

1. DEFINITIONS AND PRECEDENCE

1.1 Definitions

In interpreting this Purchase Order, the following words shall have the meanings herein assigned to them unless there is something in the subject matter or context inconsistent with such construction.

- 1.1.1 "Buyer" shall mean the Royal Eswatini Sugar Corporation Limited group of companies which includes, the Mhlume Sugar Corporation Limited, in the Kingdom of Eswatini and its successors in title and assigns to which services are supplied by the Supplier.
- 1.1.2 "Supplier" means the person or entity identified in the purchase order from whom the buyer purchases the services in terms of a contract.
- 1.1.3 "Contract" means an agreement between RES and the supplier for the supply of services as specified in the Purchase Order, and which is entered into on these terms and conditions as amended from time to time and read with that purchase order, on the earliest of the date when the supplier:
- 1.1.3.1 notifies the buyer in writing that it accepts the purchase order, as the case may be, and/or that it will commence with the supply of services;
 - 1.1.3.2 commences with the execution of the purchase order;
 - 1.1.3.3 commences with the supply of the services to the buyer; or
 - 1.1.3.4 accepts payment for the services;
 - 1.1.3.5 if the Contractor comprises a JV, the authorized representative of each member of the JV shall sign the Contract Agreement;
- 1.1.4 "Services" means any services described in the purchase order and which the supplier must provide to the buyer;
- 1.1.5 The "Estate" shall mean Sugar Factories, Sugar Cane Plantation, and Villages situated at Simunye and Mhlume within the area of land administered by RES.
- 1.1.6 "Security" shall mean RES's Integrated Management System Department and shall include any person/s appointed by RES to be in charge of all security activities at the estate and on neighbouring land administered by RES.
- 1.1.7 "Tenderer" shall mean a company or joint venture (JV) that responds to an official request for offers to perform work for RES at price.
- 1.1.8 "Joint Venture (JV)" shall mean a joint venture, association, consortium or other unincorporated grouping of two or more persons, whether in the form of a partnership or otherwise.
- 1.1.9 "JV Undertaking" means the letter provided to the Employer as part of the Tender setting out the legal undertaking between the two or more persons constituting the Contractor as a JV. This letter shall be signed by all the persons who are members of the JV, shall be addressed to the Employer and shall include:
- 1.1.9.1 each such member's undertaking to be jointly and severally liable to the Employer for the performance of the Contractor's obligations under the Contract;
 - 1.1.9.2 identification and authorisation of the leader of the JV; and
 - 1.1.9.3 identification of the separate scope or part of the Works (if any) to be carried out by each member of the JV.



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- 1.1.10 "Contractor" shall mean a registered independent company which has applied and has been approved as a supplier of good and /or services to RES. It shall also mean the other party named in the Purchase Order and shall include Sub-Contractor as well as both Contractor's and Sub-Contractor's successors in title and assigns.
- 1.1.11 The "Engineer" shall mean the Site Supervisor acting on behalf of RES or some other person employed by RES or appointed by the respective General Manager and notified to Contractor.
- 1.1.1 The "Buyer's Representative" shall mean the Procurement Officer, acting on behalf of RES who is responsible for sourcing commercial quotations from suppliers, placing purchase orders, expediting delivery and cancelling purchase orders.
- 1.1.12 "Material" shall mean and include all articles, consumables and things of all kinds to be supplied by the Contractor in terms of the Purchase Order for incorporation into the Works.
- 1.1.13 "Equipment" shall mean and include all structures, machinery, apparatus, piping, articles and things of all kinds upon or about which Contractor is required to perform the services detailed in the Purchase Order.
- 1.1.14 "Services" shall mean and include all activities to be performed by Contractor in terms of the Purchase Order on or about the Equipment or Site.
- 1.1.15 The "Works" shall mean and include all Material to be supplied and all Services to be provided by Contractor in terms of the Purchase Order.
- 1.1.16 The "Site" shall mean the actual place or places where the Works are to be completed by Contractor. The location of the Site shall be as stated in the Purchase Order.
- 1.1.17 The "Purchase Order" shall mean the agreement between RES and Contractor for the execution of the Works.
- 1.1.18 The "Purchase Order Date" shall mean the date agreed between the Engineer and Contractor for the commencement of the Purchase Order.
- 1.1.19 The "Purchase Order Price" shall mean the sum named in or ascertainable in terms of the Purchase Order as the price to be paid in respect thereof, subject to such additions to or deductions from such sum as may be made under the provisions contained in the Purchase Order.
- 1.1.20 "Sub-Purchase Purchase Order" shall mean any agreement, made with the prior written consent of the Engineer, between Contractor and a Sub-Contractor, or between two Sub-Contractors, in terms of which any part of the Works is sub-let, and "Sub-Contractor" shall be interpreted accordingly.
- 1.1.21 "Sub-Contractor" shall mean any person (other than the Contractor) named in the Purchase Order for the supply of material or any person to whom any part of the Purchase Order has been sub-let by Contractor, or by another sub-Contractor, and the successor in title and assigns of such sub-Contractor.
- 1.1.22 "Documentation" shall mean and include all drawings and other pertinent documents which are to be supplied to the Engineer by Contractor in terms of the Purchase Order together with all modifications to such documents.
- 1.1.23 "Completion of the Works" shall mean that Contractor has provided all Material and Services and has done all things as provided for in the Purchase Order, and "Complete the Works" and "Works Completed" shall be interpreted accordingly.



