

# General Terms and Conditions of Purchase

Saint-Gobain Construction Products South Africa (Pty) Ltd  
Saint-Gobain Abrasives (Pty) Ltd  
Saint-Gobain Lodhia Gypsum Industries Ltd  
Saint-Gobain Weber Ghana Ltd  
Saint-Gobain Development East Africa Ltd  
Saint-Gobain Development Mozambique, Limitada  
Saint-Gobain Construction Products Zimbabwe (Pvt) Ltd  
Saint-Gobain Development Sub-Saharan Africa Ltd and  
its representative office in Ethiopia  
Buldezee Adhesives (Botswana) (Pty) Ltd  
Saint-Gobain Weber Manufacturing PLC

Sub-Saharan Africa



## 1. DEFINITIONS AND INTERPRETATION

- 1.1. "Company" means either of Saint-Gobain Construction Products South Africa (Pty) Ltd, Registration Number: 1937/010220/07 (South Africa); Saint-Gobain Abrasives (Pty) Ltd, Registration Number: 1997/017721/07 (South Africa); Saint-Gobain Lodia Gypsum Industries Ltd, Registration Number: 83858 (Tanzania), Saint-Gobain Weber Ghana Ltd, Registration Number CS5585462015 (Ghana), Saint-Gobain Development East Africa Limited, Registration Number: CPR/2014/155673 (Kenya); Saint-Gobain Development Mozambique, Registration Number: 1763/11/01/RT/2006 (Mozambique); Saint-Gobain Construction Products Zimbabwe (Pvt) Ltd, Registration Number: 1034/1959 (Zimbabwe); Saint-Gobain Development Sub-Saharan Africa Ltd, Registration Number C16140036 (Mauritius) and its representative office in Ethiopia, Registration Number: MT/AA/40038297/2009(Ethiopia); Buildezee Adhesives (Botswana) (Pty) Ltd, Registration Number CO.2006/2181 (Botswana); or Saint-Gobain Weber Manufacturing PLC, Registration Number EIA/PC/2/0000014/2009 (Ethiopia), including their respective divisions, as identified in the Purchaser Order.
- 1.2. "Confidential Information" means, in relation to the Company, all information, transmitted on any kind of media including written documents, electronic transmissions, orally or visually, without any requirement for marking of such Confidential Information, that is disclosed or made available (whether directly or indirectly), which includes but is not limited to any information that would be regarded as confidential by a reasonable person, information on the business, affairs, customers, clients, suppliers, plans (intentions or market opportunities), operations, processes, product information, know-how, designs, trade secrets, software or Intellectual Property of the Company;
- 1.3. "Contract" means this agreement, the Purchase Order and/or any additions or amendments thereto;
- 1.4. "Force Majeure" means any cause preventing either Party from performing any or all of its reasonable obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented, including without limitation act of God, war, terrorism, riots;
- 1.5. "Goods" means all or any of the materials, items and/or products which the Supplier is contracted to provide to the Company as detailed in the Purchase Order, specification, drawings, description, sample, or any other form of identification of the material or item, and a combination thereof;
- 1.6. "Intellectual Property" means all actual or prospective rights arising in connection with any intellectual property or other proprietary rights, including but not limited to all rights arising in connection with copyrights, patents, service marks, designs, trade secrets, trademarks, trade names or know-how, whether registered or not;
- 1.7. "Party" shall mean either the Company or the Supplier, and Parties shall mean both the Company and the Supplier;
- 1.8. "Price" means in relation to the Goods and/or Services, the price agreed between the Parties as detailed in the Purchase Order;
- 1.9. "Purchase Order" shall mean a written authorisation issued by the Company to the Supplier, for the Supplier to deliver specified Goods or perform Services to the Company at the Price, quality level and delivery date specified in the Purchase Order;
- 1.10. "Services" means the services to be performed by the Supplier for the Company as detailed in the Purchase Order;
- 1.11. "Supplier" means the person or company who is engaged by the Company to provide the Goods or perform the Services, as specified in the Purchase Order to which these terms and conditions apply.

