

NECSA GENERAL CONDITIONS OF SALE

1. INTERPRETATION

- 1.1 In these conditions, unless the context requires otherwise –
- 1.1.1 words importing any one gender shall include the other two genders;
 - 1.1.2 the singular shall include the plural and vice versa;
 - 1.1.3 a reference to natural persons shall include created entities (corporate or unincorporated) and vice versa.
- 1.2 In these conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect their interpretation.
- 1.3 These conditions of sale will, where applicable, be subject to the CPA.

2. DEFINITIONS

In these Conditions, the following terms have the meanings assigned to them, namely -

- 2.1 **"CPA"** means the Consumer Protection Act No. 68 of 2008, as amended and any Regulations promulgated in respect thereof;
- 2.2 **"Buyer"** means the party from whom/which the Seller has accepted an Order in terms of clause 4 below, or with whom/which the Seller has entered into any other written form of agreement;
- 2.3 **"Conditions"** means the Seller's General Conditions of Sale as set out below.
- 2.4 **"Order"** means the Buyer's official Order or another written agreement between the Seller and the Buyer relating to the Goods;
- 2.5 **"Property"** means any item or material of whichever nature that has been provided by the Buyer to The Seller in the execution of the Order;
- 2.6 **"Protected Consumer"** means a consumer as defined in section 1 of the CPA and whose annual turnover and assets value falls below the threshold¹ contemplated in section 5 of the CPA read in conjunction with the Regulations;
- 2.7 **"Seller"** means the South African Nuclear Energy Corporation Limited;
- 2.8 **"the Goods"** means the goods or services described in the Order;
- 2.9 **"the Parties"** means The Seller and the Buyer collectively;

3. APPLICATION

- 3.1 The Conditions are applicable in their entirety to each transaction unless the Parties concerned have agreed otherwise in writing.
- 3.2 No variation from the Conditions shall have any effect unless it is reduced to writing and signed by the authorised representatives of the Parties.
- 3.3 The Conditions shall have preference over any other conditions appearing in any document of the Buyer, including his Order.
- 3.4 The Buyer is deemed to have accepted these Conditions when an Order is placed with the Seller and agrees that the Seller may verify the Buyer's information on a Credit Bureau.
- 3.5 Should any of the Conditions be incompatible with the provisions of any separate contract or special conditions agreed to in writing between the Parties then, the provisions of such contract or special conditions will have preference.

4. PURPOSE OF SELLING CONDITIONS

¹ The CPA does not apply to a transaction where the consumer is a juristic person whose asset value or annual turnover **equals or exceeds R2 000 000.00**.

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- 4.1 The Buyer and the Seller agree that these terms and conditions shall apply to any contract for the sale of any product or service by the Seller, whether that contract arises out of -
- 4.1.1 any offer made by the Seller and accepted by the Buyer; or
 - 4.1.2 any offer made by the Buyer and accepted by the Seller, including any such offer made by the Buyer in response to a quotation from the Seller.
- 4.2 The Buyer and the Seller agree that no alteration or variation of these terms and conditions shall apply, either at the time that the contract is concluded or at any time afterwards, unless the alteration or variation in question is expressly agreed to in writing and signed by an authorised representative of the Seller at the time in question.

5. TENDERS AND QUOTATIONS

- 5.1 The Seller's tender or quotation has reference only to the enquiry concerned and shall by no means be regarded as a general offer.
- 5.2 Unless otherwise stipulated in writing the Seller's tender or quotation is valid for thirty (30) calendar days from the date thereof.
- 5.3 The Conditions are applicable in their entirety to all the Seller's quotations and tenders.
- 5.4 All prices and related information provided in the Seller's quotation or tender are exclusively intended for the recipient and may not be made known to any other party.

6. ESTABLISHMENT OF CONTRACT

The Buyer's Order in reply to the Seller's quotation or tender shall be considered as an offer and a valid contract shall come into existence on the date that the Seller accepts the Buyer's offer in writing, or when work and/or capital expenditure has commenced in the execution of the Order, whichever comes first.

7. EXECUTION OF THE ORDER

- 7.1 The Seller shall execute the Order in accordance with the Buyer's issued and approved design, drawings, specifications, plans and other itemized detail forming part thereof. The Seller accepts no responsibility for any shortcomings in such documents or any costs arising from such shortcomings;
- 7.2 The Seller shall accept no liability for the loss of or damage to Property as a result of non-compliance to specific storage or treatment requests by the Buyer unless such request is specified on the Order.

8. AMENDMENTS AND CANCELLATIONS

No Order may after its acceptance by the Seller, be partially or wholly amended or cancelled in any way, unless the Seller accepts such amendments or cancellation in writing. Such acceptance shall be in the Seller's exclusive discretion and shall be subject to the conditions, including compensation, as stipulated by the Seller.

