

GENERAL TERMS AND CONDITIONS OF SERVICE

of

FLENDER (PTY) LIMITED, SOUTH AFRICA

1. Application of these Terms

Except as may be qualified or specifically excluded by Flender in any offer or separate special terms of contract (the "**Special Terms**"), all such field and other customer services offered by Flender (as more fully described as "Services" here below), shall be strictly governed by these general terms and conditions of Services ("**GT&C of Services**").

2. Scope of Services

The detail and scope of the services offered in a particular case, including the deliverables (if any) and time schedule, will be set out in written offers submitted to customers. This may include (but are not limited to) retrofit and repair services, technical support, spare part management and commissioning services, consulting and engineering services as well as technical training. The services may include the supply of minor parts and consumables (collectively referred to as "**Services**").

3. Offers and Structure of Contract

3.1 All contracts for the performance of Services shall be preceded by an official written offer by Flender to the requestor of the Services (the "**Customer**"), based on assumptions and estimated hours and stating an indicative total price, whereby these GT&C of Services shall be incorporated by reference (the "**Offer**").

3.2 On the date of acceptance of an Offer or utilization by the Customer of the offered Services, (the "**Effective Date**"), a contract will be entered into between the parties, irrespective of if the customer issues a Purchase Order (PO) and/or whether Flender may acknowledge receipt (or not) of such PO of the customer.

3.3 The Offer and any attachments thereto (including Special Terms – if any) together with these GT&C of Services, shall constitute the entire agreement between the parties with respect to the required Services (the "**Service Contract**"). No other conditions, warranties, guarantees or representations shall be of any force or effect, unless agreed to in writing by both parties.

3.4 Without prejudice to the generality of the foregoing, Flender will not be bound by any standard or printed terms presented by the Customer in any PO or other document. In the event of any conflicting provisions in any applicable document the Special Terms of the Offer and then the terms hereof shall always prevail and take precedence.

4. Price Basis and Payment Terms

4.1 Unless otherwise agreed in a Service Contract and irrespective of estimated hours/fees set out in Offers, the Customer will compensate Flender for all actual hours spent to complete the required

Services, calculated at the then applicable rates as published from time to time ("**Fees**").

4.2 All rates exclude value added tax (VAT), any hired equipment, accommodation, allowances, and medicals, inductions, waiting and travelling time and transport/flight costs (charged at cost plus 10%), which will be payable in addition to the Fees ("**Allowable Expenses**").

4.3 Unless otherwise agreed in a Service Contract, Flender will invoice the Customer for the final contract price consisting of the Fees and Allowable Expenses ("**Contract Price**"), upon completion and acceptance of the Services as provided for in Clause 7 below. Flender however reserves the right to review Customers' credit from time to time, and to demand an irrevocable and unconditional letter of credit acceptable by a South African bank as payment before commencement of the Services.

4.4 The customer shall pay the total Contract Price within thirty (30) days from the date of invoice by direct bank transfer to Flender bank account stated in the invoice.

4.5 All payments shall be net of bank charges, and free from any set-off or other withholding of any nature.

4.6 Should any amount due by the Customer remain unpaid beyond the payment date, Flender shall have the right, in addition to all other rights and remedies to which Flender is entitled under the Service Contract and at law, to charge interest on the overdue amount at the rate of 3% per annum in excess of the interest rate prescribed by Standard Bank of South Africa's, lending rate for overdrafts calculated from the date of invoice to the actual date of full and final payment. Any payment by the customer shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the Contract Price.

4.7 In addition to any other remedies available to it, Flender shall be entitled to suspend the Services in the event that any amount due remains unpaid.

5. Service Time Schedule

5.1 Unless specifically agreed, the Services time schedule and any completion dates stated in the Service Contract will be based on assumptions and shall be treated as approximate dates only. The Customer shall not be entitled to cancel the Service Contract nor have any claim of whatsoever nature against Flender arising out of or flowing from any delays or deviations from the approximate completion dates.

5.2 It is understood and agreed that Flender commencement and progress with the Services will be dependent on the customer granting Flender staff access, information and on-site support as required, and that Flender shall be entitled to amend the completion schedule and charge the Customer for delays caused by waiting and standby time occasioned by the customer, or its agents, contractors or sub-contractors.