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- 1.1.24 "Take-over" shall mean acceptance of the Works from Contractor by RES after Completion of the Works has been achieved by Contractor and "Taken-over" and "Taking-over" shall be interpreted accordingly.
- 1.1.25 "Construction Equipment" shall mean and include things of all kinds brought onto the Site by Contractor for the execution of the Works but not for incorporation therein.
- 1.1.26 "Amendment" shall mean any alteration in relation to the Purchase Order agreed in writing between Contractor and RES.

1.2. Precedence

The documents forming the Contract are to be taken as mutually explanatory of one another. If there is any conflict, ambiguity or discrepancy, the priority of the documents shall be in accordance with the following sequence:

- 1.2.1 The Standard Purchase Order (Contract Agreement)
- 1.2.2 These General Terms and Conditions of Purchase.
- 1.2.3 Any Special Conditions of Purchase Order contained in the Purchase Order.
- 1.2.4 The Letter of Award (where applicable)
- 1.2.5 RES standard engineering specifications and standards and any drawings included in the Purchase Order.
- 1.2.6 The Supplier's Offer in response to a commercial Request for Quotation (RFQ) or Request for Proposal.
- 1.2.7 Should any ambiguity, contradiction, or error occur between such sections of the Purchase Order, the Supplier shall advise the Buyer's Representative in writing and request a ruling thereon. Any work performed by Supplier prior to clarification by the Buyer's Representative shall be at Supplier's risk.

2. INDEPENDENT CONTRACTOR

- 2.1 The Contractor shall perform as an independent contractor, and nothing in this agreement or elsewhere provided shall be construed as constituting the Contractor or any of the Contractor's employees or agents as the agent, representative, employee or partner of RES.
- 2.2 The Contractor shall have no authority to incur any liability in the name of or otherwise on behalf of RES in any way or for any purpose.
- 2.3 The Contractor shall supply no goods nor render any services nor be entitled to make any charge thereof, unless RES has issued an official standard Purchase Order or Amended Purchase Order Lines for additional works thereof.
- 2.4 All Purchase Orders shall have unique identifiable RES numbers to be used by the Contractor as authorisation to perform the Works at RES and also as reference for the Contractor to charge RES for the Works performed.
- 2.5 Verbal or email instructions, including a letter of tender award, shall not be used as authorisation to perform the Works at RES. Any Contractor that will perform Works at RES on the basis of any communication other than a standard Purchase Order, shall do so at their own risk, and shall be placed in breach of these terms and conditions.



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3. CONTRACTOR TO INFORM ITSELF FULLY

The Contractor shall be deemed to have examined the Site and to have included in the Purchase Order Price for all things necessary to enable it to carry out its obligations in terms of the Purchase Order to the satisfaction of the Engineer, including any special provisions necessary to gain safe access to the Site or any portion thereof for all Material and Construction Equipment.

4. DOCUMENTATION

4.1. Contractor shall supply to the Engineer any Documentation which is stipulated in the Purchase Order as being required by RES. Such Documentation shall be supplied to the Engineer by Contractor at the time or times and in the form and manner detailed in the Purchase Order, or, if not so detailed, then in accordance with the requirements of the Engineer. Where it is stipulated in the Purchase Order that any such Documentation is subject to the Engineer's approval, then Contractor shall not proceed with the work to which such Documentation relates until such approval has been received in writing from the Engineer.

4.2. All Documentation shall be in the English language. All Documentation shall become and remain the property of RES. Any review by the Engineer of any Documentation shall not relieve the Contractor from any of its obligations in terms of the Purchase Order and the Contractor shall remain responsible for any discrepancies, errors or omissions in any of the Documentation and the effect thereof on the Works.

5. CESSION, ASSIGNMENT AND SUB-LETTING OF THE PURCHASE ORDER

The Contractor shall not, without the consent in writing of RES, cede or assign the Purchase Order or any part thereof, or enter into any Sub-Purchase Order other than for the supply or execution of minor items or for any part of the Works in respect of which a Sub-Contractor is named in the Purchase Order. Any such consent shall not release the Contractor from its obligations under the Purchase Order. The Contractor shall forward to the Engineer four unpriced copies of any Sub-Purchase Purchase Order immediately on the award thereof. RES's Purchase Order number shall be quoted on all such copies.

6. PATENT RIGHTS

The Contractor hereby indemnifies RES against all actions, claims, demands, costs, charges and expenses arising from and against all loss or damage suffered or incurred by reason of any infringement or alleged infringement of letters patent, registered designs, trademarks or copyright protected in the Republic of South Africa and Eswatini or by reason of any infringement or alleged infringement of any other rights of third parties, resulting from the use by Contractor in the execution of the Purchase Order of any Construction Equipment, and/or of any Material or procedure in the Works. The rights and obligations contained herein shall survive the Purchase Order and shall continue in full force and effect for a period of ten years from the date of Take-over or of termination of the Purchase Order.

7. SECRECY AND USAGE

7.1 Contractor shall keep and hold secret and confidential all information, whether written or oral, received or otherwise obtained by either party in connection with the Purchase Order or the business of the other, and shall not use or disclose the said information other than for the purposes of the Purchase Order, provided that RES shall be entitled to use the Documentation for the subsequent maintenance, repair, development, modification or improvement of the Works.



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7.2 These provisions shall not apply to information that is already known to the recipient or which the recipient obtains with free right of disposal thereof, or which is or becomes public knowledge. The rights and obligations contained herein shall survive the Purchase Order and shall continue in full force and effect for a period of ten years from the date of Take-over or of termination of the Purchase Order.

