
SUPPLY AGREEMENT

SUPPLY AGREEMENT FOR THE SUPPLY OF SOLAR WATER HEATERS

between

THE DEPARTMENT OF ENERGY

and

[INSERT TEXT]



energy

Department:
Energy
REPUBLIC OF SOUTH AFRICA

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SECTION 1: MASTER PURCHASE AGREEMENT

NATIONAL SOLAR WATER HEATER PROJECT

MASTER PURCHASE AGREEMENT

between:

THE DEPARTMENT OF ENERGY

(•) (“the Purchaser”)

and

[INSERT COMPANY NAME]

(a company registered in accordance with the laws of South Africa with registration number [•]) and with its principal office at (•) (“the Supplier”)

FOR THE SUPPLY OF SOLAR WATER HEATERS AS PART OF THE NATIONAL SOLAR WATER HEATER PROJECT

Preamble:

A. The Purchaser is in the process of implementing a social component of the National Solar Water Heater Programme which, through the large scale procurement and installation of the Goods in local residences, seeks to:

- (i) promote broader socio-economic benefits including the development of local manufacturing and associated implementation of local content requirements and other economic development goals;
- (ii) promote energy efficiency through the use of solar energy as a sustainable alternative energy source; and
- (iii) partly assist in demand side management by means of deferred future demand for energy and reduced demand for grid supplied electricity through the use of Baseline Systems.

(“the Project”)

- B. For the purposes of the Project, the Purchaser requires the procurement of the Goods from suppliers, which will then be used for installation in Designated Identified Areas identified by participating municipalities and approved by the Purchaser.
- C. The transportation of the Goods to the Designated Identified Areas and the installation thereof, will be carried out, respectively, by Transporters and Installation Contractors, separately appointed by the Purchaser.
- D. The Supplier successfully tendered for the supply of Goods.
- E. The Purchaser wishes to appoint the Supplier to supply the Goods in accordance with the terms of the Supply Agreement.

Now therefore the Purchaser and the Supplier agree as follows:

1. DEFINITIONS

- 1.1 In this Agreement, unless inconsistent with the context, words and expressions shall have the meaning assigned to them in the Conditions of Contract hereinafter referred to.

2. NATURE OF THIS AGREEMENT

- 2.1 The procurement of the Goods is in the ordinary course subject to the General Conditions of Contract issued in accordance with Treasury Regulation 16A published in terms of the Public Finance Management Act, 1999 (Act 1 of 1999). In this regard it is recorded that the Supply Agreement constitutes "Special Conditions of Contract" which prevail over the General Conditions of Contract in all and any cases of conflict.

3. UNDERTAKING

- 3.1 The Supplier in consideration of payments to be made by the Purchaser under the Supply Agreement, agrees to supply the Goods to the Purchaser as required from time to time (in terms of a Purchase Order), and remedy defects therein in accordance with the terms of the Supply Agreement; and

3.2 The Purchaser, in consideration for the supply of the Goods and the remedy of the defects in accordance with the Supply Agreement, agrees to make payment of Purchase Order Values in terms of the Supply Agreement.

4. MASTER AGREEMENT AND PURCHASE ORDERS

4.1 The terms and conditions of this Master Purchase Agreement together with the Conditions of Contract shall apply to all Goods ordered by the Purchaser from the Supplier after the date of signature hereof, unless and save to the extent expressly agreed otherwise in writing from time to time.

4.2 Orders for Goods shall be placed by way of the Purchaser issuing a Purchase Order substantially in accordance with the pro-forma purchase order attached as **Schedule 1**, which shall include:

4.2.1 the Commencement Date;

4.2.2 the quantity of Goods required;

4.2.3 whether the Goods are to be delivered in Batches;

4.2.4 the Delivery Place for all the Goods, or, if delivery in Batches applies, the Delivery Place for each Batch;

4.2.5 the Time for Delivery of all the Goods, or, if delivery in Batches applies, the Time for Delivery of each Batch; and

4.2.6 the Purchase Order Value for the Goods or each Batch determined in accordance with **clause 5**.

4.3 The Purchase Order shall as at the Purchase Order Date be binding on the Supplier provided that (and unless otherwise agreed):

4.3.1 a Purchase Order shall not require:

4.3.1.1 where Batches do not apply, the supply of less than 500 (five hundred) Goods by the Supplier ("**Minimum Order Amount**"); or

- 4.3.1.2 where Batches apply, the supply of Batches which when taken in the aggregate is less than the Minimum Order Amount under the Purchase Order concerned;
- 4.3.1.3 where Batches do not apply, the supply of more than 1500 (one thousand five hundred) Goods by the Supplier ("**Maximum Order Amount**"); or
- 4.3.1.4 where Batches apply, the supply of Batches which when taken in the aggregate is more than the Maximum Order Amount under the Purchase Order concerned; and
- 4.3.2 the Time for Delivery for the relevant Goods or Batch (as the case may be) is not less than 90 (ninety) days from the Purchase Order Date;
- 4.3.3 such Purchase Order is issued not less than 30 (thirty) days from the date on which the last Purchase Order was issued.
- 4.4 A Purchase order issued outside of the parameters set out in **clause 4.3** above shall only be valid if agreed and signed by both Parties.

5. PURCHASE ORDER VALUE

- 5.1 Save as otherwise provided for in the Purchase Order, each Purchase Order Value:
- 5.1.1 shall be determined by application of the unit price of a Baseline System applicable to the quantity ordered as set out in the agreed pricing schedule contained in **Schedule 4** [and is not other than in accordance with **clause 13**, subject to any revision, escalation or adjustment, including for currency fluctuations or inflation];
- 5.1.2 [excludes VAT; and]
- 5.1.3 includes all other taxes, levies, duties (including import and customs duties) royalties, penalties, charges, fines, interest, withholding taxes and imposts, or any similar charges, duties, penalties or levies imposed in connection with the Goods (and whether in the country of the Supplier or in the Country).

