- 3.6 The Client bears the onus of inspecting any Product Delivered and must refuse Delivery of any Product containing any patent defects.
- 3.7 Any latent defect must be reported to OMV as soon as possible after coming to the attention of the Client, and will constitute a dispute between the Parties which will be dealt with in accordance with clauses 7 and 8 below.
- 3.8 OMV may not be held liable by any Client or any third party for any damages arising out of the use of or reliance on Product that has been altered, contaminated, or due to any action or omission of any Client or third party been compromised in any way after Delivery.
- 3.9 For avoidance of doubt, failing to fully comply with any directions and/or instructions given by OMV regarding any Product will constitute such Product being compromised.
- 3.10 OMV is not obliged to accept any return of any Product, and any return of Product by any Client will be at such Client sole risk and expense, unless specifically agreed to in writing between the Client and the managing director of OMV.
- 3.11 OMV’s total liability arising from the supply of any proven defective Product will in all instances be limited to either the replacement of such defective Product by OMV or the passing of a credit in respect thereof. OMV has the sole discretion as to whether to replace the defective Product or pass a credit note.
- 3.12 The Client hereby indemnifies OMV against all and any claims in excess of the amounts provided for in sub-clause 3.11 above.
- 3.13 All claims must be in writing and lodged with OMV within seven (7) days of Delivery of Product, failing which any and all liability of OMV shall lapse.

- 3.14 Delivery will be deemed to have validly taken place against signature by any employee or, agent, sub-contractor or representative of any Client of any delivery note or similar proof of OMV.
- 3.15 OMV reserves the right to apply for and make adjustments to its prices at any time in the event of extraordinary increases beyond the control of OMV that have a material impact on the prices provided by OMV.

#### **4. Force Majeure**

- 4.1 In the event that OMV is prevented or restricted directly or indirectly from performing all or any of its obligations under any agreement to any Client by reason of strike, labour dispute, lockout, fire, explosion, flooding, geological discontinuity, riot, war, accident, Act of God, embargo, legislation, regulation or directive having the force of law, regulatory interference, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbance, compliance with any order or instruction of any transportation, local or other authority or without limitation, any other cause beyond its control anywhere in the world, all or any of which shall constitute force majeure for the purposes thereof, OMV will be deemed to be relieved of performance of its obligations during the period that such event and its consequences shall continue, but only to the extent so prevented, and OMV will not be liable for any delay or failure in the performance of any of its obligations or loss or damage whether general, special or consequential which a Client may suffer due to or resulting from such delay or failure.
- 4.2 OMV will give at the earliest possible opportunity by, email, telefax or telephone of the occurrence of the event constituting the force majeure, together with details thereof and an estimate of the period of time for which it will endure.

#### **5. Confidentiality and use of information**

- 5.1 Each Party shall keep confidential and shall not disclose to any person, without the prior written consent of the other Party, all information ("Confidential Information"):
  - 5.1.1 contained in these terms and conditions as well as all details of the transactions or agreements contemplated herein; and
  - 5.1.2 relating to the business/es or the operations and affairs of the Parties.
- 5.2 The Parties agree to keep all Confidential Information secret and confidential and to disclose it only to their employees, directors, officers, agents, professional advisors, contractors and/or potential investors who:
  - 5.2.1 have a need to know, and to that extent only;
  - 5.2.2 are aware of the disclosing Party's undertaking in relation to such Confidential Information in terms of this Agreement; and
  - 5.2.3 have been directed by the disclosing Party to keep the Confidential Information confidential.
- 5.3 Client consents to the processing of its personal information by OMV and any non-compliances with the POPI Act by OMV.

## **6. Representation and alteration**

- 6.1 No representations made on behalf of OMV as well as no deviations from these terms will have any effect unless reduced to in writing and signed by the managing director of OMV and the managing director of the Client.

## **7. Independent Laboratory testing**

- 7.1 In the interest of both Parties, OMV will on a regular basis instruct an independent laboratory to conduct testing on Product samples and OMV will keep proper records of such results.
- 7.2 The results as contemplated in clause 7.1 above will constitute prima facie evidence of the quality parameters and other relevant specifications of any Product Delivered which is materially the same as the sample tested and can reasonably be said to be reflective of the Product Delivered.

## **8. Dispute resolution and arbitration**

- 8.1 In the event of a dispute arising at any time between OMV and a Client, the Parties must firstly endeavour to settle any such dispute internally by each of the Parties' managing directors attempting to settle any dispute within 7 (seven) business days of such dispute arising.
- 8.2 In the event that settlement as contemplated in clause 8.1 above for whatever reason fails, the Parties will refer such dispute to their respective executive committees or chief executive officers who must attempt in a bona fide manner to settle such dispute amicably within a further 14 (fourteen) business days.
- 8.3 In the event that any dispute is still not resolved or settled after the procedures in clauses 8.1 and 8.2 has been followed, the Parties will refer the matter to arbitration in terms of the rules and regulations of the Arbitration Foundation of South Africa (hereinafter referred to as "AFSA").
- 8.4 This clause will however not prevent a party from obtaining relief on an urgent basis from a competent Court, pending the decision of the arbitrator.
- 8.5 The arbitrator shall, if the matter in dispute is principally –
- 8.5.1 A legal matter, be a practicing counsel or a practicing attorney of not less than 10 (ten) years standing;
- 8.5.2 An accounting matter, be a practicing chartered accountant of not less than 10 (ten) years standing;
- 8.5.3 Any other matter, be an independent person qualified to adjudicate upon such matter;  
and shall be agreed to between the Parties in dispute.
- 8.6 Should the Parties to a dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after arbitration has been demanded, the matter will be considered to be a legal dispute.
- 8.7 Should the Parties fail to agree upon an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be appointed at the request of either Parties to the dispute by AFSA.

- 8.8 The Parties irrevocably agree and undertake with each other that any award that may be made by the arbitrator:
- 8.8.1 Shall be final and binding upon them;
  - 8.8.2 Will be carried into effect;
  - 8.8.3 May be made an order of Court.
- 8.9 The provisions of this clause constitute the irrevocable consent of the Parties to the arbitration proceedings in terms hereof and none of the Parties shall be entitled to withdraw therefrom or to claim at any such arbitration proceedings that it is not bound by the provisions of this clause.

#### **9. Jurisdiction and applicable law**

- 9.1 All agreements and any form of contract between OMV and its Clients will be subject to South African Laws.
- 9.2 Should OMV instruct its attorneys or collection agent to collect any overdue amounts, or to take any action against a Client in the implementation or protection of OMV'S rights, OMV is entitled to the recovery of all legal or collection costs arising there from, on the scale as between attorney, agent or collection agency and own client.
- 9.3 Any natural or legal person that binds itself or themselves as surety and co-principal debtor with a Client in favour of OMV acknowledged and accepts that such suretyship will be excluded from any business rescue proceedings of a Client and that they or it will remain liable to OMV despite any claim being settled partially or otherwise during the course of business rescue proceedings of a Client.
- 9.4 Thus, for the avoidance of doubt, should a Client go into business rescue, this does not detract from the right of OMV to recover from the surety the full amount for which it is bound under the suretyship.

#### **10. Relaxation and non-waiver**

- 10.1 Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence or grace on the part of OMV may not in any way operate as or be deemed to be a waiver by OMV of any rights under this or any agreement between OMV and a Client, or be construed as a novation thereof.

#### **11. Severability of clauses**

- 11.1 Each clause of these terms and conditions is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that such clause/clauses will not affect the balance of these terms and conditions, which will remain of full force and effect.