

GENERAL TERMS AND CONDITIONS OF PURCHASE, FORMING AN INTEGRAL PART OF THE PURCHASE ORDER

Definitions. In these General Terms and Conditions of Purchase the following definitions shall apply:-

- a) "Order" shall mean any purchase order issued by the Purchaser containing written instruction for the supply of Goods or Services by the Supplier.
- b) "General Conditions of Purchase" shall mean this document.
- c) "Goods" shall mean the goods described in the Order and includes all components and materials thereof.
- d) "Purchaser" shall mean Powerbat Namibia (Pty) Ltd.
- e) "Services" shall mean the services described in the Order and supplied under a contract of work (*locatio conductio operis*) which may include the supply of Goods.
- f) "Supplier" shall mean the vendor stated on the Order.

1. **Applicability.** Acceptance of the Order also constitutes acceptance of the General Conditions of Purchase and no other terms and conditions dealing with the purchase of Goods or Services in terms of the Order shall be valid between the parties, unless such terms and conditions appear in any other agreement (including but not limited to the Supplier's quotation), signed by both parties. In the event of a conflict between the Order or the General Conditions of Purchase and any terms and conditions in any other agreement between the parties, the Order and General Conditions of Purchase shall prevail, unless the order of precedence is specifically defined in such other agreement, in which case the order of precedence so defined shall apply, provided that if an agreement with a lower precedence provides for additional arrangements expanding on an agreement with higher precedence, such additional arrangements shall be included in the agreement between the parties.

2. **Delivery.** The Goods or Services shall be supplied and delivered strictly in accordance with the instructions contained in the Order and any other agreement (if applicable). Every consignment of Goods must bear the Supplier's name and the Purchaser's Order number, and be accompanied by a detailed advice note. Should there be a dispute between the parties regarding the delivery quantity, or whether or not a delivery took place at all, the onus will be on the Supplier to furnish the Purchaser with a stamped and signed delivery note from the Purchaser's stores personnel as such proof of delivery.

3. **Quality.** All Goods or Services must conform in all respects with the requirements as to quality and specification stated in the Order and any other agreement (including but not limited to the Suppliers quotation and the Quality Agreement for Suppliers and Key Service Providers, if applicable). Unless otherwise agreed in writing the Goods or Services must also conform with any applicable South African Bureau of Standards (SABS) standards, if existing, or otherwise with any standards applicable to country of origin. All Goods or Services must pass the test of the Purchaser's quality inspection or sign-off, and in this respect the Purchaser reserves the right to inspect Goods at any stage of process, including at the Supplier's works.

4. **Accreditation.** Suppliers of products, materials, components or services which directly affect product quality are expected to be accredited by a recognized organization to the ISO9001:2008 quality system as a minimum or accredited to an equivalent or higher standard. In the case of suppliers who are not so accredited, or in the case of unacceptable quality performance, the Purchaser reserves the right to perform surveys of the Supplier's quality system to establish evidence of an effective system for management and assurance of quality.

5. **Ownership.** The ownership of Goods shall not pass to the Purchaser nor shall the Purchaser accept any risk in respect thereof unless and until the Goods have passed the tests referred to in 3 above, and in the meantime the Goods shall remain at the Supplier's risk in all respects despite delivery to the Purchaser. Should the Goods attach to any property of the Purchaser in such a manner that the Goods cannot be removed without restoring the property of the Purchaser to the condition it was in before the Goods were so attached, the ownership to but not the risk in the Goods shall pass to the Purchaser.

6. **Replacement.** If required by the Purchaser, any Goods or Services which may fail to pass the Purchaser's inspector's test must upon written notice be immediately replaced by the Supplier at the Supplier's expense within the time specified by the Purchaser or within a reasonable period of time if the time period is not stipulated by the Purchaser. Should the Supplier fail to do so, the Purchaser shall have the option to cancel the Order as provided in Clause 16, either as to the Goods or Services in question or as to the whole of the undelivered balance of the Order. The above shall be without prejudice to any other rights that the Purchaser may have in law, and in particular to claim damages.

7. **Offsite Services.** If in terms of the Order any Goods are delivered by the Purchaser to the Supplier for the purpose of having Services performed on them, then such Goods shall remain the property of the Purchaser but be at the risk of the Supplier until such time as the Goods are re-delivered to and accepted by the Purchaser's inspectors.