5.2 The Supplier shall be considered to have examined all matters, circumstances and contingencies in respect of or in connection with the supply of the Goods and the remedying of defects and to have fully satisfied itself as to the correctness and sufficiency of the Purchase Order Value for the carrying out and completion of all of its obligations under the Supply Agreement.

6. SUPPLY AGREEMENT DOCUMENTS

6.1 The following documents shall form the Supply Agreement and are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

6.1.1 This Master Purchase Agreement (**section 1**);

6.1.2 The Conditions of Contract including the Schedules thereto (**section 2**);

6.1.3 The Purchaser's Requirements (**section 3**); and

6.1.4 The Purchase Order.

6.2 The above documents detail all amendments to the tender documents which have been agreed by the Parties.

7. NON-VARIATION

7.1 No variation, amendment, or consensual cancellation of this Master Purchase Agreement or any provision or term thereof (including this clause) shall be binding or have any force or effect unless reduced to writing and signed by or on behalf of the Parties (by duly authorised representatives).

7.2 Without derogating from the foregoing, no agreement or purported agreement reached at any Project review or other meeting in connection with the Goods or this Master Purchase Agreement, notwithstanding that it may be contained in any minute signed by or on behalf of the Parties, shall constitute an amendment to this Master Purchase Agreement unless and until incorporated in a formal addendum to this Master Purchase Agreement which is signed by or on behalf of the Parties (by duly authorised representatives). The provisions of this Master Purchase Agreement do

not, however, limit or derogate from the provisions of **clause 11** of the Conditions of Contract.

SIGNED at _____ on _____ 2015

For: **DEPARTMENT OF ENERGY**

Signatory:
Capacity:
Authority:

SIGNED at _____ on _____ 2015

For: **[INSERT COMPANY NAME]**

Signatory:
Capacity:
Authority:

Signatory:
Capacity:
Authority:

SECTION 2: CONDITIONS OF CONTRACT

1. INTERPRETATION AND GENERAL PROVISIONS

1.1 Definitions

In this Supply Agreement, unless the context requires otherwise:

- 1.1.1 “**Accredited Installer**” means an Installer which has been trained and accredited by the Supplier to properly install and test the Goods;
- 1.1.2 “**Additional Storage Cost**” means the fixed daily rate to be charged to the Purchaser by the Supplier for the Supplier undertaking additional storage of the Baseline Systems after the Initial Storage Period;
- 1.1.3 “**Affiliate**” means any other entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under the common control with the Party in question. For the purpose hereof “control” means the beneficial ownership of the majority in number of the issued equity of any entity (or the whole or majority of the entity’s assets), and/or the right or ability to directly or otherwise control the entity or the votes attaching to the majority of the entity’s issued share capital and, “**controlled**” or “**under common control**” shall have a similar meaning;
- 1.1.4 “**Applicable Interest Rate**” means the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment;
- 1.1.5 “**Base Date**” means the date 14 (fourteen) days prior to the date for submission of the Supplier’s tender;
- 1.1.6 “**Baseline System**” means a solar water heater system with a capacity ranging from 80 (eighty) litres to 150 (one hundred and fifty) litres, together with any and all associated components and equipment, and that complies with the minimum technical standards, specifications and requirements set out in the Technical Compliance and Functionality Criteria in clause 38.4 of *Part II (Bidding Rules, Compliance and Functionality Criteria)* and which is described more fully in Appendix 3A (*Baseline System Technical Specification*) of Volume 3 (**Technical Requirements and Returnable Appendices**);

- 1.1.7 “**Batch**” means a portion of the total Goods ordered under a Purchase Order, which are to be delivered separately and for which a separate Time for Delivery is specified;
- 1.1.8 “**Business Day**” means every day other than a Saturday, Sunday or official public holiday in the Country;
- 1.1.9 “**Certificate of Completion**” means the certificate to be issued under and in terms of the Installation Services Agreement, certifying the complete and successful installation of a Baseline System;
- 1.1.10 “**Corrupt Act**” means any offence in respect of corruption or corrupt activities contemplated in the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;
- 1.1.11 “**Collusive Practice**” means any agreement (which includes without limitation a contract, arrangement or understanding, whether or not legally enforceable) or concerted practice (being co-operative, or coordinated conduct between firms, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement) between two or more persons (other than between the Supplier and its Affiliates), regardless of any technological, efficiency or other pro-competitive gains, involving any of the following:
- 1.1.11.1 the direct or indirect fixing of a purchase or selling price or any other trading condition;
- 1.1.11.2 the division of markets by allocating customers, suppliers, territories, or specific types of goods or services; or
- 1.1.11.3 collusive tendering;
- 1.1.12 “**Conditions**” means these Conditions of Contract including its Schedules;
- 1.1.13 “**Confidential Information**” means any and all information, including data, reports, records, schedules, correspondence, notes, compilations, studies, whether in writing, in electronic format or otherwise, relating to or in any

way connected with the Purchaser or any of its actual or proposed business activities including, without limitation the Project and/or this Supply Agreement, other than any such information which:

- 1.1.13.1 at the time of disclosure to the Supplier or thereafter, without breach of this Supply Agreement by the Supplier, enters into the public domain; or
- 1.1.13.2 was already in the possession of the Supplier at the time of disclosure (evidenced by written records in existence at that time);
- 1.1.14 “**Commencement Date**” means the date stated in the Purchase Order Schedule or, if no date is stated therein, the Purchase Order Date;
- 1.1.15 “**Cost**” means proven cost and expense reasonably and necessarily incurred by the Supplier in the particular circumstances;
- 1.1.16 “**Country**” means the Republic of South Africa;
- 1.1.17 “**Delivery**” means that the Goods ordered under a Purchase Order are ready and made available for collection by Transporters at the Delivery Place and “**Delivered**” shall have a corresponding meaning in relation to the Goods;
- 1.1.18 “**Delivery Certificate**” means the written certificate to be issued by the Purchaser’s Representative under **clause 3**;
- 1.1.19 “**Delivery Place**” means the place or area at which or on which the Goods are to be offloaded and/or stored pending collection by Transporters as stated in the Purchase Order Schedule or as otherwise notified in the Notice to Deliver;
- 1.1.20 “**Designated Identified Areas**” means the place/places at which the Goods will be installed under and in terms of an Installation Services Agreement;
- 1.1.21 “**End User**” means the owner of a residence in which a Baseline System is installed;