6. Quality and Services Warranty

6.1 Flender warrants that the Services will be performed using reasonable skill and care, in accordance with good industry practices and any applicable professional standards and codes, and

- that the Services shall conform to the quality requirements and/or agreed specifications as may be set out in the Service Contract
- 6.2 Flender shall, at its sole cost and risk, re-perform or repair or replace or otherwise make good any Services which are, within a period of six (6) months after completion, found to be defective or non-conforming to the requirements of the Service Contract.
- 6.3 The provisions of the abovementioned service warranty shall not be applicable if any of the following events occur:
- if the customer fails to report the defect in writing within seven (7) days of the alleged defect occurring; and
 - if the customer fails to grant Flender adequate time and opportunity to re-perform the Services which Flender may deem necessary;
 - if the Customer has failed to fulfil its payment obligations in terms of the Services Contract;
 - if the defect is due to fair wear and tear or to misuse of the equipment or if such equipment have not been properly handled and not been operated and maintained in accordance with instructions issued by Flender; and/or
 - if any repairs or alterations or other services were carried out by the customer himself or unauthorised third parties.
- 6.4 Except as expressly stated above, there are no warranties, express or implied, by operation of the law or otherwise and the Customer remedies as set out in this clause shall be its sole and final remedies and shall fully lapse after the warranty period set out in Clause 6.2 above.
- 7. Service Requests, Management and Acceptance of Services**
- 7.1 In order to provide efficient and effective Services, Flender may utilise an online cloud mobile platform with simple and to the point remote management capabilities, whereby the Customer can:
- Register and be allocated a secured password;
 - Lodge Services requests;
 - Receive "real-time" field service reports from Flender staff performing the Services; setting out the result of the services ("**Field Report**") and
- 7.2 Approve / sign-off on completed Services as furthermore provided here below, in which case Flender shall be entitled to automatically initiate invoicing.
- 7.3 Completed Services as evidenced by the Field Service Report shall be accepted against the agreed requirements and criteria (if any) or as per industry practices referred to in Clause 6.1 above. The completed Services shall promptly (no more than 24 hours) be accepted/rejected by the customer upon receipt of the Field Service Report ("**Acceptance**").
- 7.4 Receipt by Flender of Customers Acceptance shall evidence and be deemed as customers' unqualified and irrevocably acceptance of the satisfactory completion of the Services in accordance with the Service Contract, and Flender is thereby authorized to issue its invoice for the Contract Prices for that completed Services as per the provisions of Clause 4.1.
- 8. Limitation of liabilities and Indemnity**
- 8.1 Each party (Flender and Customer) shall be solely responsible for its own equipment, material and staff, sub-contractors or agents ("Employees") used in the execution of the Services and will, to the fullest extent possible in law, indemnifies the other party from and against all costs, expenses, demands and claims in respect of or flowing from loss of or damage to its property and in respect of injury or death of any of its Employee resulting from or in connection with the Services.
- 8.2 Neither party shall under any circumstances be liable towards the other for indirect, incidental, special or consequential damages, including loss of profit or savings.
- 8.3 Notwithstanding any other provision hereof, it is understood and agreed that Flender's total liability arising out of the Service Contract and/or in connection with the Services, regardless of the form or nature of the action (whether in contract or delict), will under no circumstances exceed the total fees actually paid and received by Flender in relation to the Services.
- 9. Force Majeure**
- 9.1 Subject to the below provisions, neither party shall be liable for the non- performance or late performance of any of its obligations where such were caused by force majeure.
- 9.2 A "Force Majeure Event" means any event which is beyond the reasonable control of a party or its subcontractors, which could not have been prevented by good industry practice and which results in a party (the "Affected Party") being unable to perform or being delayed in performing in whole or in part its obligations under this Contract. Force Majeure Events include, among others, acts of war, riot, civil commotion, terrorism, natural disaster, epidemic, strikes, lock-outs, attacks on Flender' IT systems (e.g. virus attacks, hacker attacks), non-issuance of licences, permits or approvals or any other act or failure to act by any public authority, or embargos or any other trade sanctions.
- 9.3 In the event that a party experiences a force majeure, it shall notify the other promptly, but not later than seven (7) days of becoming aware of such occurrence, of the full detail, nature and anticipated duration and effect of the force majeure.
- 9.4 The party experiencing the force majeure event shall use its reasonable efforts to remove the force majeure in the shortest time, and to minimize the negative effect of such on its performance under the Service Contract. Where the period of delay due to force majeure exceeds six (6) months, Flender shall be entitled in its sole discretion to terminate the Service Contract and shall be entitled to claim reimbursement of all Allowable Expenses incurred by it in relation to and in preparation for the Services, up to the date of termination.