8. MANNER OF EXECUTION

The Contractor shall execute the Works in the manner set out in the Purchase Order, or, where not so set out, to the satisfaction of the Engineer and, wherever possible, in conformance with the RES IMS Rules for Contractors, the OHS Act (as amended), the Construction Industry Council Act, No. 14 of 2013 (as amended) together with the Regulations framed thereunder, and the Factories, Machinery and Construction Workers Act of 1972 (as amended) and regulations framed thereunder. The use of explosive-powered (cartridge-type) Construction Equipment is prohibited unless, prior to their use, their use is specifically authorised in writing by the Engineer.

9. CONSTRUCTION EQUIPMENT

9.1. Construction Equipment and Facilities to be supplied by Contractor

The Contractor shall supply all Construction Equipment and facilities (except as provided in Clause 9.2 hereof) necessary for it to fulfil its obligations in terms of the Purchase Order, including all necessary Site workshops, stores, offices, latrines, washing facilities, tools, tackle, vehicles and telephones. Such Construction Equipment and facilities shall be erected and operated in a safe and satisfactory manner and to the Engineer's approval.

9.2. Facilities to be supplied by RES

RES will provide supplies of electricity and water at a voltage specified in the Purchase Order and at a suitable pressure respectively, and the Contractor shall have the free use of such supplies for the purposes of the Purchase Order. Contractor shall make the connections to the points of supply.

10. PURCHASE ORDER AMENDMENTS

10.1 The Engineer may, from time to time during the execution of the Purchase Order, by notice in writing, direct Contractor to Amend the scope or specification of the Purchase Order, and Contractor shall carry out such Amendments and be bound by the same conditions, so far as applicable, as though the said Amendments were stated in the Purchase Order, provided that, if any such direction affects or is likely to affect the Purchase Order Price and/or Contractor's obligations in terms of the Purchase Order, then such direction shall not be binding on the Contractor unless and until Contractor and the Engineer shall have agreed upon a suitable Amendment to the Purchase Order.

10.2 Should the anticipated Amendment to the Purchase Order be more than 25% of the original Purchase Order price, RES reserves the right to issue requests for more quotations from other Contractors shall be issued for the revised scope of works. The Original Purchase Order shall then be cancelled by RES in terms of 13.2.

10.3 Should the Purchase Order contain provisions under the heading "Escalation" for adjusting the Purchase Order Price to allow for any increase or decrease in the costs to the Contractor of performing its obligations in terms of the Purchase Order, then, the Purchase Order Price will be adjusted accordingly.



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11. CONTRACTOR'S DEFAULT

Should the Contractor fail or neglect to carry out its obligations in terms of the Purchase Order, or refuse or neglect to comply with any reasonable instructions given to it in writing by the Engineer in connection with the Purchase Order, or make a material breach of any of the provisions of the Purchase Order, the Engineer may give notice in writing to Contractor to make good the failure, neglect, refusal or breach complained of. Should the Contractor fail to comply with the notice or to justify its actions within a reasonable time, the Buyer shall have the right to terminate the Purchase Order forthwith by giving written notice to the Contractor, and upon such termination the provisions of clause 13 hereof shall become effective.

12. JUDICIAL MANAGEMENT / INSOLVENCY

Should the Contractor become insolvent or commit an act of insolvency or pass a resolution for winding-up, (not being a members' voluntary winding-up for the purpose of reconstruction or amalgamation), or be subject to a winding-up or provisional or final liquidation Purchase Order of Court, or be placed under provisional or final judicial management, then RES may, at its option, terminate the Purchase Order forthwith by notice in writing to Contractor or to the liquidator or judicial manager or to any person in whom the Purchase Order may become vested, whereupon the provisions of Clause 13 hereof shall become effective.

13. TERMINATION

13.1. Effect of Termination under clauses 11 or 12

In the event of termination of the Purchase Order by virtue of the provisions of clause 10 or 11 hereof, Contractor shall be liable for any amount by which the costs and expenses incurred by RES in completing the Purchase Order exceeds the amount which RES would have paid to Contractor to complete the Purchase Order. Any such excess amount shall be set off against all sums of money due and payable by RES to Contractor for all expenditure and liabilities properly incurred by Contractor prior to termination.

13.2. Termination by RES

RES shall have the right at any time to terminate the Purchase Order but if such termination shall not be caused by one of the grounds specified in clauses 11, 12 or 40 hereof, RES shall pay to Contractor compensation for all expenditure and liabilities properly incurred by Contractor, and a sum agreed between the parties hereto as reasonable compensation for direct loss suffered by Contractor solely as a result of such termination, and Contractor shall not be entitled to any further or other payment.

13.3. Arbitration

If any dispute shall arise between RES and Contractor in connection with or as a result of termination in terms of clauses 13.1 or 13.2 hereof, and such dispute cannot be resolved, it shall be referred to arbitration in terms of clause 34 hereof.

14. INSPECTION, TESTING AND REJECTION

14.1 The Engineer shall be entitled, at RES's cost, to inspect, examine and test on Contractor's or other premises, Materials to be supplied in terms of the Purchase Order, and if any Material is being manufactured on other premises, Contractor shall obtain for the Engineer permission to inspect, examine and test as if such Material was being manufactured on Contractor's premises.