1.1.22 **“Event of Force Majeure”** means an exceptional event or circumstance (other than lack of funds):

1.1.22.1 which is beyond the control of the affected Party (as defined in **clause 17.1**),

1.1.22.2 which such Party could not reasonably have provided against before entering the Supply Agreement;

1.1.22.3 which having arisen, such Party could not reasonably have overcome or avoided; and

1.1.22.4 which is not substantially attributable to the other Party; and which includes, but is not limited to:

1.1.22.4.1 war, hostilities (whether war be declared or not), invasion, act of foreign enemies;

1.1.22.4.2 rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;

1.1.22.4.3 riot, commotion, disorder, strike or lockout by persons other than the Supplier’s personnel and other employees of the Supplier and its sub-suppliers;

1.1.22.4.4 munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Supplier's use of such munitions, explosives, radiation or radio-activity; and

1.1.22.4.5 natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

1.1.23 **“Event of Insolvency”** means any one of the following events:

1.1.23.1 the Supplier is, or could be deemed, in terms of any law to which it is subject or by any court having jurisdiction over it to be, insolvent or

- unable to pay its debts;
- 1.1.23.2 the Supplier begins negotiations or takes any other step with a view to generally deferring, re-scheduling or otherwise re-adjusting all or a material part of its indebtedness or proposes or makes a general scheme, arrangement or composition with or for the benefit of its creditors or a moratorium is proposed or agreed in respect of or affecting all or a material part of its indebtedness;
- 1.1.23.3 the Supplier makes an application for its provisional or final liquidation or seeks the appointment of a judicial manager;
- 1.1.23.4 a court of competent jurisdiction grants an order placing the Supplier under provisional or final liquidation or judicial management;
- 1.1.23.5 an application or other legal process is issued seeking an order placing the Supplier under provisional or final liquidation or judicial management, except for so long as such application or other legal process is being contested in good faith and by appropriate means or except for the purpose of reconstruction, amalgamation, reorganisation, merger or consolidation on terms which have been approved by the Purchaser;
- 1.1.23.6 the Supplier sells all or substantially all of its assets; and/or
- 1.1.23.7 a resolution is passed by the shareholders of the Supplier for the winding-up of the affected Party, including by way of a members' or creditors' voluntary winding-up;
- 1.1.24 **"Fixed Storage Cost"** the total cost including insurance to the Supplier of storing the Baseline Systems for the Initial Storage Period;
- 1.1.25 **"Goods"** means the Baseline Systems which are to be provided under this Supply Agreement read with the relevant Purchase Order;
- 1.1.26 **"Initial Storage Period"** means the anticipated period during which storage and preservation will be required as defined in **clause 2.2.5**;

- 1.1.27 **“Installation Services Agreement”** means an installation agreement concluded or to be concluded between the Purchaser and Installation Contractor for the installation of the Goods;
- 1.1.28 **“Installation Contractor”** means an installation company, close corporation and/or sole proprietor selected and appointed by the Purchaser pursuant to a separate procurement process undertaken by the Purchaser, to undertake the management of the Installation of Baseline Systems for purposes of the Social Programme of the National Water Heater Programme;
- 1.1.29 **“Installer”** an individual selected and managed by a Municipality and used by an Installation Contractor to carry out installation activities;
- 1.1.30 **“Laws”** means all laws (including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure or enactment of the government, local government, statutory or regulatory body or court);
- 1.1.31 **“Long Stop Installation Date”** means 30 (thirty) days from the issue or deemed issue of a Delivery Certificate for the Goods or a Batch (as the case may be);
- 1.1.32 **“Notice to Deliver”** means a notice from the Purchaser to the Supplier that the Purchaser is ready to take Delivery;
- 1.1.33 **“Parties”** means the Purchaser and the Supplier, and **“Party”** shall mean either of them, as the context may require;
- 1.1.34 **“Pricing Schedule”** means the schedule so named and included in the Supply Agreement Documents;
- 1.1.35 **“Project”** means the project for the Purchaser described in paragraph A of the preamble above;
- 1.1.36 **“Purchase Order”** means the written order in the form attached as **Schedule 1**, described as the Purchase Order, issued by the Purchaser to the Supplier;

- 1.1.37 “**Purchase Order Date**” means the date of issue of the Purchase Order by the Purchaser to the Supplier;
- 1.1.38 “**Purchase Order Schedule**” means the schedule so named and attached to the Purchase Order;
- 1.1.39 “**Purchase Order Value**” means in respect of each Purchase Order the price for the supply of the Goods or a Batch ordered;
- 1.1.40 “**Purchaser**” means the person named as such in the Purchase Order together with its permitted assignees and legal successors in title;
- 1.1.41 “**Purchaser’s Personnel**” means the Purchaser’s Representative and all other staff, labour and other employees of the Purchaser’s Representative and of the Purchaser; and any other personnel notified to the Supplier, by the Purchaser or the Purchaser’s Representative, as Purchaser’s Personnel;
- 1.1.42 “**Purchaser’s Representative**” means the person stated as such in the Purchaser Order Schedule and/or such substitute and/or additional persons, appointed as such by the Purchaser, from time to time, on written notice to the Supplier;
- 1.1.43 “**Purchaser’s Requirements**” means the document so named and included in the Supply Agreement, as Varied from time to time;
- 1.1.44 “**Signature Date**” means the date of signature of the Master Purchase Agreement, by the Party last signing;
- 1.1.45 “**Supplier**” means the person named as such in the Purchase Order together with its permitted assignees and legal successors in title;
- 1.1.46 “**Supplier Nominated Account**” means the bank account referenced as such in the Purchase Order Schedule or such other bank account as may be nominated by the Supplier from time to time, and approved by the