10. Relationship

The parties are and shall at all times be and remain independent contractors, and nothing in a Service Contract is intended or shall be construed as or shall operate to create partnership, joint venture of any kind between the parties; or to constitute either party the agent or employee of the other.

11. Breach and Cancellation

If either party ("**Defaulting Party**") is in breach of its material obligations under a Service Contract and/or initiates a business rescue and/or becomes insolvent, the other shall give the Defaulting Party written notice to remedy such failure or default. Failure by the Supplier to remedy the failure or default within a period of seven (7) days of the date of the notice, will entitle that non-defaulting party to cancel the Service Contract. Cancellation of the Service Contract shall be without prejudice to any other rights or remedies in law.

12. Compliance and Anti-Corruption

12.1 The customer represents and warrants that it and any party acting on its behalf (including any employees) will comply with all applicable laws and regulations in relation to the Service Contract, without limitation any laws and regulations relating to taxation, environment, anti-corruption, antitrust, anti-money laundering or any other criminal law, rule or regulation.

12.2 The customer further represents that it will not make or use (either directly or indirectly), payments to representatives, agents or contractors of Flender in order to obtain any improper business advantage or benefit.

12.3 If, during the term of the Service Contract, the customer becomes aware that any of the representations and warranties set forth above, are no longer true and correct, it must notify Flender in writing within latest 10 days. The same is true, in the event that customer is asked by a third party or any Flender officer or employee, whether directly or indirectly, to violate any law or regulations.

13. Confidentiality and data protection

13.1 The parties shall keep and treat the contents of the Service Contract and all exchanges pursuant to Services in confidence, and shall not disclose any such confidential information to third parties, without the prior written consent of the other. They shall not be entitled to use or apply the confidential information of the other received pursuant Service Contracts for any other purposes as stated herein. For other purposes of this provision, "Confidential Information" shall mean any information and data,

including, but not limited to, any kind of business, commercial or technical information and data disclosed between the parties in connection with the Services, irrespective of the format or medium in which such information or data is embedded.

13.2 The Customer agrees that Flender (or its service providers) may process personal and technical data provided by it in connection with any Service Contract for purposes of the execution and management thereof. The customer shall ensure that all data provided by it is accurate and up to date, and acknowledge and accepts that Flender shall (and shall procure) that the data is handled and protect pursuant Flender standard Commitment to Data Privacy Protection and the relevant laws.

14. Governing law, Dispute Resolution and Jurisdiction

14.1 The Service Contract shall be governed by and shall be construed in accordance with the laws of the Republic of South Africa and the High Court in Johannesburg shall have jurisdiction in relation to any dispute hereunder.

14.2 In the event that a dispute arises between the parties regarding the existence, interpretation and/or the execution hereof or any payments due ("Disputes"), the parties shall attempt to resolve such in an amicable manner by referring the dispute to their respective senior management.

14.3 Should the Dispute not be resolved in the aforesaid manner within thirty (30) days after being referred to senior management, then the Dispute shall be referred to and finally settled under the Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") by an arbitrator appointed in accordance with the said rules. The arbitration shall be conducted in Johannesburg and may be made an order of an appropriate court of law. The arbitration shall be conducted on an expedited basis and the contents any determination made thereafter shall be kept confidential. The arbitration award shall be final and binding on both parties and either party may proceed to make the arbitration award an order of court.

15. Miscellaneous

15.1 No changes or variations to these GT&C of Service and/or a Service Contract shall be valid or effective unless agreed in writing pursuant to the change control procedure set out in a Variation Order.

15.2 In the event any provision hereof should be declared invalid or unenforceable, it shall be severed from the Service Contract, and such provision shall not affect the validity or enforceability of the remaining provisions hereof.