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14.2 Such inspection, examination, or testing, if made, shall be in addition to any inspection, examination or testing to be carried out by the Contractor in terms of the Purchase Order, and shall not release the Contractor from any obligation under the Purchase Order nor be interpreted to imply that such Material is free of any patent or latent defects. If after inspecting, examining, or testing Material, the Engineer decides that such Material is defective or not in accordance with the Purchase Order, he may reject such Material by giving to Contractor notice in writing of such rejection, stating therein the grounds upon which the said decision is based.

15. ACCESS TO AND POSSESSION OF THE SITE

RES shall afford the Contractor access to and possession of the Site in reasonable time to carry out its obligations in terms of the Purchase Order. The Contractor shall afford to RES and to other Contractors working on the Site every reasonable facility for the execution of work concurrently with its own. No persons other than Contractor and its employees shall be allowed on the Site, except with the written permission of the Engineer, but facilities to inspect the Works at all times shall be afforded to the Engineer.

16. OWNERSHIP OF MATERIAL

Material shall become the property of RES when same is delivered to Site provided that ownership in any surplus material shall revert to Contractor upon Contractor removing such material from Site with the prior written approval of the Engineer.

17. SETTING OUT

The Contractor shall, wherever applicable, be responsible for ensuring that the positions, levels and dimensions of the Works are correct according to the Purchase Order and/or the Documentation, notwithstanding any assistance it may have received from the Engineer in determining same.

18. ENGINEER'S SUPERVISION

All site instructions to the Contractor shall be given by the Engineer, provided that the Engineer may delegate any of the powers, discretion, functions, and authorities vested in him. No site instruction can be given if there is no Purchase Order for the original works.

19. CONTRACTOR'S REPRESENTATIVES AND WORKMEN

The Contractor shall employ a competent representative on Site to superintend the carrying out of the Contractor's obligations in terms of the Purchase Order. The Engineer may, by notice in writing to Contractor, object to any person employed by the Contractor in the execution of the work relative to the Purchase Order who shall be unsuitable, and the Contractor shall immediately cease to utilise such person in connection with the Purchase Order and shall, if applicable, immediately remove such person from the Site. It shall not be incumbent on the Engineer to give reasons why such person should be removed from the Site.

20. LIABILITY FOR ACCIDENTS AND DAMAGE

20.1. All losses of and damage to the Works prior to Take-over shall be made good by Contractor to the satisfaction of the Engineer, and at the Contractor's cost to the extent that such cost is not recoverable in terms of clause 21 hereof or unless Contractor is indemnified against such loss or damage in terms of clause 23 hereof, or otherwise at RES's cost.



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- 20.2. After Take-over and whilst Contractor is on Site for the purpose of making good any defects in terms of clause 29. hereof, the Contractors shall be responsible on the same basis for the costs of any loss of or damage to the Works but only where such loss or damage arises out of the performance by or on behalf of Contractor in carrying out its obligations in terms of the said clause 29. Notwithstanding the foregoing and notwithstanding the provisions of clause 15 hereof, the risk of loss of or damage to Material prior to incorporation thereof into the Works shall remain with Contractor until Take-over, or, in respect of surplus Material, until same is removed from Site.
- 20.3. For the purposes of this clause only, the word "Contractor" shall be deemed to refer to Contractor only and shall not include Sub-Contractors. The Contractor hereby indemnifies RES against any injury, death, disease, or illness to any person and any damage to or loss of any property (other than the Equipment and all property forming part of the Works and which has not been Taken-over) and against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith, which shall be occasioned by any negligence on the part of Contractor, its agents, employees and Sub-Contractor and their agents and employees in the execution of the Purchase Order or by any defect in the Works.
- 20.4. Notwithstanding the provisions of clause 20.3 hereof, should any loss of or damage to the Equipment occur which is occasioned by Contractor's negligence, then Contractor's liability in respect of such loss or damage shall be determined in accordance with any relevant provisions contained in the Purchase Order, or, failing any such provisions, then such liability shall be limited to any amount for which Contractor is required, in terms of the Purchase Order, to insure the Equipment in accordance with the provisions of clause 20.5 hereof, or, where Contractor is not so required to insure the Equipment, then Contractor shall not be liable for any such loss or damage except as provided in terms of clauses 22.2 and 22.3 hereof.
- 20.5. The insurance which Contractor may be required to effect in terms of clause 20.4 hereof shall be effected with an insurer and in terms approved by the Engineer, which insurance shall contain an endorsement signifying a waiver of recourse against RES in respect of the full amount of any claim. The costs of the said insurance and, if applicable, the said endorsement, are deemed included in the Purchase Order Price. Contractor shall, prior to commencing work on Site, supply to the Engineer for approval a certified copy of the said policy and, if applicable, the said endorsement, and the receipt/s for payment of the current premium/s.

21. THIRD PARTY INSURANCE

- 21.1 Liability for any bodily injury, death, loss of, or damage to property caused by either party hereto shall be determined according to law, provided that RES shall not be responsible for the security of, nor liable for any loss of or damage to, the Contractor's or the Contractors worker's tools or equipment notwithstanding any negligence on the part of RES, and the Contractor shall indemnify RES against any claim therefore by any of the Contractor's workers.
- 21.2 The Contractor shall indemnify RES against all claims and/or legal proceedings which might be made or be instituted against RES (and against all costs including, without limitation, all costs incurred by RES in resisting such claims and/or proceedings and in enforcing this indemnity) for damages or compensation payable in respect of any injury to or the death of any workman or other person engaged by the Contractor or any Sub-Contractor which does not result from the fault of RES or any other person for whose conduct in question RES is, in law, liable.