Purchaser's Representative (such approval not to be unreasonably delayed or withheld);

1.1.47 **"Supplier Representative"** means the person appointed by the Supplier from time to time to act as its representative as provided for in **clause 7.2**;

1.1.48 **"Supply Agreement"** means the Master Purchase Agreement, these Conditions of Contract and the Supply Agreement Documents;

1.1.49 **"Supply Agreement Documents"** means the documents referenced as Supply Agreement Documents in the Master Purchase Agreement;

1.1.50 **"Time for Delivery"** means, the time for delivery of the Goods (or where delivered in Batches, each Batch) stated in the Purchase Order Schedule but (where applicable) as adjusted in accordance with this Agreement from time to time;

1.1.51 **"Transporter"** means the persons appointed by the Purchaser for collection and transportation of the Goods from the Delivery Place to the Designated Identified Areas;

1.1.52 **"Variation"** means a change or amendment to the Purchaser's Requirements or other change to scope and/or nature of the Goods or Batch to be supplied under the Supply Agreement in terms of a Variation Order;

1.1.53 **"Variation Order"** means a variation order issued by the Purchaser via the Purchaser's Representative as contemplated in **clause 11**;

1.1.54 **"VAT"** means Value Added Tax as provided for in the South African Value Added Tax Act 89 of 1991; and

1.1.55 **"Warrantee Period"** means the 5 (five) year period that the Supplier has to provide in accordance with **clause 18**.

1.2 **General Interpretation**

In this Supply Agreement, unless the context requires otherwise:

- 1.2.1 the singular shall include the plural and *vice versa*;
- 1.2.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 1.2.3 any reference to a person includes any individual, body corporate, unincorporated association, or other entity recognised under any law as having a separate legal existence or personality;
- 1.2.4 references in this Supply Agreement to “clauses” and “schedules” are to clauses of, and schedules to, this Supply Agreement;
- 1.2.5 the schedules and appendices to this Supply Agreement form an integral part hereof and words and expressions defined in this Supply Agreement shall bear, unless the context otherwise requires, the same meaning in such appendices and schedules;
- 1.2.6 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in this interpretation clause, effect shall be given to it as if it were a substantive provision of this Supply Agreement;
- 1.2.7 any word and expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout this Supply Agreement;
- 1.2.8 references to a statutory provision include any subordinate legislation (including regulations) made from time to time under that provision and references to a statutory provision include that provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Supply Agreement;
- 1.2.9 references to technical standards such as shall (unless otherwise expressly stated in the circumstances in question) be construed as a reference to such standard as amended, or substituted from time to time;

- 1.2.10 any reference in this Supply Agreement to “this Supply Agreement” or “the Supply Agreement” or any other agreement, document or instrument shall be construed as a reference to this Supply Agreement or that other agreement, document or instrument as amended, varied, restated, novated or substituted from time to time;
- 1.2.11 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day;
- 1.2.12 in the event that the day for payment of any amount due in terms of this Supply Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the next Business Day;
- 1.2.13 save to the extent expressly provided for (and save, in particular, in respect of any right of an End User), no provision of this Supply Agreement constitutes a stipulation for the benefit of any person who is not a Party to this Supply Agreement;
- 1.2.14 the use of any expression in this Supply Agreement covering a process available under South African law (for example liquidation) shall, if any of the Parties to this Supply Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction;
- 1.2.15 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.2.16 the use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
- 1.2.17 the expression “inspect and test” shall include checking, examining, measuring, surveillance, auditing and/or testing as required in terms of this

Supply Agreement or as may otherwise be usual, reasonable or appropriate in the circumstances. Derivative expressions such as “inspect or test”, “inspection and testing” and the like shall have corresponding meanings;

1.2.18 no rule of construction shall be applied to the disadvantage of a Party to this Supply Agreement because that Party was responsible for or participated in the preparation of this Supply Agreement or any part of it.

1.3 **Headings**

All the headings and sub-headings in this Supply Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

1.4 **Order of Precedence**

The Supply Agreement Documents shall be taken to be mutually explanatory of one another but in the event of ambiguity, discrepancy, divergence or inconsistency in or between any of the Supply Agreement Documents they shall take precedence in the order in which they are set out in the Master Purchase Agreement.

1.5 **Recognized Good Practice**

The term “recognized good practice”, whenever used in this Supply Agreement (unless the context indicates a different intention), means the skill, care and diligence of a Supplier seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, observing and/or exercising the degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced Supplier in relation to his practices, methods, techniques, specifications and/or standards (whether in respect of design, workmanship or otherwise) engaged in the same type of undertaking under the same or similar circumstances and conditions as this Supply Agreement.

1.6 **Language**

All written and oral communications under this Supply Agreement shall be in English. Where any document is produced in any language other than English, the Party producing such document shall (at its own cost) also provide a certified

translation in English. For the purpose of this Supply Agreement, the English translation of any document shall prevail.

1.7 Notices

1.7.1 Any notices provided for under this Supply Agreement shall be in writing and shall:

1.7.1.1 be delivered personally (against receipt) as between the Supplier and the Purchaser's Representative; and

1.7.1.2 be delivered by registered mail or courier or transmitted using any of the agreed mechanisms of electronic transmission as set out or referenced in the Purchase Order Schedule.

1.7.2 When a notice is issued to a Party by the other Party or the Purchaser's Representative, a copy shall be sent to the Purchaser's Representative or the other Party as the case may be.

