

## GENERAL TERMS AND CONDITIONS FOR PROCUREMENT

### 1. PREAMBLE

These Terms apply to all business dealings with the following entities:

Alleyroads Construction (Pty) Ltd;  
Alleyroads Holdings (Pty) Ltd;  
Alleyroads Kitchens (Pty) Ltd;  
Alleyroads Management and Corporate Services (Pty) Ltd;  
Alleyroads Power (Pty) Ltd;  
Alleyroads Professionals (Pty) Ltd;  
Alleyroads Supply (Pty) Ltd,

hereafter termed "**Alleyroads**" and, for the purpose hereof, acts for itself and/or on behalf of the Alleyroads Company/ies set out in the Purchase Order. The supplier of the products and/or works ("**Work**") as described in the Purchase Order is hereafter termed "**Supplier**". Alleyroads and the Supplier are collectively referred to herein as the "**Parties**" and individually as the "**Party**". These Terms, including any attachments hereto, and the Purchase Order for the supply of the Work, constitute the agreement between the Parties (the "**Agreement**"). Defined terms used herein are described in the Schedule, below.

### 2. PURCHASE ORDERS

- 2.1 Alleyroads will issue a Purchase Order (PO) for the procurement of the Work. Acceptance by Supplier of the PO will constitute acceptance of these Terms.
- 2.2 In the event of any conflict between these Terms and the PO and any other attachments thereto (including any terms of the Supplier), unless otherwise stated in the PO; these Terms will take precedence.
- 2.3 The PO will be deemed accepted by Supplier upon the first of (a) Supplier making, signing, or delivering to Alleyroads any letter, form, or other writing or instrument acknowledging acceptance; and (b) any performance by Supplier under the PO.

### 3. PAYMENT, PRICE AND PROCEDURE

- 3.1 Supplier will submit invoices in a PDF format to pastel@alleyroads.co.za as soon as possible following Acceptance.
- 3.2 The invoice will set out in detail the PO, the Work supplied, the period during which the Work was supplied and if applicable, hours spent in supplying of the Work.
- 3.3 Subject to the remaining provisions in these Terms, Alleyroads will make payment to Supplier by means of electronic transfer to the Supplier's nominated bank account within the time period stated in the PO (the default being 30 days from statement). The Supplier will assume the entire risk where incorrect banking details were provided to Alleyroads or where changes were made to the Supplier's banking details without notification to Alleyroads.
- 3.4 Alleyroads is entitled to audit all Supplier's records relating to the provision of the Work. Supplier will keep and make all records available for 7 years after completion of the Work. If overcharging is identified, Alleyroads may invoice Supplier for all audit costs and Supplier shall repay any amount overcharged to Alleyroads within 10 days of receipt of Alleyroads' invoice.
- 3.5 The Price excludes Sales Tax; however to the extent that Sales Tax may be applicable to the amounts invoiced by the Supplier, the Supplier shall provide a Sales Tax invoice to Alleyroads, together with all additional forms and documentation in accordance with applicable law(s).

- 3.6 No invoice shall be paid by Alleyroads unless the invoice is a valid tax invoice, including the following information:
- 3.6.1 Alleyroads': company name, registration number, physical and postal addresses. Alleyroads' PO number, order number, job number, Alleyroads VAT number; and
  - 3.6.2 Supplier's: company name, registration number, physical and postal addresses. quote number, order number, job number, Supplier VAT number and full description of the Works supplied.
- 3.7 All invoices from the Supplier shall be accompanied by a comprehensive POD signed by both Parties.
- 3.8 Alleyroads will not make payment of the Supplier's invoice unless the conditions of these Terms have been fully complied with.
- 3.9 The Supplier shall be liable to refund Alleyroads within 7 days from Alleyroads' sending its invoice to the Supplier, for Works paid for but are faulty or not supplied (i.e. cement pallets, Works not delivered as per PO and defective Works).
- 3.10 Supplier accounts will be verified by Alleyroads and should the company name, registration number and VAT number not match, no payment shall be made to the Supplier.
- 3.11 Alleyroads shall retain a minimum of 2% (two percent) of the invoice total for all slab Suppliers until the surveyor's general plans have been approved for the slabs.
- 3.12 Alleyroads shall charge a Supplier R5000 (five thousand Rand) per completion certificate where the Supplier has failed to provide the relevant completion certificate/s within forty-eight hours upon written requested by Alleyroads.
- 3.13 No Supplier may hold back any completion certificate/s or part thereof due to non-payment by Alleyroads.
- 3.14 Prior to payment of the Supplier's invoice, the Supplier must ensure that it has delivered to Alleyroads (a) BBBEE certificate, SARS tax clearance certificate (income tax, VAT, PAYE, UIF and SDL), FICA documents (certified CIPC/CIPRO registration certificate), Workmen's Compensation certificate of good standing, proof of bank account, Contractors Registration Certificate (Issued by the CIDB), Quality Management Certificates: (e.g. ISO 9000:2000), Environmental Management System Certificate (e.g. ISO 14001), SANS certification (10400) and NHBRC compliance forms).