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22. INSURANCE OF THE WORKS

22.1. Insurance by RES

RES shall, subject to the terms, limits, exceptions, and conditions of the applicable policies described below in this clause 22.1, effect and maintain insurance;

- 22.1.1 against loss of and/or damage to the Works, Temporary Works, Plant, and other things for inclusion in the Works and temporary Works (excluding all Construction Equipment, tools, and equipment owned, hired, or used by the Contractor or his employees or agents, or by any sub-Contractor or his employees or agents) in terms of a contract works policy, in such a manner that RES is indemnified against such loss and/or damage –
- 22.1.2 which may occur from the commencement of loading of the item concerned for dispatch from premises within the geographical limits of the applicable policy to the Site until completion and hand-over to RES of the Works (including, inter alia, any trans-shipment or storage en-route and at the Site, but excluding any risk insured against in terms of any marine insurance policy which may be arranged in respect of imported machinery, plant and equipment to be incorporated into the Works); and/or
- 22.1.3 which may manifest itself during any period of maintenance or Defects Period and have arisen from a cause occurring prior to the commencement of such period; and/or
- 22.1.4 which is caused by or is attributable to Contractor whilst performing his obligations in respect of and during such period of maintenance or Defects Period; and
- 22.1.5 against loss of and/or damage to the Works, Temporary Works, Equipment, and other things for inclusion in the Works and temporary Works (excluding the Construction Equipment, tools, and equipment excluded in terms of clause 22.1.1 hereof, provided that nothing herein contained shall oblige RES to insure against the necessity for the repair, replacement or reconstruction of any work designed or constructed with materials or workmanship not in accordance with the requirements of the Purchase Order.

22.2. Insurance by Contractor

- 22.2.1 The Contractor shall effect and maintain insurance against legal liability for damages or compensation payable in respect of the death of and/or injury to any third party and the loss of and/or damage to property belonging to any third party arising out of and occurring during the execution of the Works or temporary Works or otherwise in the carrying out of the Contractor's other obligations in terms of the Purchase Order. Unless it is stated in the Special Conditions that a greater limit shall apply, such policy shall have a limit of indemnity of not less than E5,000,000,00 (Five Million Emalangeni) in respect of any one occurrence or any series of occurrences arising from one cause and be unlimited during any period of insurance.
- 22.2.2 The Contractor shall effect and maintain a common law liability insurance policy in respect of the employees of the Contractor. Unless it is stated in the Special Conditions that a greater limit shall apply, such policy shall have a limit of indemnity of not less than R2,000,000,00 (Two Million Emalangeni) in respect of any one occurrence or any series of occurrences arising from one cause and be unlimited during any period of insurance.



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22.2.3 The Contractor's obligations in this regard in respect of any persons employed by any sub-Contractor shall be satisfied if such sub-Contractor shall have insured against such liability in respect of such persons in such a manner that RES is indemnified under the applicable policy. The Contractor shall, on demand therefore by RES, procure that such sub-Contractor exhibits to RES such policy and/or the receipt for payment of the current premium.

- 22.2.4 The Contractor and its Sub-Contractor shall effect and maintain insurance,
- a. against loss of and/or damage to all Construction Equipment (including tools, equipment, sheds, and other temporary structures and the contents thereof) brought onto the Site, for at least their cost of replacement, except for such Construction Equipment as may be specifically excluded by the Engineer in writing; and
 - b. in the case of a hired plant, against any liability additional to that described in clause 22.2.4.a hereof imposed upon the Contractor in terms of the contract of hire relating to such plant, arising from such loss and/or damage.
 - c. The Contractor and its Subcontractors shall effect and maintain a comprehensive motor vehicle insurance (including passenger liability indemnity) in respect of all motor vehicles operated by them in performing their obligations in terms of the Purchase Order.
 - d. The Contractor and his Sub-Contractors shall, at their own cost, with the requirements of all Acts of the Kingdom of Eswatini, and with all ordinances, regulations, by-laws, Purchase Orders and proclamations made or issued under any such Acts, and with the lawful requirements of public, municipal and other authorities in any way affecting or applicable to the Purchase Order, and shall on request therefore by RES from time to time furnish documentary proof that they have complied herewith.

22.3. Insurance Limit

None of the Contractor's obligations, responsibilities, and liabilities in terms of the Purchase Order (including, without limitation, those relating to the risk of loss of and/or damage to the Works or any part thereof) shall be limited or varied as a consequence of any insurance to be arranged by either RES or the Contractor in terms of this clause 22.

22.4. Liability

22.4.1 Liability for any loss and/or damage which is not insured against in terms of any insurance to be arranged in terms of this clause 22, shall be borne by the party which in terms of the Purchase Order or otherwise in law bears liability for such uninsured loss or damage;

22.4.2 Liability for any excess or deductible applicable to any claim in terms of any insurance to be arranged in terms of this clause 22, shall be borne by the party which in terms of the Purchase Order or otherwise in law bears liability for the loss or damage to which such claim relates.