9. DELIVERY, RISK AND INSURANCE

- 9.1 Although delivery dates shall be approximate and dependent on normal operational activities, the Seller shall make every effort to meet the given delivery date. the Seller shall not accept any responsibility whatsoever for late delivery or completion, unless it has guaranteed the delivery date to the Buyer.
- 9.2 Unless otherwise agreed by the Parties, delivery shall be deemed to have occurred when the Goods leave the Seller's site or when Goods have been collected by the Buyer or his authorized representatives, whichever takes place first.
- 9.3 The risk in respect of the Goods shall pass to the Buyer on delivery, or in respect of an international Buyer, the risk shall pass according to the Incoterms 2000 conditions agreed to. The Buyer should give prompt written notice of any defect or damage to the Seller within seven (7) calendar days after the discovery of any defect or damage for the Seller to accept liability therefore.
- 9.4 Unless the Parties have agreed otherwise, each consignment shall be regarded as a delivery and be subject to the provisions of this clause.
- 9.5 Should the Buyer neglect or unreasonably refuse to take delivery of the Goods, the Buyer shall be responsible for costs that the Seller may incur as a result of such neglect or refusal.
- 9.6 The Buyer shall be responsible to arrange and pay the insurance costs relating to the Goods as from the delivery date except if in contradiction with the relevant Incoterms 2000 rules agreed to between the Parties.
- 9.7 The Buyer shall indemnify the Seller, its employees and subsidiaries for the loss of or damage to its Property in the execution of the Order unless such loss or damage was caused as a result of the willful conduct or gross negligence of the Seller or its employees or subsidiaries. The Buyer shall ensure that its Property is adequately insured while in the possession of the Seller.

10. RIGHT OF OWNERSHIP

Notwithstanding anything to the contrary, the Seller shall remain the lawful owner of the Goods until such time that the Buyer has paid for the Goods in full.

11. QUALITY AND INSPECTION

- 11.1 The Goods shall be delivered strictly in terms of the provisions of the Order and shall conform to the agreed requirements.
- 11.2 Should the Order make provision for inspection or tests, such inspection or tests shall be carried out in full on the Seller's premises unless the Parties have agreed otherwise in writing. Such tests or inspections shall be carried out in accordance with the method as stipulated in the Order or as agreed otherwise in writing by the Parties.

12. GUARANTEE

- 12.1 The Goods are guaranteed against defects in materials and workmanship provided that -
- 12.1.1 the Goods are used for the purposes for which they have been manufactured only;
 - 12.1.2 the Goods are stored, installed, tested, commissioned and used in accordance with, prescribed methods;
 - 12.1.3 the Seller shall not be liable for normal wear and tear of the Goods or damage thereto owing to the negligence of the Buyer, his employees or agents or representatives;
 - 12.1.4 the Seller shall not be liable for any consequential damage owing to defects;

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12.1.5 the Seller shall not, in respect of items purchased or items not manufactured by it, offer a guarantee or accept any liability greater than the enforceable right against the seller or manufacturer of the items concerned; or

12.2 the Buyer informs the Seller in writing within 7 (seven) days after discovering such defect.

12.3 Guarantees shall be valid for a period of twelve (12) months from the date of delivery.

13. PRICE

13.1 Unless otherwise agreed in writing, prices shall be quoted in South African Rands as set out in the Order and be subject to escalation where applicable, and in accordance with the indices as specified.

13.2 Prices shall exclude any taxes, duties or levies enforced by the South African Government or where Goods are being transported, which may arise outside of South Africa. South African taxes and levies shall be specified separately and added to the nett price for payment by the Buyer.

14. PAYMENT TERMS

14.1 Payment without deduction shall be made within thirty (30) days from date of statement for Goods supplied to South African Buyers and within thirty (30) days from the lading/airway bill date for exportation of Goods to foreign buyers except if agreed otherwise in writing between the Parties.

14.2 Partial deliveries shall be invoiced per consignment and be paid for as such.

14.3 The Buyer shall pay interest on any overdue payment at the ruling prime rate as confirmed by the Seller, plus 2% from the due date of such payment until payment is actually made.

14.4 No discount shall be granted, unless the Parties have agreed thereto in writing.

15. PATENT INFRINGEMENT

15.1 Should the Goods be manufactured in accordance with the Buyer's design, drawings, specifications, plans and other itemized detail, such Orders shall be accepted by the Seller subject to the explicit assurance by the Buyer that no patent, registered design or copyright shall be violated by the manufacture of the Goods, and the Buyer shall indemnify the Seller against any costs or loss in case of an action or claim as a result of such violation.

15.2 The Seller shall use the specifications and related information, supplied by the Buyer, exclusively for purposes of the execution of the Order.

16. FORCE MAJEURE

16.1 All Orders shall be subject to the express condition that the Seller shall not be responsible for any losses, damage or delays arising from or caused by forces of nature or action by the State or the State's enemies, or any cause or occurrence outside the reasonable control of the Seller, including but not limited to war, revolt or civil uprising, fire, accident, explosion, flood, earthquake, strikes or labour unrest of any nature.

16.2 Should the force majeure period exceed 3 (three) months and prevent the Seller from meeting its contractual commitments, the Buyer shall be entitled to terminate the Order and the Seller shall be entitled to payment for the Goods which have been manufactured before such termination.