## 2. APPLICATION

- 2.1. This Contract shall govern the relationship between the Company and the Supplier.
- 2.2. This Contract may only be altered by the written agreement of the Parties and any agreed amendments will be recorded on a separate amendment sheet and signed by both Parties.
- 2.3. Notwithstanding anything to the contrary in the Supplier's standard conditions or in any tender, quotation, advice note, invoice, acknowledgement letter or any other document issued or sent by the Supplier, this Contract shall apply to the entire exclusion of all other terms or conditions, and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

## 3. QUALITY & TIME FOR PERFORMANCE

- 3.1. The Supplier will provide the Goods and/or Services to the Company as is detailed in the Purchase Order, in good time with any instructions or other information required to enable the Company to accept delivery of the Goods and/or performance of the Services.
- 3.2. The Supplier warrants and undertakes that the Services will be performed with all due skill and care and by appropriately qualified and trained personnel and that the Goods shall be of the best available design, of the best quality, material and workmanship, and be without fault. The Services and/or Goods shall conform in all respects with the description and/or specification contained in the Purchase Order and with any statements or undertakings made by the Supplier, or his employees, or agents, prior to the conclusion of the Contract.
- 3.3. If the Company considers that the Supplier has provided sub-standard, defective or negligent Services or that the Goods supplied by the Supplier are defective upon delivery or prove to be defective within 12 (twelve) months of use, the Company may call upon the Supplier, without prejudice to the Company's other rights, to rectify, replace or reimburse, at the Company's option, the defective or negligently performed Services and/or the defective Goods, within 48 (forty-eight) hours of being notified of such deficiency. All rectification and replacement will be carried out at the Supplier's own expense. All obligations in this clause 3.3 shall further apply to any such rectified Services and/or rectified or replacement Goods.
- 3.4. The time for performance shall be a material term of the Contract. The Company reserves the right to refuse payment if the Supplier fails to timely perform the Contract, unless previously approved by the Supplier in writing.
- 3.5. If performance of the Contract is delayed or anticipated, then the Supplier shall give immediate written notice to the Company. The Company may then, in its discretion and without prejudice to its other rights, accept a different time for performance as is reasonable in the circumstance.
- 3.6. Notwithstanding the provisions contained in clause 3.5 above and without prejudice to any other right or remedy available to the Company, the Supplier recognises that late performance of the Services may cause the Company to fail to meet other contractual commitments and consequently incur loss, and the Supplier therefore agrees to pay damages in compensation to the Company an amount equal to 10% (ten percent) of the total Contract value.
- 3.7. Any pre-order by the Company is done for convenience, and as an estimate of orders, the Company will be entitled to cancel such pre-order in whole or in part, unless prior arrangements are made between the Company and the Supplier.
- 3.8. The Company may at any time request adjustments in relation to the delivery of in respect of each instalment. Nevertheless, failure by the Supplier to deliver and/or perform any one instalment shall entitle the Company at its option to treat the Goods or performance of the Services, for which an appropriate adjustment to the Contract shall be made and agreed between the Parties in writing.

- 3.9. Where the Company agrees to accept delivery of the Goods and/or performance of the Services by instalments, the Contract will be construed as a single contract<sup>(3)</sup> whole Contract as repudiated.

## 4. DELIVERY OF SERVICES

- 4.1. The Supplier will perform the Services on the date and at the location stipulated in the Purchase Order.
- 4.2. If the Company is not satisfied with the Services, it will notify the Supplier in writing and the Supplier shall, within 72 (seventy-two) hours of receipt of a written notification by the Company, make good any deficiencies in the Services provided, at its own expense.

## 5. DELIVERY, PACKAGING AND CARRIAGE, INSPECTION, RETURN OF GOODS

- 5.1. The Supplier will deliver the Goods on the date and to the place of delivery. All Goods must comply as to quantity, quality, description and sample as specified in the Purchase Order, and must be clearly and legibly labelled and addressed and properly packaged to survive transit, and to resist pilferage, distortion, corrosion or contamination.
- 5.2. All shipments of Goods must be accompanied by a packing advice note stating the order number and listing in full the contents.
- 5.3. The Company will inspect the Goods as to the weights, measures and other quality checks within a reasonable period after delivery or performance, and if the Goods do not comply with this Contract and the Purchase Order, the Company will notify the Supplier in writing. If the Supplier disagrees with the contents of the notification, it shall, within 72 (seventy-two) hours of receipt of a written notification by the Company, arrange a joint inspection at the place of delivery. Failing this, the Supplier shall be deemed to have accepted that the Goods delivered are as stated by the Company and shall take such action as the Company requires to resolve the issue to the satisfaction of the Company.
- 5.4. Notwithstanding clause 5.3 above, the Company reserves the right to reject the whole delivery of the Goods and claim damages suffered as a result, should the Goods fail to comply with the provisions stated in clause 5.1 above and/ or return to the Supplier at the Supplier's expense and risk any Goods delivered in advance of the agreed delivery date or any Goods delivered in excess of the quantities ordered.
- 5.5. Unless the Company has exercised its rights under clause 5.4 or otherwise agreed in writing, the Supplier shall as soon as reasonably practicable and at its expense make good any shortages in the Goods delivered, and where appropriate, collect any of the Goods which do not comply with the Purchase Order, which have been damaged in transit or which have visual defects and replace the same within 48 (forty eight) hours of the Supplier's acceptance or deemed acceptance in accordance with clause 3.1 above.