#### **4. SUPPLIER WARRANTIES AND REPRESENTATIONS**

- 4.1 Supplier warrants that (a) it has, and will acquire at its cost, all the necessary equipment, material, licences, permits, registration certificates, or other administrative authorisations required by applicable law(s), infrastructure, services, resources and personnel required to supply the Work to Alleyroads' satisfaction in accordance with the relevant PO and the Agreement; (b) it has the experience, ability, expertise and means to supply the Work; (c) it will supply the Work in a good, professional and workmanlike manner in accordance with recognised industry best practice for the provision of similar services and other policies, standard or guidelines of Alleyroads; (d) it has the capacity and authority to enter into and perform in terms of the Agreement.
- 4.2 In addition to the warranties above, Supplier warrants that (a) the Work will comply with the standards having legally binding effect or as adopted by Alleyroads, fit for purpose, free of defects and comply with the specifications stated in the PO; and (b) the Work will be free from all defects for a period of 12 months after installation and commissioning or such period as specified in the Scope of Work.
- 4.3 Supplier acts as an independent contractor and neither Supplier nor Supplier's Contractors are

deemed to be either expressly or impliedly employees of the Alleyroads Group of Companies.

- 4.4 Supplier will, at its sole cost and risk, keep in its custody and care material brought by it onto an Alleyroads site or Location to supply the Work; and material supplied by Alleyroads (or its suppliers) to the Supplier free of charge for any part of the Work.

## 5. CHANGE OF WORK

The Scope of Work, but not the nature thereof may be subject to changes by additions, deletions or revisions thereto by Alleyroads at its sole discretion, and Supplier will be advised by Alleyroads of such changes by means of written change orders. For clarity, Supplier will not provide any type of Work to Alleyroads in terms of the Agreement (including any change order) other than the nature of the Work stated in the relevant PO.

## 6. DELIVERY

- 6.1 The Supplier will complete or deliver the Work no later than the due date(s) as agreed in the Scope of Work ("**Due Date(s)**") and shall promptly notify Alleyroads if unable to meet the Due Date.
- 6.2 Time shall remain of the essence in respect of the performance by the Supplier of its obligations under the Agreement.
- 6.3 If Supplier fails to supply Work by the Due Date Alleyroads may, at its sole discretion summarily terminate the PO without prejudice.
- 6.4 Delivery must be accompanied by a comprehensive