1.8 Joint Ventures

1.8.1 If the Supplier constitutes a joint venture, consortium or other unincorporated grouping of two or more persons:

1.8.1.1 such persons shall be deemed to be jointly and severally liable to the Purchaser for the performance of this Supply Agreement; and

1.8.1.2 the Supplier shall not alter its composition or legal status without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld).

1.9 Assignment and Sub-Contracting

1.9.1 The Purchaser may on written notice to the Supplier cede and delegate its rights and obligations under the Contract to any Affiliate of the Purchaser including but not limited to any corporatised entity comprising its present divisions and/or operations. Outside of this the Purchaser shall not cede nor

delegate its rights and obligations in terms of this Supply Agreement without the Supplier's prior written consent, which consent shall not be unreasonably withheld.

1.9.2 The Supplier shall not cede any rights nor delegate any obligations under this Supply Agreement, nor shall it sub-contract the whole or any substantial part of its obligations under this Supply Agreement, without the prior written consent of the Purchaser.

1.10 **Severance**

If any provision of this Supply Agreement is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.11 **Survival of Rights, Duties and Obligations**

Termination of this Supply Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination. Similarly the termination of this Supply Agreement shall not release a Party from any obligation which, by its nature, is intended to survive such termination (including the Suppliers undertakings in terms of **clause 16**).

1.12 **Reason for Termination**

Any and all rights of the Purchaser on or arising from the termination of this Supply Agreement shall, unless expressly otherwise provided, apply irrespective of the reason or cause giving rise to such termination.

1.13 **Governing Law**

The validity of this Supply Agreement, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa (in respect of both substantive and procedural law).

1.14 **Entire Agreement**

This Supply Agreement contains the entire agreement between the Parties in regard to the subject matter thereof. Neither Party shall be bound by or have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this Supply Agreement whether it induced the contract and/or whether it was negligent or not.

1.15 **Non-variation**

Save to the extent expressly otherwise provided for in this Supply Agreement, no variation, amendment, or consensual cancellation of this Supply Agreement or any provision or term hereof (including this **clause 1.15**) shall be binding or have any force or effect unless reduced to writing and signed by or on behalf of the Parties (by duly authorised representatives). Without derogating from the foregoing, no agreement or purported agreement reached at any Project review or other meeting, notwithstanding that it may be contained in any minute signed by or on behalf of the Parties, shall constitute an amendment or variation to this Supply Agreement unless and until incorporated in a formal addendum to this Supply Agreement signed by or on behalf of the Parties (by duly authorised representatives) or in a Variation Order, as may be applicable.

1.16 **Non Waiver**

1.16.1 Save to the extent otherwise expressly provided for in this Supply Agreement, no extension of time or wavier or relaxation of any of the provisions or terms of this Supply Agreement (or any agreement or other document issued or executed pursuant to or in terms of this Supply Agreement) shall operate as an estoppel against any Party in respect of any of its rights in terms of this Supply Agreement.

1.16.2 No failure by any Party to enforce any provision of this Supply Agreement shall constitute a waiver of such provisions or affect in any way such Party's rights to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.

1.17 **Costs**

Each Party shall be liable for its own costs incurred in the negotiation and preparation of this Supply Agreement.

2. SUPPLY, DELIVERY, OWNERSHIP AND RISK

2.1 **Goods & Supply**

2.1.1 The Goods shall be fit for purpose and shall satisfy, comply with and meet, as the case may be, the requirements of:

2.1.1.1 the Purchaser's Requirements;

2.1.1.2 all Laws which are applicable to the Goods and/or use thereof; and

2.1.1.3 the technical standards stated in the Purchaser's Requirements and those of the Country which apply to the Goods.

2.1.2 The Supplier represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized and financed to supply the Goods

and remedy defects in terms of this Supply Agreement.

2.1.3 The Supplier shall:

2.1.3.1 commence the design and manufacture of the Goods as soon as reasonably possible after the Commencement Date and shall proceed with due expedition and without delay;

2.1.3.2 supply the Goods and perform its obligations under this Agreement (i) with due care and skill and in a proper and workmanlike manner, (ii) in compliance with the Laws of the Country and any other jurisdiction which apply to the Goods, (iii) in compliance with the technical standards stated in the Purchaser's Requirements and those of the Country which apply to the Goods and (iv) in accordance with recognised good practice;

2.1.3.3 use only new materials and equipment in manufacturing the Goods (and reconditioned materials and/or equipment shall not be regarded as new under any circumstances); and

2.1.3.4 not use materials for manufacture of or incorporation into the Goods which are generally recognised as being deleterious or unsuitable or otherwise to be avoided in any case for the purpose for which they are intended.

2.2 **Storage and Preservation**

2.2.1 The Supplier shall issue a Manufacture Complete Notice to the Purchaser when the manufacture and/or fabrication of the Goods or a Batch have been completed and the Goods or a Batch are ready for storage or Delivery. Such notice shall be issued by the Supplier to the Purchaser's Representative not less than 3 (three) Business Days prior to the forecast date of each Delivery of the Goods or a Batch;

2.2.2 Upon issuing the Manufacture Complete Notice the Supplier shall allow the Purchaser, Purchaser's Representative and/or the Purchaser's Personnel reasonable access (as required by them) to the places of storage to allow for

the Goods or Batch and storage conditions to be inspected and to begin the process for the issue of a Manufacture Complete Certificate under **clause 3.1**;

2.2.3 Until such time as the Purchaser issues a Notice to Deliver, the Supplier shall pack, store and preserve the Goods or Batch in accordance with recognised good practice (as well as requirements for storage and preservation set out in the Purchaser's Requirements (if any)), so as to prevent any loss, damage or deterioration of the Goods and ensure continued compliance with **clause 2.1.1** and readiness to Deliver;

2.2.4 If Delivery is delayed by the late issue of a Notice to Deliver, the Supplier shall, subject to **clause 13** be entitled to an extension to the Time for Delivery for the period by which Delivery is delayed beyond the Time for Delivery by reason of the late issue of the Notice to Deliver. Such entitlement shall however exclude any delay in the issue of a Notice to Deliver which is attributable to a delay by the Supplier in the issue of a Manufacture Complete Notice or other failure or delay on the part of the Supplier.