## 6. RIGHT OF OWNERSHIP/PASSING OF RISK

- 6.1. The ownership in the Goods shall pass to the Company on delivery to the Company as specified, without prejudice to any rights of rejection.
- 6.2. All Goods delivered against this Contract are at the sole risk of the Supplier until officially received by the Company.
- 6.3. Where advance payments have been made, either in part or in full, ownership of the Goods shall pass to the Company at the time when any instalment or payment is made, but risk shall remain with the Supplier until delivery is effected.
- 6.4. The Supplier shall not be entitled to exercise a right of retention on any Goods which are the property of the Company and are in the Supplier's possession, nor exercise a lien over the Company's property which is in the Supplier's possession.

## 7. PRICE

- 7.1. The Price of the Goods and/or Services is as detailed in the Purchase Order.
- 7.2. The Price will not be reviewed or increased annually without the prior written approval of the Parties. The Price will include all necessary packaging, shipping and delivery costs, unless otherwise agreed in writing between the Parties. Unless stated otherwise in the Purchase Order, the Price is exclusive of Value Added Tax (or equivalent) but inclusive of all other taxes, duties and all other charges.
- 7.3. Unless otherwise agreed in writing the Price shall include payment for all Intellectual Property or other material created by Supplier in performing the Services and this Contract, unless such materials are specifically provided by the Company.
- 7.4. The Company will be allowed all discounts normally offered by the Supplier for bulk purchases, prompt payment and other reductions.

## 8. PAYMENT TERMS

- 8.1. All invoices must state the Company's Purchase Order number as well as a detailed description of the Goods supplied or Services provided. Documents not bearing the above information will become disputed invoices until such time as the relevant information is provided. Furthermore the Supplier shall provide all other justification, evidence or documentation in relation to the Goods and/or Services which the Company may from time to time reasonably require.
- 8.2. Unless otherwise agreed between the parties in writing, payment of undisputed accounts will be made within 60 (sixty) days of receipt of the invoice relating thereto.
- 8.3. The Company reserves the right to withhold payment in respect of disputed invoices and the Company shall notify the Supplier of any disputed invoices within 14 (fourteen) working days of receipt. When an invoice that has been in dispute is subsequently cleared for payment, then the settlement terms that are applicable will be applied from the date of clearance.
- 8.4. The Company reserves the right to deduct any monies due or to become due from the Supplier to the Company from any monies due or to become due from the Company to the Supplier. It is agreed that such set-off shall occur in the normal course of business.
- 8.5. Payment of the Price (or any part thereof) shall not constitute any admission by the Company as to the performance by the Supplier of its obligations under the Contract.

## 9. EARLY TERMINATION, SUSPENSION

- 9.1. The Company may without affecting its accrued rights, terminate all or any part of this Contract in the following events:
  - 9.2.1. the Supplier commits a breach of any of the terms and conditions of this Contract, and fails to rectify such breach within 7 (seven) days of receiving a written request by the Company to do so; or
  - 9.2.2. any distress, execution or other legal process is levied upon any of the assets of the Supplier;
  - 9.2.3. the Supplier makes an arrangement or compromise with his creditors, or otherwise takes the benefit of any legislation for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a business rescue practitioner appointed in its undertaking or any part thereof, or a

- resolution is passed or a petition presented to any court for the winding up of the Supplier or for the
- 9.2.4. The Supplier suffers or allows any execution to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under this Contract or any other contract between the Company and the Supplier, or is unable to pay its debts as they become due; or
- 9.2.5. The Company provides a 30 (thirty) days written termination notice to the Supplier.
- 9.3. In the event of a termination for any reason, the Company's sole obligation and liability to the Supplier shall be limited to the reimbursement of the Supplier for those Goods actually delivered and accepted by the Company, and the Services actually performed and accepted by the Company up to the date of final termination. In no event shall the Company be responsible for loss of the Supplier's anticipated profit or other consequential or purely economic loss nor shall the Company's liability exceed the value on the Purchase Order.

