

1 **ANNEXURE A - Terms and Conditions of Sale**

1 **Acceptance of Orders**

All orders placed are subject to acceptance through credit insurances or receipt of suitable payment guarantees.

2 **Acceptance**

2.1 **Provisional acceptance:**

If commissioning is carried out by the client without ordering TCG's assistance service, the transfer of ownership and responsibility, the right of use and the provisional acceptance of the equipment supplied takes place at the time of delivery, without the need for a specially written document.

If commissioning assistance is included in the contract or under a separate additional contract and taken in charge by the client for a sufficient time to allow TCG commissioning engineer to attend all the start-up tests.

The transfer of ownership and responsibility, the right of use, takes place at the time of commissioning. The client agrees that if any person uses the supplied equipment prior to commissioning with the assistance at site by a TCG commissioning engineer, this renders the client solely responsible for any damage whatsoever.

TCG will take action to remedy them within a time to be agreed with the client.

2.2 **Final acceptance:**

The final acceptance shall automatically be effective at the end of the warranty period without requiring any particular document nor agreement.

3 **Warranty**

- TCG warrants that the equipment supplied is free from defects in design, materials, and workmanship. Such equipment is warranted for a period of 18 calendar months from the date of final commissioning, to a maximum of 24 calendar months from the date of delivery.
- When the warranty applies, TCG take in charge their own internal expenses for delivering, replacing or repairing the defective parts or components including their dismantling and re-fitting, to the exclusion of any other works, costs and expenses eventually incurred by the client or any other third party.
- The client shall take all measures to facilitate TCG interventions under warranty, notably by obtaining the necessary shut-downs to allow TCG to repair or replace such defective parts.
- Such a warranty shall not apply if the equipment supplied is operated without compliance to TCG user's guideline manual, or beyond the limits of the contractual operating conditions, or if it has been subject to mishandling, lack of operational care, lack of maintenance or lack of compliance with the professional Codes of Practice.
- Such a warranty is not applicable in the following cases:
 - The warranty shall not apply to flame scanners and igniters if their cooling air is not permanently assured, or if they are cooled with air not free from oil and water, or if they are not mounted as per TCG user's guideline manual, or to any combustion equipment in the case where the combustive temperature exceeds the contractual temperature, even in transitory periods.
 - All the following parts: burner tips and nut, burner plate, swirler, refractory lining or quarl, liquid atomising parts, coal wear plates, igniter electrodes, UV tubes.
 - The warranty shall not apply to any equipment not supplied by TCG, even if listed or drawn on drawings or documents of TCG origin. In case of a fault on a TCG document, but not concerning any equipment supplied by TCG, the warranty is strictly limited to the supply of the corrected document, free of charge under the Client's demand, exclusive of any claims for damages whatsoever.
- The Client has no right to substitute TCG in order to fix any faults under warranty, the sole exception being that it has sent TCG a registered letter of notice notifying TCG beforehand with all the necessary information proving that the warranty applies and that such notice has not been followed by the start of corrective action by TCG within the 10 days from its date of receipt. **Performance**

4 **Guarantees**

General conditions:

- The validity of performance guarantees is conditional upon TCG's assistance service being effectively ordered and paid for by the Client. Otherwise, the performance guarantees become null and void.
- All costs associated with the performance tests, including external organisms or bodies and all measuring equipment, are at the client's expense.
- Once the performance guarantees have been reached during such test, they are deemed definitively met and accepted.
- If it has not been possible to carry out some performance test during TCG's assistance service at site for reasons not attributable to TCG, then the corresponding performance guarantees are deemed to be definitively accepted (without needing any document or agreement).
- The Client shall take all measures to facilitate all of TCG's interventions under performance guarantees, notably obtaining the necessary shut-downs to allow TCG to tune or modify the equipment supplied.
- The Client has no right to substitute TCG in order to fix any faults under warranty, the sole exception being that it has sent TCG a registered letter of notice notifying TCG beforehand with all the necessary information proving that the warranty applies and that such notice has not been followed by the start of corrective action by TCG within the 10 days from its date of receipt.

5

Intellectual Property – Prohibited Reproduction and use

- This quotation and the submitted technical documents are protected by the South African laws and the international conventions on industrial property, copyright, and unfair competition.
- TCG are and remain the owners of all the intellectual property rights and of the know-how associated with this quotation, irrespective of the fact that this know-how has been developed specifically for this quotation or not, as well as of all the technical documents given to the customer or prospect, i.e. plans, drawings, proposals, etc.