2.2.5 Should a Notice to Deliver not be issued within 90 (ninety) days of the issue or deemed issue of a Manufacture Complete Certificate ("**Initial Storage Period**") then;

2.2.5.1 the Supplier shall be entitled to the Additional Storage Cost, for continued storage and preservation from the expiry of the Initial Storage Period up until the date on which the Notice to Deliver is issued. Save as provided for above, the costs for storage and preservation under this clause, is deemed included in the relevant Purchaser Order Values for the Goods concerned; and

2.2.5.2 the Supplier shall be entitled to payment of the portion of the relevant Purchase Order Value that is otherwise payable on Delivery of the Goods or Batch, (as the case may be) notwithstanding that actual Delivery has not taken place.

2.3 **Delivery**

2.3.1 Upon receipt of a Notice to Deliver the Supplier shall Deliver the Goods or

Batch (as the case may be), as soon as possible, but in any case, by no later than, the Time for Delivery.

2.3.2 Following Delivery the Supplier shall, where required by the Purchaser's Representative, supervise the Transporters in the packing and loading of Transporter's vehicles at the Delivery Place.

2.4 Ownership & Risk

2.4.1 Each of the Goods shall become the property of the Purchaser, free of all liens and encumbrances, on the earlier of the following:

2.4.1.1 When the Supplier receives the payment for manufacture and storage of the Goods contemplated in **clause 4.2.1.1**

2.4.1.2 when the Supplier receives payment for the Delivery of the Goods in accordance with **clause 4.2.1.2**; or

2.4.1.3 Delivery of such Goods.

2.4.2 Without derogating from **clause 2.4.1** the Purchaser shall, before making payment of any amount to the Supplier for any Goods, be entitled to require the Supplier to provide a certificate signed by the Supplier (and the applicable subcontractor, if any) confirming that ownership in such Goods has passed to the Supplier and/or will pass to the Purchaser, free of all liens and/or other encumbrances, against payment. The Purchaser shall be entitled to withhold payment of any such amount pending the receipt of such certificate.

2.4.3 The risk in the Goods shall (without relieving the Supplier from any guarantee or warranty undertaking or other responsibility or obligation in terms of this Supply Agreement) pass to the Purchaser on Delivery to the Delivery Place.

3. CERTIFICATES

3.1 Manufacture Complete Certificate

3.1.1 Upon receipt of a Manufacture Complete Notice for Goods, the Purchaser's Representative or other member of the Purchaser's Personnel, designated by the Purchaser ("**Designated Person**") may inspect the Goods and storage conditions. If satisfied that the Goods are properly manufactured and can be readily stored or Delivered, the Designated Person shall issue a Manufacture Complete Certificate certifying the date on which Goods have been manufactured and are ready for storage or Delivery.

3.1.2 If the Designated Person is not so satisfied, it will notify the Supplier of any defects or damage in the Goods or unsuitability of the storage conditions, which must be promptly remedied by the Supplier at its own cost to ensure compliance with **clause 2.1.1**. The Supplier shall then issue a new Manufacture Complete Notice and the procedure under this **clause 3.1** will be repeated until a Manufacture Complete Certificate is issued subject to **clause 3.1.3**.

3.1.3 If the Designated Person does not issue a notice contemplated in **clause 3.1.2** or a Manufacture Complete Certificate within 30 (thirty) days of a Manufacture Complete Notice the Manufacture Complete Certificate shall be deemed issued.

3.2 **Delivery Certificate**

3.2.1 Upon Delivery of the Goods or a Batch (as the case may be) the Purchaser's Representative or other member of the Purchaser's Personnel, designated by the Purchaser ("**Designated Person**") may inspect the Goods. If the Designated Person considers that the Goods are in the condition required under the Supply Agreement and on submission by the Supplier to the Purchaser of delivery notes in respect of such Goods delivered, verified and signed off by the Purchaser's Representative, the Designated Person shall issue a certificate to the Supplier certifying the date of such Delivery.

3.2.2 If the Designated Person is not so satisfied, it will notify the Supplier of any defects or damage in the Goods, which must be promptly remedied by the Supplier at its own cost to ensure compliance with **clause 2.1.1**, the Supplier will then notify the Purchaser when these have been attended to and the

Goods are regarded to be Delivered, the procedure in this **clause 3.2** shall be repeated until a Delivery Certificate is issued subject to **clause 3.2.3**;

3.2.3 If the Designated Person does not issue either a notice contemplated in **clause 3.2.2** or a Delivery Certificate within 30 (thirty) days of (i) Delivery or, (ii) where a notice has been given under **clause 3.2.2**, 30 (thirty) days from notice from the Supplier that defects or damage have been attended to, the Delivery Certificate shall be deemed issued.

3.3 **Effect of Certificates**

The certificates contemplated in this **clause 3** are issued for administrative purposes and accordingly shall not be regarded or construed as certifying compliance with the requirements of the Supply Agreement, shall not constitute a waiver by the Purchaser of any rights under the Supply Agreement and shall not relieve the Supplier from any responsibility, undertaking, warranty or other obligation in terms of this Supply Agreement.

4. **PURCHASE ORDER VALUE AND PAYMENT**

4.1 **Payment**

4.2 Unless otherwise agreed in the Purchaser Order;

4.2.1.1 80% (forty percent) of a Purchase Order Value for the Goods or a Batch (as the case may be) will be paid on the completion of the manufacture or fabrication and storage of Goods and provided a Manufacture Complete Certificate has been issued or deemed issued under **clause 3.1**.