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- 22.5 Each of the insurances to be arranged by Contractor in terms of clause 22.2 hereof shall be effected at the Contractor's cost. Contractor shall, within 14 (fourteen) days after the Purchase Order comes into force, produce to the Engineer documentary proof to the satisfaction of the Engineer of the existence of all the insurances to be provided by Contractor in terms of clause 22.2 hereof and proof of payment of the current premiums relating to such insurances, and shall thereafter, upon demand therefore by or on behalf of RES, furnish documentary proof to the satisfaction of RES of the punctual payment of all premiums in respect thereof.
- 22.6 Should Contractor fail to arrange and/or to keep in force any insurance referred to in clause 22.2 hereof, then, without prejudice to any of RES's other rights or remedies, RES may arrange and/or keep in force any such insurance and pay such premiums as may be necessary for that purpose, and may recover any amount so paid by RES in accordance with clause 45.1 hereof.
- 22.7 RES shall bear and pay all premiums and stamp duty payable in respect of the insurances to be arranged by RES in terms of clause 22.1 hereof, and the Contractor shall not include in the Purchase Order Price any cost for insurances of the nature described therein other than insurance against liability for the excess or deductible referred to in clause 22.4.2 hereof.
- 22.8 Any amount which becomes payable as a result of a claim (other than a public liability claim) against any insurance arranged by RES in terms of clause 22.1 hereof shall be paid by the insurer to RES after deducting any excess or deductible therefrom (if applicable) and shall be utilized towards making good any loss and/or damage forming the subject of such claim.
- 22.9 Should there be any occurrence which is likely to give rise to a claim under any insurance arranged by RES in terms of clause 22.1 hereof, the Contractor and Sub-Contractors concerned -
- 22.8.1 shall, in addition to any statutory requirements and/or other requirements contained in the Purchase Order, immediately notify the Engineer and RES's insurance brokers by telephone stating the circumstances, nature, and an estimate of the loss and/or damage;
- 22.8.2 shall immediately complete a claim advice form available from RES's administration manager at the Site (or in his absence, from the Engineer) and request him to submit it without delay to RES's insurance broker;
- 22.8.3 shall not negotiate the settlement of any claim with the insurer concerned except with the express consent of and in conjunction with the Engineer (all such settlements being subject to the prior written express approval of RES); and
- 22.10 Where manufacturing and/or fabrication of the Works or any part thereof occurs elsewhere than on the Site, the Contractor shall satisfy RES that such Works and all Equipment for incorporation in such Works are adequately insured during manufacture and/or fabrication until loaded for dispatch to the Site. Should RES have an insurable interest in such Works during manufacture or fabrication, the Contractor shall procure that such interest is noted by endorsement to the relevant policy of insurance.
- 22.11 The Contractor shall give all notices and shall otherwise comply with all conditions and requirements of all the required insurances applicable to the Purchase Order.



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22.12 The Contractor may, at the Contractor's cost, effect any insurance, including, without limitation, professional indemnity and/or product liability insurance, in addition to that referred to in clause 22.2 hereof which the Contractor deems necessary in his own interests. Upon request therefore by RES, the Contractor shall furnish to RES all information regarding any such additional insurance.

22.13 The Contractor shall ensure that all potential and appointed Sub-Contractors are aware of the contents of this clause 22 and shall enforce compliance by all Sub-Contractors with the provisions of this clause 22.

23. STATUTORY AND OTHER LIABILITIES

RES accepts no responsibility for the following matters, nor for any premium payable in respect thereof:

23.1. statutory liability on the part of Contractor in respect of Compensation for Occupational Injuries and Diseases, Unemployment Insurance or Motor Vehicle Third Party Insurance;

23.2. the outbreak of disease, or death of or injury to the employees and/or agents and/or representatives of Contractor or any liability which Contractor may have to its employees and/or agents and/or representatives in respect of such outbreak of disease or death or injury;

23.3. loss of or damage to any personal effects or money or other negotiable instruments belonging to Contractor and/or its employees and/or representatives and/ or agents;

23.4. loss of or damage to any Contractor's Equipment;

23.5. consequential loss suffered by the Contractor.

24. CONTRACTOR'S LIABILITY

Contractor shall not be liable to RES for:

24.1. the "war risks" and "nuclear" exclusions as contained in the policy of insurance referred to in clause 22.1.2 hereof.

24.2. except as provided in the Purchase Order or except as brought about by the Contractor, any claim made against RES;

24.3. any damage, loss or injury caused by or arising from the negligence of RES or others (not being the Sub-Contractors or servants of Contractor) unless any such negligence is occasioned by negligence on the part of Contractor;

24.4. any damage, loss or injury caused by or arising from information supplied by RES.

25. PROGRAMME

25.1 The Contractor shall submit a programme in bar chart form plotted to a time scale showing the Purchase Order and duration of activities proposed by it. Before the issue of a notice of site clearance, the Engineer, if he deems necessary, may request the Contractor to revise or supplement the said programme. Following the Contractor's agreement on such revisions, Contractor shall execute the Works in accordance with the said programme, duly amended, if applicable, as aforesaid.



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25.2 At any time, the Engineer may request revisions and/or updating of the said programme in the interests of the project as a whole and/or the timely completion of the Works, and Contractor shall comply with such requests without such compliance relieving Contractor from any of its obligations in terms of the Purchase Order or becoming the basis of a request by Contractor for an extension of time for the completion of the works or for additional remuneration in respect of such compliance.

26. EXTENSION OF TIME FOR COMPLETION OF THE WORKS

If by reason of any cause beyond the reasonable control of Contractor, Contractor shall have been delayed or impeded in the Completion of the Works, whether such delay or impediment occurs before or after the time or extended time fixed for such Completion, provided that Contractor shall without delay have given to the Engineer notice in writing of its claim for an extension of time, the Engineer shall, on receipt of such notice, grant Contractor from time to time in writing either prospectively or retrospectively such extension of the time fixed by the Purchase Order for the Completion of the Works as may be reasonable.