## 7. INSPECTION AND REJECTION OF WORK

- 7.1 Alleyroads may inspect and assess the Work at the Location, including Supplier's facilities, personnel/labour, equipment, licences, permits, and Supplier will make available all information and documentation necessary to enable Alleyroads to determine the progress and quality of the Work.
- 7.2 If on inspection the Work does not comply with the Agreement ("**Defective Work**") Supplier will, on or by a date specified by Alleyroads and at Alleyroads' option, either redo, replace, repair, adjust, or modify the Defective Work ("**Remedied Defect**") (or any part thereof as specified by Alleyroads), free of any costs and expenses to Alleyroads.
- 7.3 Supplier's warranties and obligations provided under the Agreement will extend and apply to such Remedied Defect.
- 7.4 Alleyroads reserves the right to accept or reject the Defective Work or Remedied Defect. If Alleyroads rejects the Defective Work and/or Remedied Defect (collectively "**Rejected Work**"), Alleyroads will notify Supplier in writing of such rejection and require the removal of the Rejected Work within 7 days from date of such notification. The Rejected Work may not be removed from Alleyroads' premises without a dispatch advice issued by Alleyroads.
- 7.5 Should Supplier fail to collect the Rejected Work within 7 days or as prescribed in the notice, Alleyroads may dispose of the Rejected Work as it deems fit and Supplier shall be responsible for all costs incurred by Alleyroads in relation to such disposal.
- 7.6 Alleyroads' inspection or lack of inspection of, or failure to inspect, the Work, will in no way release Supplier from its obligations and warranties given in terms of the relevant PO and the Agreement.
- 7.7 Final acceptance of the Work by Alleyroads will only occur and be effective after acceptance of delivery, inspection, and subsequent issuing of a notice of acceptance, or equivalent thereof by Alleyroads ("**Acceptance**").
- 7.8 Any Acceptance by Alleyroads of the Work will always be subject to Alleyroads' rights and remedies in terms of the Agreement and will not relieve Supplier from any of its obligations,

warranties and indemnities.

- 7.9 Ownership, custody and risk, save for warranties, to the Work will only pass to Alleyroads upon Acceptance. Supplier hereby warrants that it will at all times pass ownership, title and rights to Alleyroads in relation to the Work free of any liens or encumbrances.

## **8. CONFIDENTIAL INFORMATION**

- 8.1 By virtue of its association with Alleyroads, Supplier may come into possession of and have access to information of a confidential nature embodied in the technical knowledge, specifications, chemical make-up, materials and/or other communications, in tangible or intangible form, relating to or useful in connection with the feedstock, products, catalyst, waste emissions, markets, business and/or the design, construction or operation of the facilities of Alleyroads or any of its Affiliates ("**Confidential Information**").
- 8.2 Supplier undertakes that, except as authorised in writing by Alleyroads beforehand, it shall, at all times during and after the termination/expiry of the Agreement (a) keep all Confidential Information confidential, (b) not disclose, in whole or in part, any Confidential Information to any third party, and (c) not use the Confidential Information for any purpose otherwise than as contemplated by and subject to the terms of the Agreement.
- 8.3 The commitments set forth in clause 8.2 will not extend to any portion of Confidential Information which Supplier can establish (a) is known to Supplier prior to the receipt from Alleyroads or is generally available to the public; (b) after disclosure, through no action or inaction of Supplier, becomes generally available to the public; (c) corresponds to information furnished to Supplier on a non-confidential basis by a third party having a bona fide right to do so; or (d) has been independently developed by Supplier.

## **9. INTELLECTUAL PROPERTY**

- 9.1 In the event that Supplier supplies the Work exclusively for Alleyroads, Supplier hereby cedes, transfers and assigns to Alleyroads all Intellectual Property in the Work. Such Work shall constitute Confidential Information of Alleyroads.
- 9.2 In the event that Supplier does not supply the Work exclusively for Alleyroads, Supplier hereby grants to Alleyroads (and its Affiliates) an irrevocable, royalty free extendable licence to use the Work including all Intellectual Property embodied therein for any purpose whatsoever.
- 9.3 The Supplier hereby grants to Alleyroads (and its Affiliates) an irrevocable, royalty free, extendable licence to use the Ancillary Material including all Intellectual Property embodied therein for any purpose whatsoever.
- 9.4 Supplier represents and warrants that (a) in the case of clause 9.1 applying, it has good, unencumbered title and ownership to such Intellectual Property and is entitled to transfer and assign to Alleyroads (and its Affiliates) such title and ownership pursuant to the Agreement; (b) in the case of clause 9.2 or 9.3 applying, it has obtained all approvals, licences, and authorisations necessary to grant the licence to use such Intellectual Property pursuant to the Agreement; and (c) it is not aware of any existing, valid and enforceable third party Intellectual Property rights that may be infringed by supplying the Work to Alleyroads and, use thereof by Alleyroads (and its Affiliates).
- 9.5 In the event of infringement/misappropriation of third party Intellectual Property rights through supplying the Work to Alleyroads (and its Affiliates) and, use thereof by Alleyroads (and its Affiliates), Supplier shall pay all royalties and expenses and be liable for all such claims (including claims of infringement of Intellectual Property rights) and costs relating to the supply of the Work, and use thereof.