4.2.1.2 10% (forty percent) of a Purchase Order Value for Goods or a Batch (as the case may be) will be paid in each case on:

4.2.1.2.1 Delivery of the Goods or Batch (as the case may be) and provided a Delivery Certificate has been issued or deemed issued under **clause 3.2**; or

- 4.2.1.2.2 in the circumstances contemplated in **clause 2.2.5.2**.
- 4.2.1.3 5% (ten percent) of the Purchase Order Value for the Goods or Batch (as the case may be) will be paid on:
- 4.2.1.3.1 the successful completion of the training and accreditation of Installers in accordance with **clause 12 AND** issuance of the Certificate of Completion under the Installation Services Agreement as notified to the Purchaser by the Supplier; or
- 4.2.1.3.2 where installation has not occurred by the Long Stop Installation Date, for reasons not attributable to any default of the Supplier or defect in the Goods or Batch.
- 4.2.1.4 10% (ten percent) of the Purchase Order Value for the Goods or Batch (as the case maybe) will be paid on
- 4.2.2 No payment will be made by the Purchaser without original approved Tax Invoices (as defined under the Value Added Tax Act no. 89 of 1991 (as amended)) submitted to the Purchaser and in accordance with the manner prescribed by the Supply Agreement.
- 4.2.3 The Supplier shall issue invoices to the Purchaser for the amounts due to it from time to time in accordance with the Purchaser's required procedures for the rendering and processing of invoices and payment of amounts due and payable to the Supplier shall be made by way of electronic money transfer directly into the Supplier Nominated Account.
- 4.2.4 Where the Purchaser disputes part of an amount invoiced to it by the Supplier, the Purchaser shall pay the undisputed portion on receipt of a credit note for the disputed portion. The credit note is required for the purpose of processing payment to the Supplier of the undisputed portion and shall not absolve the Purchaser of any liability for any amounts due and properly owing to the Supplier. The Supplier shall be entitled to record, if required by it, that the credit note is issued without prejudice to its rights in respect of the disputed portion.

4.3 **Interest**

The Supplier shall be entitled to interest, at the Applicable Interest Rate, on all amounts not paid on the due date for payment thereof.

5. **RETENTION**

5.1 The Purchaser shall withhold as retention money, 5% (five percent) of the Purchase Order Value for the Goods or Batch (as the case may be) calculated in the following manner:

5.1.1 2% (two percent) shall be withheld when the payment specified in **clause 4.2.1.1** is paid;

5.1.2 2% (two percent) shall be withheld when the payment specified in **clause 4.2.1.2** is paid;

5.1.3 0,5% (half a percent) shall be withheld when the payment specified in **clause 4.2.1.3** is paid; and

5.1.4 0,5% (half a percent) shall be withheld when the payment specified in **clause 4.2.1.4** is paid.

5.2 Such retention money will be withheld as security to ensure that the Supplier remedies any defects in the Goods, and provides the warranties contemplated in **Schedule 5**.

5.3 The retention money will be paid to the Supplier at 1% per year for every completed year of the Warranty Period . Such moneys will only be paid to the Supplier if all defects are remedied and related obligations complied with by the Supplier in accordance with the warranty in the relevant year.

6. **DOCUMENTS, INFORMATION & APPROVAL**

6.1 **Supplier's Documents & Information**

6.1.1 The Supplier shall within the Time for Delivery, prepare and submit to the Purchaser's Representative:

- 6.1.1.1 the operating & maintenance manuals and any other documents, plans or information required for:
- 6.1.1.1.1 packaging and transportation of the Goods from the Delivery Place to the Site by the Purchaser or Transporters;
- 6.1.1.1.2 the installation; testing and use of Goods (including for connections to the Goods and, to the works of the Purchaser or Installation Contractors on the Site); and
- 6.1.1.1.3 such other documents or information as may be required in terms of the Purchaser's Requirements or reasonably required by the Purchaser's Representative in connection with the Goods.

6.2 Use of Supplier's Documents

The Supplier hereby grants to the Purchaser an irrevocable royalty free non-exclusive licence to use the Supplier's documents provided under **clause 6.1** for any purpose whatsoever connected with the Goods or the Project, including for the purpose of operating, repairing, maintaining, dismantling, re-assembling and making adjustments to all parts of the Goods.

7. PURCHASER & SUPPLIER REPRESENTATIVES

7.1 The Purchaser's Representative

7.1.1 The Purchaser's Representative shall have the authority to act on behalf of the Purchaser in respect of all of the matters specifically assigned to the Purchaser's Representative in terms of this Supply Agreement, but shall not, unless expressly otherwise stated in this Supply Agreement, have the authority to relieve the Supplier of any of its obligations under this Supply Agreement.

7.1.2 The Purchaser may on written notice to the Supplier, revoke the appointment of the Purchaser's Representative and appoint a new Purchaser's

Representative.

7.1.3 Any written notice given to the Purchaser's Representative by the Supplier under this Supply Agreement shall be deemed to have been given to the Purchaser.

7.2 **Supplier Representative**

7.2.1 The Supplier shall promptly after the Purchase Order Date appoint one or more of its personnel who is fluent in the English language and is otherwise acceptable to the Purchaser's Representative as the Supplier Representative. The Supplier Representative shall at all times until the date of issue of the Delivery Certificate have authority, as necessary, to act for and to bind the Supplier and to receive instructions on behalf of the Supplier in terms of this Supply Agreement.

7.2.2 The Supplier shall be entitled, from time to time, to revoke such appointment with the approval of the Purchaser's Representative, which approval shall not be unreasonably withheld or delayed, in order to appoint a substitute Supplier Representative acceptable to the Purchaser's Representative.

7.2.3 Any instruction or notice under this Supply Agreement which is given to the Supplier's Representative shall be deemed to have been given to the Supplier.

8. **PERFORMANCE BOND**

8.1 The Performance Bond shall:

8.1.1 be issued by a registered first class South African Bank or other financial institution acceptable to the Purchaser;

8.1.2 be in the form of the pro-forma bond in **Schedule 2** or other form approved by the Purchaser;

8.1.3 be for the amount stated in the Purchase Order Schedule; and

8.1.4 remain valid and enforceable until the earlier of installation of the Goods or the Installation Long Stop Date.