8. **Warranty.** If any defect in design, material or workmanship should become apparent within 12 months of acceptance of delivery or within the prescriptive period applicable under Common Law or the manufacturer's or the Supplier's warranty, whichever period is longer, such defects shall at the Purchaser's option and upon written notice be repaired or replaced at the Supplier's expense within the time specified by the Purchaser or within a reasonable time if the time is not stipulated by the Purchaser.

9. **Payment.** Unless otherwise stated in the Order, all payments will be made in Namibian Dollars. No statements or invoices will be valid until all the Supplier's obligations have been met in terms of the Order or the General Conditions of Purchase or any other agreement between the parties or there are no outstanding disputes in respect of such statements or invoices. Although early deliveries may be accepted, payments will only be made as if deliveries had been made strictly in accordance with the delivery instructions stated on the Order and the Purchaser shall remain entitled to any discount, if applicable.

10. **Intellectual Property (IP) infringement** The Supplier warrants that neither the sale nor the use of the Goods or Services will infringe any South African or foreign patent, trademark, trade name or registered design, and the Supplier indemnifies the Purchaser against all actions, costs, claims, demands, expenses and liabilities whatsoever, resulting from any actual or alleged infringement.

11. **Indemnity.** The Supplier indemnifies the Purchaser from all actions, costs, claims, demands and liabilities whatsoever brought or made or arising under any Statute or the Common Law, or in any other way, in respect of personal injury to or the death of any person or in respect of any loss or destruction of, or damage to property not attributed to any act or negligence of the Purchaser or of any person for whom the Purchaser is responsible, but which shall have occurred in connection with any work executed by the Supplier in respect of the Services or shall be attributable to some defect in the Goods.