#### 10. FORCE MAJEURE

- 10.1. If either Party is prevented or delayed in its performance of any of its obligations under this Contract by Force Majeure, that Party shall forthwith serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clauses 10.2 and 10.3 below shall have no liability in respect of the performance of such of its obligations during the continuation of such events, and for such time after they cease as is necessary for that Party, using reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 10.2. Notwithstanding the above, if either Party is prevented from performance of its obligations for a continuous period, which exceeds a period of 3 (three) months, either Party may then terminate this Contract forthwith on service of a written notice upon the Party so prevented. If the Company serves such notice as a result of a Force Majeure event claimed by the Supplier, the Company shall be entitled to exercise its right of set-off under Clause 8.4 against monies owed to the Supplier in respect of additional costs it may reasonably have incurred since the Supplier's notice under Clause 10.1, such costs having been incurred by the Company to ensure the Company honoured its obligations to its customers. These costs, without limitation, include the additional costs and charges of sourcing the Goods from a third party. To the extent set-off does not fully reimburse the Company in respect of such extra costs the Supplier shall indemnify and keep indemnified the Company in respect of the same.
- 10.3. The Party claiming to be prevented or delayed in the performance of any of its obligations under this Contract by reason of Force Majeure shall take all steps as are necessary to bring the Force Majeure event to a close or to find a solution by which this Contract may be performed despite the continuance of the Force Majeure event.

#### 11. INDEMNIFICATION

- 11.1. The Supplier shall indemnify and keep the Company indemnified in full and on demand against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill), damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
- 11.1.1. any breach of this Contract by the Supplier, including any act or omission of the Supplier or its employees or agents or subcontractors in performing, or in connection with the performance of the Contract;
- 11.1.2. Goods and/or Services supplied which do not comply with this Contract and the Purchase Order;
- 11.1.3. Goods and/or Services supplied which do not comply with any legislation;
- 11.1.4. any dispute or claim or proceedings made or brought against the Company in respect of or in connection with Goods and/or Services supplied, and the use of or any other dealing with the Goods and/or Services by the Company or by a third party, and claims by a third party alleging infringement of its Intellectual Property rights;
- 11.1.5. an infringement or alleged infringement of any Intellectual Property rights caused by the use, manufacture or supply of the Goods or Services provided;
- 11.1.6. any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the supply of Goods and/or Services by the Supplier as a direct consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier, unless it is a claim relating to personal injury or fatality caused by the gross negligence of the Company.
- 11.2. The Supplier shall supply the Company at the Supplier's expense with all reasonable assistance required by the Company to deal with any claim.
- 11.3. This indemnity shall not apply if and to the extent that a claim arises from:
- 11.3.1. the Company's fraudulent misrepresentation or gross negligence for which the Company shall be responsible; or
- 11.3.2. defects in design or any specification if the Company has supplied or furnished the design or specification and the Supplier has disclaimed any responsibility.

#### 12. INTELLECTUAL PROPERTY

- 12.1. The Supplier acknowledges that the Company has Intellectual Property which may or may not be registered. Neither the Supplier nor any related party shall infringe the Intellectual Property rights of the Company, or otherwise seek to use the Company's Intellectual Property for any purpose, other than expressly authorised in writing by the Company. In the event of the unauthorised use of the Company's Intellectual Property by the Supplier, or any related party, the Company reserves the right to seek the appropriate legal remedy, and the Supplier will indemnify and keep indemnified the Company for all reasonable losses or damages incurred in relation to such unauthorised use by the Supplier.
- 12.2. Unless expressly agreed otherwise in writing, the Intellectual Property created by the Supplier, related parties, agents, employees or subcontractors in furtherance of this Contract shall vest in the Company absolutely.
- 12.3. Where applicable any Intellectual Property furnished to the Supplier by the Company, or fully or partially paid for by the Company, shall remain the property of the Company and shall be used only in fulfilling the Contract, will be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions.

#### 13. CONFIDENTIALITY

- 13.1. The Supplier shall keep the Confidential Information of the Company strictly confidential and, except with the prior written consent of the Company, shall not use or exploit the Confidential Information in any way except for the performance of the Services, not disclose or make available the Confidential Information in whole or in part to any third party, apply the same security measures and degree of protection from unauthorised disclosure, copying and use.

- 13.2. None of the details of the Contract or the relationship between the Parties shall be published or disclosed by the Supplier to any third party without the Company's written permission.
- 13.3. The provisions of this clause 13 shall continue to remain of full force and effect for a period of five (5) years after either the termination or expiration of this Contract.

#### 14. INSURANCE

The Supplier shall have in place a suitable policy of insurance to cover its liabilities to the Company and third parties under this Contract, and the Company shall have the right to request evidence of such insurance.