27. DELAY IN COMPLETION OF THE WORKS

27.1. If it is stated in the Purchase Order that penalties will be payable by Contractor for failure to complete the Works timeously and such penalties become applicable, then RES shall have the right to deduct the amount of such penalties from any monies due or becoming due to Contractor.

27.2. If it is stated in the Purchase Order that time is of the essence for Completion of the Works, and Contractor fails to complete the Works on the date for Completion stated in the Purchase Order, then such failure to complete the Works timeously shall be deemed to be a material breach of the Purchase Order and the provisions of Clause 13, hereof shall apply.

28. COMPLETION OF THE WORKS

As soon as Completion of the Works has been achieved in accordance with the Purchase Order, RES shall Take-over the Works in terms of clause 29.

29. TAKING-OVER

As soon as the Works have been completed in accordance with the Purchase Order, the Works shall be deemed to have been taken over. However Taking-over shall be subject to Contractor having fulfilled its obligations under clause 4 hereof, and having left the Site in a clean and tidy condition, with all rubbish, Construction Equipment and surplus Material cleared away from RES' premises. RES shall provide a Take-over Certificate which must be counter-signed by authorised representatives of Contractor and RES.

30. DEFECTS PERIOD

30.1. The defects period shall commence when the Works are taken-over in terms of clause 29 hereof, and shall, subject to the provisions of clause 30.2 hereof, terminate 12 (twelve) months thereafter. Contractor shall be responsible for making good with all possible speed and at no cost to RES any defect that may become apparent or develop in the Works during the defects period under proper use of the Works, and attributable to Contractor.



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30.2. If Contractor repairs any portion of the Works in terms of clause 30.1 hereof, or in terms of this clause, the provisions of the whole of this clause 30 shall apply to such portion until the expiration of a period of 12 (twelve) months from the date of such repair.

30.3. If any defect contemplated in clauses 30.1 or 30.2 hereof be not remedied by Contractor within a reasonable time, the Engineer may proceed to remedy the defect at Contractor's risk and expense but without prejudice to any other rights which RES may have against Contractor in respect of the failure of Contractor to carry out its obligations.

31. SUFFICIENCY OF THE WORKS

Except in the case of fraud or dishonesty relating to or affecting the Works, and except in regard to defects and insufficiencies in the Works, the Works shall be deemed to be sufficient at any time after the Contractor has ceased to be under any obligation in terms of clause 30 hereof.

32. TERMS OF PAYMENT

32.1. The Purchase Order Price will be paid by RES to Contractor in accordance with the provisions set out in the Purchase Order. Should there be any delay on the part of the Contractor in completing its obligations in terms of the Purchase Order, or should there be any defect in the Works, then RES may withhold all or part of any payment to cover such delay or defect until Contractor has completed such obligations in terms of the Purchase Order or rectified such defect.

32.2. Should the Contractor require upfront or advance payment with the placement of the Purchase Order, the Contractor shall provide RES with a bank guarantee or bond equivalent to the upfront payment from a world class recognized bank. The bank guarantee or bond shall be valid until the Works have been completed and handed over to RES.

32.3. Contractor shall submit an invoice and any necessary substantiating documents to the Engineer in respect of each and every amount which becomes due and payable to Contractor in terms of the Purchase Order. Payment of each such amount will be made to Contractor by RES within 30 (thirty) days of the 25th day of the month in which the Contractor submits its correct and acceptable invoice and statement, provided that the invoice is submitted before the 25th day of the said month.

33. STATUTORY AND OTHER REGULATIONS

The contractor shall, in all matters arising in the performance of the Purchase Order, ensure compliance with all legislation that shall be or become applicable to the Works. The contractor shall also ensure observance of RES' Rules applicable to the Site.

34. ARBITRATION

Any question, dispute, or difference arising between RES and Contractor in connection with the Purchase Order which cannot be resolved and of which notice has been given, where required, by Contractor, shall be referred to the arbitration of a person to be agreed upon and in terms of the Arbitration Procedure for Contractors at RES or any statutory modification or re-enactment thereof. Any such proceedings shall take place at an agreed venue in the Kingdom of Eswatini. Performance of the Purchase Order shall continue during arbitration proceedings unless the Engineer shall cancel the Purchase Order or cause the suspension thereof or of any part thereof. No payments due or payable by RES shall be withheld on account of a pending reference to arbitration.



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35. CONSTRUCTION OF PURCHASE ORDER

The Purchase Order shall in all respects be construed and operate as Eswatini contract and in conformity with the law of the Kingdom of Eswatini.

36. PUBLICITY

No advertisement shall be displayed on the Site or elsewhere by the Contractor in connection with the Works without the prior written consent of the Engineer. The taking of photographs of Equipment or the Works or any portion thereof and the introduction to or possession of cameras on the Site is expressly forbidden. No photographs, sketches, drawings, information, etc. regarding Equipment or the Works may be published in magazines or elsewhere without the prior written approval of the Engineer.

37. TAXES AND PERMITS

37.1. RES shall not be responsible for any income or other taxes levied by the Government of Eswatini on the Contractor and/or its employees and/or representatives and/or agents in respect of the Contractor's obligations in terms of the Purchase Order. RES will obtain from the relevant authorities the necessary permission to erect and operate the Works. The contractor shall obtain from the relevant authorities and administer all permits and licenses, which are necessary to enable the Contractor to fulfil its obligations in terms of the Purchase Order.