## **10. COMPLIANCE**

- 10.1 Supplier acknowledges that it adhere to all applicable laws, include: (a) Bribery and Corruption, (b) Sanctions, (c) Broad-Based Black Economic, (d) Safety, Health and Environment requirements (to the extent that Work is performed at a Location governed as a Alleyroads site), and (e) Section 37(2) of the Occupational Health and Safety Act No. 85 of 1993 ("**OHS Act**"). The Supplier accepts the responsibilities of its duties as set out in the OHS Act and undertakes to ensure that all Work will be executed in accordance with these Terms and the OHS Act.
- 10.2 The Supplier acknowledges that: (a) it is an employer in its own right and will not provide any of its employees to Alleyroads to supply Work under the control and supervision of Alleyroads, unless explicitly stipulated in the PO; (b) while performing the Work on Alleyroads' premises it is solely responsible for its employees, sub-contractors, agents and the like.
- 10.3 The Supplier shall further be responsible for ensuring all Works comply with the National Building Regulations and SABS Codes of Practice.

## **11. TERMINATION**

- 11.1 Alleyroads may summarily terminate the Agreement for cause if Supplier (a) is in breach of any applicable law(s); (b) is sequestrated or liquidated, or commits any act of insolvency or is placed under business rescue; (c) breaches any warranty provided in the Agreement; or (d) is in breach of any of the provisions of the Agreement and such breach is not remedied within 5 days from the date of receipt of notice in writing from Alleyroads specifying the breach and requiring the same to be remedied.
- 11.2 Alleyroads may in its sole discretion terminate the Agreement by giving Supplier a minimum of 5 days' prior written notice ("**Early Termination**"). Supplier will immediately cease the supply of the Work as at the date specified in such notice. In such event, Alleyroads will only reimburse Supplier for the Work accepted and will not have any further liability in terms of the relevant PO or the Agreement.
- 11.3 Termination or expiry of the relevant PO or the Agreement will not release either of the parties from any obligation, indemnity or warranty which arose prior to termination.
- 11.4 If Supplier is dissolved for purposes of restructuring or amalgamation, the Agreement may not be terminated and will be binding on the restructured company or the company arising from the amalgamation, unless Alleyroads elects to terminate.

## **12. INDEMNITIES**

Supplier indemnifies Alleyroads including its Affiliates and their directors, employees, agents and representatives ("**Indemnified Party**") and holds it harmless against all liabilities, costs, expenses, damages, compensation and losses including such legal and attorneys' fees as between attorney and client suffered or incurred by the Indemnified Party, caused by the acts or omission of Supplier, its employees or sub-contractors ("**Other Party**") or arising out of the Other Party (a) failing to comply with applicable laws, including any industry code/practice applicable to the Work; (b) polluting or damaging the environment, including the costs of clean-up and rehabilitation, relating to the supply of the Work; (c) causing the death or personal injury of any person and arising out of the supply of the Work; (d) damaging, loss of or destruction of any property arising out of the supply of the Work; (e) causing any third party claim against the Indemnified Party arising out of or in connection with the supply of the Work; (f) breaching any acts relating to corruption; and (g) breaching the warranties in clause 4.

## **13. INSURANCE**

The Supplier will procure and maintain (at its cost) for the duration of this Agreement, comprehensive third-party public liability insurance cover with a total aggregate cover specified in the PO.

## **14. GOVERNING LAW AND DISPUTE RESOLUTION**

- 14.1 The Agreement will be governed, constituted and interpreted in accordance with the laws of South Africa.