#### 15. RESPONSIBLE DEVELOPMENT, LEGAL AND ETHICAL BUSINESS PRACTICE

- 15.1. The Supplier is aware that the Company adheres to the United Nations Global Compact and has notably adopted a policy of responsible purchasing, an integral part of the Company's Sustainable Development policy. The approach and expectations of the Company with regard to its Suppliers are formalised in the "Suppliers Charter", a copy of which is available on request.
- 15.2. The Supplier shall (i) respect employee rights regardless of the country in which they operate, (ii) refrain, even if permitted under applicable local legislation, from resorting to any forced or compulsory labor or to any child labor, either directly or indirectly or through sub-contractors, in the course of their production processes or when providing services or when intervening on Company sites and (iii) provide their employees with the best possible conditions of health and safety and to observe, during their interventions on Company sites, all applicable health and safety rules.
- 15.3. The Supplier endeavours to take the necessary steps to ensure occupational health and safety. The Supplier agrees to ensure that its employees fully comply with all applicable safety instructions when working on the Company's sites. The policies of the Company which will be made available to the Supplier on request.
- 15.4. The Supplier will carry on its activities in compliance with the principle of transparency and in strict accordance with applicable domestic and international legal standards and shall not bring the Company into disrepute.
- 15.5. The Supplier agrees to adopt a cautious approach to issues concerning the environment and responsible environmental practices. The Supplier will implement policies on managing and improving its industrial processes designed to limit environmental impact. Supplier shall have control of environmental risks related to both their processes and the products they use whether in their activity or when intervening on Company sites.
- 15.6. The Supplier shall ensure that in any dealings with the Company, neither it nor its employees or agents shall commit any offence under anti-corruption and anti-bribery regulations that are applicable.
- 15.7. The Parties intend that this Contract and their actions in relation to it shall comply at all times with all applicable competition laws and the Parties are satisfied that this Contract does so comply as at the start date of this Contract. The Parties agree during the term of this Contract to take all appropriate steps to ensure that there are no discussions, exchanges or disclosures of information or documents, or other acts or omissions by or between them in relation to this Contract which might contravene applicable competition laws.
- 15.8. The Supplier undertakes to comply with all export controls and economic sanctions legislation. For all matters pertaining to the execution of this Contract, Supplier represents and warrants that it will not enter into transactions with any person or entity with whom commercial transactions are forbidden or restricted under applicable regulations. In the event that any or all part of the Goods and/or Services and/or their components (including software or services) is subject to any type of export restriction, the Supplier shall inform the Company as soon as possible but in any case prior to the supply of such Goods and/or Service.
- 15.9. The Supplier shall comply with the requirements of any data protection laws in any jurisdiction relevant to the performance of this Contract. The Supplier agrees to the Company collecting and processing and possibly transferring overseas, certain information regarding the Supplier as may be necessary to ensure performance of this Contract or reporting on the Supplier and/or the Contract.

#### 16. GENERAL

- 16.1. The Company can be held be liable, by the Supplier only, in the event that the Supplier proves that it has suffered a loss directly caused by the Company's gross negligence in the performance of the Contract. This clause excludes indirect and consequential liabilities and/or loss.
- 16.2. This Contract and the Purchase Order are governed by the laws of the country in which the Company is incorporated.
- 16.3. The Parties agree to attempt to firstly reach an amicable settlement of any dispute between the senior management and/or executive teams of the respective Parties to this Contract, before such dispute is referred to the courts of the country in which the Company is incorporated.
- 16.4. If any provision of this Contract is held by a competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Contract and the remainder of the provisions in question shall not be affected thereby.
- 16.5. The failure by either Party to exercise or enforce any rights contained in this Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 16.6. Each right or remedy of the Company under this Contract is without prejudice to any other right or remedy of the Company, arising from any cause whatsoever.
- 16.7. The Parties agree that at expiration of this Contract, if the Parties continue to trade and do business in accordance with this Contract, then the provisions of this Contract shall continue to apply in full, a, save that the duration of this Contract as defined shall no longer be applicable.
- 16.8. The Supplier shall not assign or subcontract all or any portion of its rights or obligations under this Contract without the prior written approval of the Company. In the event that such consent is given to subcontract, the Supplier agrees that it remains bound by these terms as principal.
- 16.9. Any notice required to be given under this Contract shall not be effective unless given in writing and delivered by:
- 16.9.1. pre-paid registered post, effective 5 (five) business days after posting; or
- 16.9.2. courier or personal delivery effective at the time of delivery; or
- 16.9.3. fax or email, effective upon the transmission of the entire notice as confirmed by a transmission report or delivery receipt; to the Party's address, fax number or email address as indicated on any Purchase Order received.