- When receiving the quotation, plans, and technical documents, the customer or prospect undertakes not to use them in any way whatsoever, nor to copy nor reproduce them, except where required by the contract that may follow, and not to disclose them to third parties whoever they may be and for whatever reason it may be.
- The customer or prospect undertakes to observe strict confidentiality for all the information made known to him during the discussions for the conclusion or performance of the contract.

6 Cancellation/Change

- 6.1 In the event of cancellation by the purchaser of the contract or part thereof, or in the event of TCG cancelling the contract as a result of a breach by the purchaser of any of these conditions, TCG shall be entitled to payment of a standard cancellation fee not less than 25% of the value of the contract so cancelled plus:
- The sales value of all goods delivered.
 - The sales value of all goods finished and not delivered at the time of such cancellation.
 - The sales value of all materials ordered by TCG especially for such order whether such materials have been received or not.
 - The cost of all labour accumulated on any unfinished goods in process of manufacture.
 - The sales value of any special engineering and other costs incurred up to the time of cancellation.
- 6.2 In the event of requested amendments or additions, after acceptance of order, all additional costs associated with such request may be charged to the purchaser. Prices for such will be calculated on the basis of administration, design, and manufacturing and may exceed any individual price offered. Delays in delivery may also occur.

7 Limitation of Liability

TCG shall have no liability to the Client for:

- Any loss of profits or any consequential damages suffered by the Client and /or any third party.
- Any claim not expressly defined and provided for in the contract with the Client.
- Notwithstanding anything contained in this offer or the contract, the liability for direct losses or damages for any cause whatsoever shall be limited to the aggregate of 2.5% of the contract sum.

8 General

- The quoted prices are based on the contract being awarded as a whole. Should the contract be fragmented, TCG reserves the right to adjust the prices accordingly.
- The offer is based on reasonable access to the plant and also sufficient clearance around equipment being provided.

9 Terms of payment

This clause is extracted from the Standard Terms and Conditions of Sale for emphasis and is not the complete clause as shown in the Standard Terms and Conditions of Sale:

The Seller's terms of payment are strictly net and the Customer is required to pay in full within 30 (thirty) days of the date of the Seller's invoice. The Seller shall be entitled to charge the customer interest at the rate of 2 % per month or the maximum rate allowed in law, whichever is the lesser, on all amounts in respect of which payment is overdue, and in the event of an overdue amount being handed to an attorney and client scale, including collection.

Payment may not be withheld pending the settlement of any claim or dispute.

Any discount granted by TCG shall be forfeited if payment is not made on due date.

Without prejudice to any of its rights in terms of law, TCG reserves the right to enter the purchaser's premises and to repossess the Goods in the event of the purchaser failing to make any payments on due date or at all.

10 Equipment Returns

All returned equipment will be subject to a handling fee of 10% under the following conditions:

- Equipment incorrectly specified by the "purchaser"
- Any equipment returned by the "purchaser" without consent from TCG.
- No electrical/electronic equipment returns will be considered.
- No special materials or equipment may be returned including parts directly exposed to flame, even for short periods i.e. burner nozzle, burner blocks etc.

11 Project Terms and Conditions

TCG's Standard Terms and Conditions of Sale and Contract are integral to this offer. All Standard Terms and Conditions are available on request.

All Terms and Conditions shall be governed and interpreted in accordance with the laws of South Africa.

The scope of supply is limited to equipment and service as defined in this offer.

In the event of the reuse of any existing gas equipment to complete the work, TCG will deem the equipment as certified, in good working order and cannot be held liable for any delay, consequential damage due to such equipment being reused.

TCG reserves the right to assign or sublet fabrication and installation works to their approved subcontractors.

Insurance liability for equipment will transfer from TCG to the purchaser on delivery of the said items to the purchaser's premises. The earthing of the plant is the responsibility of the client. However, TCG needs to know the quality of the earth either by a current SABS approved certificate or witness an earth test on site. If TCG witnesses an earth test, then the test equipment must have a current SABS certificate and the test technician must be qualified to perform the test.

Client to supply a dedicated earth point as close as possible to the burner control panel to earth the burner system.

Electrical COC of the system is the responsibility of the end user. TCG tests and issues a test certificate to state that the panel and the wiring between the panel and the equipment supplied by TCG are in accordance with SANS 60204 and SANS 10142 respectively.

It is a requirement that the client ensures protected fuel and/or oxygen pressure at the battery limit. The stated maximum pressure must not be capable of increasing under any circumstance.

Variations to the tendered scope or work could alter the above duration. This would be subject to negotiation.

Unless otherwise specified "Delivery" shall have the meaning assigned in the International Rules for the interpretation of Trade Terms 2010 edition (INCOTERMS).