17. CONFIDENTIALITY

The Parties shall, during the period of execution of the Order and thereafter ensure that no confidential information with regard to and including information on specifications, methods of manufacturing and information relating thereto is made known to any third parties.

18. VARIANCE

No condonation, respite or other concession of whatever nature by the Parties in respect of their commitments in terms of an Order or any refusal or neglect to insist on strict execution of the Order shall be deemed to be a variance from the Order and shall not jeopardize the rights of the Parties in any way.

19. BREACH

Should any of the Parties breach these Conditions or conditions otherwise agreed to between the Parties and fail to correct such breach within fourteen (14) days after receiving written notice to do so, then the Party not in breach may cancel the Order without prejudicing any right that it may have in law or otherwise.

20. TERMINATION

Should the Buyer fail to comply with the Conditions of the Order, default on payment, be liquidated (voluntary, involuntary, preliminary or finally) or in the case of a natural person, assign or surrender its estate, be sequestrated (preliminary or finally), enter into a buy-over arrangement, compromise or make any other arrangement with creditors, or have any writ or attachment order or execution issued against it, then the Seller shall have the right to, at its discretion, submit a claim for specific discharge of the full outstanding balance of the price owing at the time plus interest or to cancel the Order forthwith and to repossess the Goods without any prejudice to any compensation owing to breach of contract or otherwise.

21. PROTECTED CONSUMERS

To the extent that the Buyer is an individual or a company, CC, partnership, trust or other association of persons which has an annual turnover or asset value **below the threshold (as determined by the Minister from time to time)**, the Buyer is entitled to the rights set out in the CPA and the following provisions of this agreement may not apply -

21.1 clause 9 and 11.2 shall not apply insofar as they contravene section 19 and the period referred to in 9.3 shall be 6 (six) months as set out in section 56(2) of the CPA; and

21.2 clause 9.7 to the extent that it may be interpreted to provide that the Buyer assumes all risk relating to defective goods supplied by the Seller and insofar as it seeks to indemnify the Seller from liability in contravention of section 48, 55 and 56 of the CPA.

22. ENTIRE AGREEMENT

22.1 The Conditions shall comprise the entire agreement between the Parties and no amendments or variation thereof shall have any effect, unless reduced to writing and signed by the Parties.

22.2 No representations, appointments, commitments or guarantees other than those contained in the Conditions shall be of any value or effect.

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23. APPLICABLE LAW

The conditions of all transactions between the Seller and the buyers regardless of when they come into force shall be controlled by and interpreted in accordance with the legal system of the Republic of South Africa.

24. DISPUTE RESOLUTION AND JURISDICTION

24.1 A dispute between the Parties arising out of or in connection with the Conditions shall be adjudicated in the High Court of Pretoria, regardless of whether the cause of the dispute originated outside the jurisdiction of this Court, or the amount exceeds its jurisdiction, unless the Parties agree that a dispute be resolved by arbitration.

24.2 Any dispute arising from or in connection with these Conditions (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed thereby in accordance with its rules.

24.3 The decision of the arbitrator shall be final and binding on the Parties and may be made an order of the court.

25. DOMICILIUM

25.1 The Seller's *domicilium citandi et executandi* for the purpose of the serving of notices and legal documents shall be Pelindaba, Church Street West Extension, Brits District, North West Province.

25.2 The Buyer declares that the address appearing on the Order shall be its *domicilium citandi et executandi* for the purpose of the serving of notices and legal documents.

26. ACCEPTANCE

The Buyer herewith agrees and accepts the Conditions as stipulated in clauses 1 to 24 in this document.

SIGNED FOR AND ON BEHALF OF THE BUYER	NAME	DATE

Office use			
	SIGNED FOR AND ON BEHALF OF NECSA	NAME	DATE

APPLICATION FOR CREDIT FACILITIES

Name of Applicant (The Buyer) as reflected on the trading license:				
Address where business is conducted:				
Application Date:				
Requested Credit Limit:	Currency		Amount	
Are you the owner of the premises from where your business is conducted?				
Contact Persons:	Buyer Contact:		Accounts Payable Contact:	
	Name:		Name:	
	Designation:		Designation:	
	Tel:		Tel:	
	Fax:		Fax:	
	E-mail:		E-mail:	
Form of Ownership:				
Company Registration Nr: / Close Corporation Nr:				
Name of Directors or Partners or Owner or Chairman	1			
	2			
	3			
	4			

APPLICATION FOR CREDIT FACILITIES

	5			
	6			
Name and address of Secretary/Treasurer/Auditor:				
Bank:		Branch:		Account Number:
Address:	Deliveries:			
	Invoices & Statements:			
VAT Registration Number:				
Trade References	1			
	2			
	3			
	4			
I/we hereby agree that all purchases from Necsa will be subject to the Necsa General Conditions of Sale except where the conditions have been amended and accepted by both parties in writing.				
Acceptance				
	Signed for and on behalf of the Buyer		Name	Date:

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APPLICATION FOR CREDIT FACILITIES

	Signed for and on behalf of the Seller	Name	Date: