

## **GENERAL CONTRACTUAL UNDERTAKINGS QUALITY OF GOODS**

Notwithstanding anything to the contrary in this agreement:

- 1 The goods to be supplied under the contract are to be, in all aspects, of the best description and according to the sample and specifications provided.
- 2 In every case the goods shall be subject to the inspection and approval of the CEO or his duly authorised representative, who shall be at liberty to reject them and in cases of such rejection, the Bidder agrees to be bound by the rejection of the CEO or his duly authorised representative.
- 3 In the event of the approval of the goods by the said CEO or his duly authorised representative and if it is later discovered that the goods are in any way defective, the CEO may reject same, in spite of such approval by its CEO or his duly authorised representative.
- 4 Tests and analyses may be made as deemed necessary and the cost thereof shall be borne by the EDC provided that the goods are of the stipulated quality, failing which cost shall be defrayed by the Bidder; the EDC to have the right to deduct such cost from payments due to the Bidder, or otherwise to recover the same from him.
- 5 No second-hand/refurbished materials/parts will be used in the final goods to be delivered by the Bidder, only new materials/parts bearing the SABS mark of quality will be considered.

## **INDEMNITY**

1 Without prejudice to any of the rights of the EDC arising from any of the provisions of this agreement, the Bidder indemnifies and holds the EDC harmless against all loss, liability, damage, claim, proceeding or expense of any nature whatever (including without limiting the generality of the foregoing all party and party and attorney and client costs incurred by the EDC) which the EDC may suffer as a result of or which may:

...1.1 be attributable to-

..... .A any liability of the Bidder, whether actual or contingent;

..... .B any liability of the Bidder for taxation, for which purpose the terms "taxation" shall include:

.....i normal taxation;

.....ii value added tax;

.....iii minimum or secondary taxation on companies;

.....iv Regional services council, District or equivalent levies;

.....v all other forms of levies or taxation.

..... C any penalties or interest as a result thereof.

...1.2 arise out of or in the course of or by reason of the Bidder's performance in terms of this agreement;

2 The Bidder undertakes to indemnify the EDC in respect of all actions, prosecutions or claims of any nature that might be brought in any manner against the Bidder as a consequence of the negligence of the bidder, its employees, members or any persons under its control.

3 The Bidder shall not be liable for such liability, loss, damage, claim, proceeding or expense where same was due to any act or neglect of the EDC or any person for whose actions the EDC is legally liable.

#### **POWERS OF THE EDC IN THE EVENT OF GOODS BEING DEFECTIVE**

1 In the event of the goods being defective in quantity or quality, it is agreed that, either-

...1.1 the CEO shall have power to purchase other goods or make good the deficiency in any manner he may deem fit, and any excess costs so incurred over the contract price, together with all charges and expenses attending the purchase, shall be recoverable from the Bidder; or,

...1.2 if the EDC so determines, the Bidder shall, at his own expense, replace the affected goods or make good the deficiency at once, or within such period or at such time as the EDC may fix.

2 Nothing contained in this clause or with regard to delivery conditions, shall prejudice the power of the EDC in terms of the dispute resolution provisions of this agreement.

#### **DELIVERY OF GOODS**

1 The goods shall be delivered, at the Bidder's risk and expense, to: Pharoeh Park Retail, Office No.09, Corner Jack and Queen Streets, Germiston; or, such other place in the Municipal Area of the EDC as may be specified and at the time/s and in the manner appointed by the CEO;