37.2. If the Contractor is a foreign national, then in terms of the Eswatini Income Tax Act of 1975 (as amended), a 15% labour tax will be applied by RES to the costs associated with the use by the Contractor of non-Swazi manpower for on-site work. RES shall provide all relevant documentary proof of any tax deductions and the remittance thereof made in this regard. The contractor shall not levy this tax onto the Purchase Order price since it is an allowable deduction in his country of origin.

37.3 The Purchase Order price shall be deemed to be inclusive of all taxes and levies. The Contractor shall be responsible to remit the Eswatini Construction Industry (CIC) Levy and Value-Added-Tax (VAT) to the Eswatini Government Institutions in accordance with the Construction Industry Council Act of 2013 (as amended) and the CIC Regulations, and the VAT Act 2011 (as amended) and supplemented by the VAT Regulations. VAT applicable in foreign countries shall not apply to the Purchase Order.

38. IMPOSSIBILITY OF PERFORMANCE

38.1. Should any of the obligations of either party hereto become objectively impossible of performance then such party shall be exempted from performance of a such obligation(s) under the Purchase Order, provided that the circumstances that rendered performance impossible;

38.1.1 was unforeseeable at the time of contracting and the party concerned displayed reasonable care and diligence in attempting to avoid the consequences thereof;

38.1.2 was foreseeable at the time of contracting but was beyond the control of the party concerned and provided that the party concerned could not reasonably have been expected to have taken it into account in undertaking its contractual obligations and displayed reasonable care and diligence in attempting to avoid the consequences thereof.



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38.2. Notice of the existence of any circumstances referred to in clauses 38.1.1 and 38.1.2 hereof shall be given promptly by the affected party to the other party hereto. Should any such circumstances endure for a continuous period of one (1) month then either party hereto shall be entitled to terminate the Purchase Order on written notice to the other party. In the event of such termination, the provisions of clause 13 hereof shall not be applicable, but should any dispute arise in connection with or as a result of such termination, such dispute shall be referred to arbitration in terms of clause 34 hereof.

39. NOTICES, CORRESPONDENCE, INVOICES, STATEMENTS, AND DELIVERIES

39.1. All notices required in terms of the Purchase Order shall, unless amended by notice in writing from the relevant party, be addressed to the Supplier at the address set out in the Purchase Order and to RES at the following address:

The Procurement Manager
Royal Eswatini Sugar Corporation Limited
P.O. Box 1
Simunye

39.2. All correspondence, invoices, and monthly statements of account shall bear RES's Purchase Order number and be in the English language. Delivery instructions for Material shall be in accordance with the relevant provisions contained in the Purchase Order. All invoices and monthly statements must be sent to the following address;

39.2.1 For services provided to the Simunye Estate;

The Financial Accountant - Creditors
Royal Eswatini Sugar Corporation Limited
P.O. Box 1
Simunye

39.2.2 For services provided to the Mhlume Estate;

The Financial Accountant - Creditors
Mhlume Sugar Company Limited
P.O. Box 1
Mhlume

40. GUARANTEE OF WORK DONE

Without limiting or restraining the nature and scope of clause 30 hereof and without derogating from any guarantees contained in the law, the Contractor guarantees that the Works will be free from fault and defects and that they will serve the purpose for which they are devised, with all of which Contractor declares itself fully acquainted. To this end the Contractor may be required to provide a performance guarantee bond as specified in the Purchase Order.

41. CLAIMS FOR EXTRA PAYMENT

RES shall not be liable for claims for extra expense to which Contractor may consider itself entitled arising out of the Purchase Order unless Contractor has notified RES as soon as reasonably practicable of its intention to make such a claim and in any case within five (5) days of the start of the circumstances on which the claim is based. The contractor shall submit to RES at the end of each month, the full particulars of all such outstanding claims.



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42. CONTRACTOR'S NON-COMPLIANCE WITH CONDITIONS

Should the Contractor fail to comply with any of the conditions contained in the Purchase Order, notwithstanding any other right which RES might have either in terms of the Purchase Order or at law, RES shall have the right to suspend all payments due to the Contractor until such condition/s is/are fully complied with.

43. NO WAIVER OF RIGHTS

Any relaxation or indulgence afforded by either party to the other relative to any of the terms and conditions of the Purchase Order shall not in any way prejudice such party's rights in terms thereof nor be construed as a waiver of same.

44. REQUEST FOR QUOTATIONS

44.1 Contractor shall not be obliged to prepare and submit written quotations or proposals for Works to be performed at RES if the request has not been issued in writing by a Procurement Officer at the Buyer's Procurement Department. The Request For Quotations shall have a unique identifiable RES number and shall be subject to these same terms and conditions of Purchase. Purchase Orders shall be issued in response to submitted formal commercial quotations or proposals.

44.2 RES shall reserve the right to invite selected Contractors to submit quotations or proposals.

44.3 RES shall reserve the right not to award the Purchase Order to the Contractor with the lowest price.

45. WHOLE PURCHASE ORDER

The Purchase Order constitutes the entire agreement between the parties and both this clause and the Purchase Order may be amended only by written agreement signed by both parties.

46. ACCEPTANCE

Unless the Contractor shall, within 7 (seven) days of placement of the Purchase Order by RES, advise RES of any error or omission in the Purchase Order, it shall be deemed to have accepted the Purchase Order in its entirety.