14.2 In the event of any controversy or claim arising out of or in connection with the Agreement (“**Dispute**”) arising between the parties, such Dispute will in the first instance be referred to duly authorized senior representatives of each of the parties for resolution. If such Dispute is not resolved within 30 days from date of referral, the Parties agree and consent to the non-exclusive jurisdiction of the South Gauteng High Court.

**15. ADDRESSES FOR NOTICES**

The Parties choose the following addresses for purposes of giving and receiving of any legal notices and the serving of any legal process:

Alleyroads: 15C Gibson Drive East, Buccleuch, Johannesburg 2090  
E-mail: pastel@alleyroads.co.za

Supplier: The address that appears on the PO.

**16. CONSEQUENTIAL DAMAGES**

Neither Party will be responsible under any circumstances for or held liable for consequential damages, indirect damages, loss of work, loss of profit, and/or business interruption however same may be caused.

**17. SUB-CONTRACTING, CESSION AND DELEGATION**

17.1 Supplier will not subcontract the Work in whole or in part, to any third party without first declaring to Alleyroads its intention to take such action and without obtaining the prior written consent of Alleyroads.

17.2 Supplier will not cede, delegate or assign any of its rights and/or obligations in terms of the Agreement in whole or in part to any third party without first declaring to Alleyroads and obtaining Alleyroads’ prior written approval.

**18. GENERAL**

18.1 The Agreement constitutes the sole and entire record of the agreement between the Parties with regard to the supply of the Work.

18.2 No variation of this Agreement will be of any force or effect except as may be specifically agreed to in a subsequent writing executed with the same formalities as this Agreement.

**DEFINITIONS**

**Affiliate:** With respect to a Party, any corporate entity with legal personality that controls, is controlled by, or is under common control with such Party. An entity will be regarded as being in control of another entity if it owns, directly or indirectly, or is entitled to exercise, directly or indirectly, the votes attaching to at least 50% of the equity share capital of the other entity, or if it possesses, directly or indirectly, the power to determine the composition of the majority of the board of directors of the other entity.

**Alleyroads Group of Companies:** Alleyroads Holdings (Pty) Ltd and all its Affiliates and related companies.

**Ancillary Material:** All manuals, reports, analyses, documents, designs, drawings, solutions, specifications and data prepared or supplied by the Supplier incidental to the Work to Alleyroads.

**Government:** A government entity or department, agency, authority or instrumentality thereof of any level (federal, state, regional, county or municipal); an organisation authorised by the local government to perform government functions; and/or, an entity owned or controlled by such bodies.

**Intellectual Property:** All products of human intellect and shall include, without limitation, that which is contained or described in any trade-marks, service marks, trade names, domain names, logos, get-up, patents, provisional patents, innovation patents, petty patents, inventions (whether patentable or not), know-how, (including formulations, processes, technical information, confidential industrial and commercial information and techniques in any form), utility models, designs, copyrights, semi-conductor topographies, databases, any new or existing compilation of any data or information not

covered under any existing copyrights, as well as any confidential information relating to that subject matter.

**Location(s):** The place, sites or premises where Supplier will supply the Work (or part thereof) as stipulated in the PO and/or Scope of Work or if omitted from the PO and/or Scope of Work, the place, sites or premises as will be notified by Alleyroads.

**Price:** The contract price set out in the relevant PO which will be fixed and firm.

**Purchase Order(s) or PO's:** Any separate contract document(s) issued by Alleyroads indicating the nature/details of the transaction.

**Sales Tax:** Any tax imposed by any Government, taxing or other authority on transactions such as the sale of goods and the performance of services, including importation, commonly referred to, for example, as value added tax, goods and services tax or general sales tax or any other similar taxes.

**Scope of Work:** The scope of the Work as described in the relevant PO, if applicable.

**Supplier's Contractors:** Any agents, representatives, suppliers, advisors, contractors or sub-contractors contracted with the Supplier to supply the Work.

**Work:** The services, deliverables and/or goods/materials supplied by Supplier strictly in accordance with the specifications as set out in the relevant PO.