12. **Suspension of performance.** The Purchaser reserves the right at any time, or from time to time, to request the Supplier to suspend the delivery of any Goods or the execution of any work in respect of the Services to such extent and for such period as in the Purchaser's absolute discretion and the Supplier shall suspend delivery or execution as requested at no cost to the Purchaser. The Supplier shall immediately resume delivery of Goods and continue with the execution of any Services when so instructed by the Purchaser.
13. **Cancellation without cause.** The Purchaser reserves the right to cancel the whole or any part of the Order for its convenience by providing the Supplier with a 30 (thirty) day written notice of such termination and no liability will accrue to the Purchaser for that Order or part thereof cancelled, provided that the Supplier may claim its necessary and unrecoverable costs incurred prior to the effective date of termination.
14. **Packaging.** Packing cases and other containers (if applicable) shall not be paid for and accordingly must not be invoiced, and if marked as returnable, they will be dispatched to the Supplier at its expense and risk.
15. **Government contracts.** If the Goods or Services which are the subject of the Order are to be used in carrying out or otherwise in connection with a Government or Local Authority contract as stated in the Order, the Order shall be subject to the standard contract conditions stipulated by the particular Government Departments. Where Local Authorities are concerned, details of the contract will be supplied by the Purchaser on request.
16. **Cancellation with cause.** The Purchaser reserves the right to cancel the Order in whole or in part, if the Order or any part thereof is not completed in all respects in accordance with the instructions on the Order, these General Conditions of Purchase or the Supplier's quotation or any other agreement between the parties and for the purpose of this condition, time shall be of the essence. In the event of the Purchaser canceling the Order in terms of this clause as to all or any part of the Goods or Services, the Purchaser shall be entitled to purchase a like quantity of Goods or Services of similar description and quality, and in that event the Supplier shall be liable to reimburse the Purchaser on demand for all expenditure (including any legal costs incurred) and loss incurred by the Purchaser in connection with the said cancellation and re-purchase, including any increase in the price over that stated in the Order. The Purchaser reserves the right to deduct any monies due in terms of this clause from any monies due by the Purchaser to the Supplier.
17. **Penalties.** The Purchaser reserves the right to claim penalties in the event of any or all outstanding items of the Order not being delivered to the Purchaser in terms of the Order by the time specified. The amount of the penalties shall be one percent of the value of the items outstanding per completed week in delay or pro rata portion thereof and will automatically be deducted from any monies owing to the Supplier by the Purchaser. The provisions of this clause shall not apply if the delays incurred are the result of the Purchaser not fulfilling its obligations or the Supplier can prove to the Purchaser's satisfaction that the delays were caused by events beyond the control of the Supplier.
18. **Non-disclosure and subcontracting.** No part of the Order or any documents relating thereto may be disclosed to any third party, nor may the Order or any part thereof (except for raw materials and standard parts) be sub-contracted without first obtaining the Purchaser's permission in writing.
19. **Use of Purchaser's IP.** The Supplier may not refer to the Purchaser's trade name, trademarks, or products in connection with any advertising without prior written permission from the Purchaser.
20. **Quoted prices.** All prices quoted to the Purchaser will be considered final and binding on the Supplier unless any agreed escalation clauses are specifically accepted by the Purchaser in the Order.
21. **Session & Assignment.** No claim of the Supplier against the Purchaser for payment may be ceded by the Supplier nor may the Supplier assign its obligations to a third party without the Purchaser's prior written consent.
22. **Special conditions.** Any special conditions in the Order will apply over and above these General Conditions of Purchase and in the event of conflict, the special conditions will apply.
23. **Jigs, tools, patterns and drawings.** All jigs, tools, patterns and drawings supplied by the Purchaser, will remain the Purchaser's property and must be returned in good order and condition on completion of the Order, carriage paid, unless instructed otherwise in the Order.
24. **Arbitration.** If at any time, a dispute or claim arising out of or relating to this contract or a breach thereof should occur between the Supplier and Purchaser which cannot be resolved by negotiations, either party may give notice to this effect to the other in writing and such dispute, claim or breach shall be referred to a mutually agreed arbitrator. In the event that the parties cannot mutually agree an arbitrator, the matter will be referred to and an arbitrator shall be selected by the Chairman of the Arbitration Foundation of Southern Africa (AFSA). The arbitration shall be conducted in accordance with the rules of AFSA. The arbitration shall take place in Johannesburg. The General Conditions of Purchase and the arbitration shall be governed by and construed in accordance with the laws of the Republic of Namibia, or by agreement, in terms of the laws of the Republic of South Africa. The language used in the arbitration proceedings shall be English. Such arbitrator's decision shall be final and binding on the Purchaser and the Supplier. Nothing in this clause shall preclude either party from approaching any court of competent jurisdiction for urgent or interdictory relief.
25. **Common law warranties.** Nothing in these conditions shall prejudice the Purchaser's rights in relation to any condition or warranty (expressed or implied) or other rights or remedies to which the Purchaser would be entitled in relation to the Goods or Services by virtue of any common law. In particular, without limiting the scope of this clause, the Supplier shall guarantee the suitability of the Goods or Services for the purpose for which they are to be used by the Purchaser.
26. **Essential conditions.** Unless otherwise agreed by the Purchaser in writing, every condition contained in these General Conditions of Purchase and in the Order shall be deemed to be an essential condition.
27. **Force majeure.** The parties' obligations under the Agreement are extinguished if contract performance is prevented for more than 60 (sixty) days by any event beyond the parties' reasonable control including, without limitation, strikes, lock-outs, accidents, war, fire, acts of God, insurrection, rebellion, war or national emergency. In such case, the Purchaser's only liability is to pay the Supplier for the Goods supplied and/or Services rendered before the date of such event and the Supplier's only liability is to refund any payments made by the Purchaser for which no Goods were supplied and/or Services rendered.
28. **Domicilium addresses.** The Purchaser chooses 64 Nickel Street, Prosperita, Windhoek, Namibia and legal@auto-x.co.za and legal@powerbat.com.na as its chosen domicilium citandi et executandi and the Supplier chooses the address set out in the Quote as its chosen domicilium citandi et executandi. All notices shall be given in writing and sent by email or delivered by hand or by courier and shall be rebuttably

presumed to have been received by the addressee within 24 (twenty four) hours.

29. **Confidentiality.** Any information relating to any Order and the General Conditions of Purchase or the operations, business or financial affairs of a party of any information expressly marked or designated by a party as confidential (the confidential information) that may be disclosed, prior or subsequent to the execution of the Order, shall be deemed confidential and shall be used exclusively for purpose of the Order. Each party shall ensure that confidential information is not disclosed to any person other than such of its employees, agents, representatives or consultants that may need to access such confidential information for the adequate performance in terms of the Order and each party undertakes to keep such confidential information secret and confidential.