8.2 If the terms of the Performance Bond specify an expiry date, and if 20 (twenty) Business Days before the expiry of the Performance Bond the Supplier has not become entitled to receive the Delivery Certificate, the Supplier shall forthwith, at its own expense, obtain an extension or renewal of the Performance Bond so as to ensure that the bond remains valid and enforceable as required by **clause 8.2.4** above. If the Supplier fails to do so, the Purchaser shall be entitled to draw down the full amount of the Performance Bond and to retain the amount *mutatis mutandis* as cash security, free of interest.

8.3 **Withholding of Payment**

The Purchaser shall be entitled to withhold any payments otherwise due to the Supplier if, and for so long as, the Supplier is in default of any of its obligations under this **clause 8**.

9. **EARLY WARNING**

9.1 The Supplier shall promptly notify the Purchaser's Representative in writing of any event, circumstance or factor which is likely to have an adverse effect on the Goods and/or meeting the Time for Delivery. In the notice the Supplier shall provide:

9.1.1 detailed particulars of the event, circumstance or factor and the potential adverse effects; and

9.1.2 proposals for the steps to be taken by the Supplier to mitigate the potential adverse effects and meet the Time for Delivery.

9.2 A notification in terms of **clause 9.1** is intended only to be an early warning of potential adverse effects and shall not constitute a notification of a claim for extension of time pursuant to **clause 13**.

10. **QUALITY ASSURANCE, INSPECTION & TESTING**

10.1 The Supplier shall, at all times from the Commencement Date to the date on which it

is entitled to receive the Delivery Certificate, implement a quality assurance system which conforms to the standard set out in the Purchaser's Requirements.

10.2 The Goods shall in the course of execution and completion, be properly inspected and tested by the Supplier at its own expense. The Supplier shall provide the Purchaser's Representative with reasonable notice, in writing, of its intention to carry out any inspection or test and the Purchaser shall, at its own expense, via the Purchaser's Personnel be entitled to attend the Supplier's inspections and tests.

10.3 Neither the carrying out of any inspection or test or the failure to carry out or attend any inspection or test by the Purchaser or the Purchaser's Personnel nor the failure by the Purchaser or the Purchaser's Personnel to discover any defect in the course of any inspection or test shall operate to relieve the Supplier of any responsibility, undertaking, warranty or other obligation in terms of this Supply Agreement, or prejudice the rights of the Purchaser thereafter to reject or require the correction of defective Goods.

11. VARIATIONS

11.1 The Purchaser may at any time in writing, via the Purchaser's Representative, instruct a change to the Goods, the quantity of Goods ordered (but subject to the maximum amount stipulated in **Clause 4.3.2** of the Contract Agreement) or the Purchaser's Requirements by way of a Variation Order. The Purchaser may, prior to issuing a Variation Order, require the Supplier to submit a proposal for the proposed change ("**Request for Variation**").

11.2 Within 5 (five) Business Days of receipt of the Request for Variation, or such extended period as may in each instance have been requested by the Supplier and approved by the Purchaser's Representative, the Supplier shall, in writing, submit to the Purchaser's Representative ("**the Variation Reply**"):

11.2.1 a description of the work to be performed and the time it will take; and

11.2.2 a lump sum quotation for the increase or decrease in the Purchase Order Value resulting from the proposed Variation and, where appropriate, its proposals for the time of payment.

11.3 If the Purchaser decides that the proposed Variation shall be carried out by the Supplier, the Purchaser's Representative will issue a Variation Order, either in accordance with the Variation Reply or on the basis that the resultant payment adjustments (if any) are to be dealt with under **clause 13**. The Supplier shall thereafter proceed to carry out the Variation Order.

11.4 The Supplier shall not make any change to the Goods or Batch except in accordance with a Variation Order.

12. TRAINING AND ACCREDITATION SERVICES

12.1 The Supplier shall be notified by the Purchaser's Representative of persons who are intended to be Installers, and require training and accreditation by the Supplier for the installation, maintenance and operation of the Goods.

12.2 The Supplier shall provide training to the potential Installers in the correct and proper installation of the Goods on Site, and shall notify to the Purchaser when a potential Installer has successfully completed the training and qualifies as an Accredited Installer to perform the installation of Goods. The Supplier shall develop and issue a training schedule to provide for monitoring of this important activity.

12.3 The training shall cover, at a minimum, installation, handling, testing, normal operation, maintenance, emergency situations and trouble-shooting in respect of the Goods.

12.4 The training procedures shall include classroom training, assisted self-study, on-the-job training and training regarding the Goods.

12.5 The Purchaser shall be responsible for the payment or reimbursement of the approved travel, accommodation and subsistence costs in respect of the training of potential Installers.

12.6 The Supplier shall certify to the Purchaser each individual who has passed the training and qualifies as an Accredited Installer and shall indicate who has not passed the training with an indication of what further training is required and furthermore an indication of whether the Supplier considers that the persons who have failed the training have the capability of being further trained to install, handle,

test or operate the Goods.

12.7 Provided that the potential Installers are notified within thirty (30) days of the Time for Delivery, the Supplier undertakes to complete such training and accredit potential Installers by the Time for Delivery.

12.8 The Supplier shall ensure that it trains and accredits five (05) Installers to install a minimum of five percent (5%) of the Goods ordered, provided that a sufficient number of potential Installers have been notified by the Purchaser.

13. EXTENSION OF TIME AND ADDITIONAL COST

13.1 Extensions of Time

13.1.1 The Supplier shall, subject to clause **13.2**, be entitled to an extension to the Time for Delivery if and to the extent Delivery of the Goods, or a Batch (as the case may be) is or will be delayed beyond the Time for Delivery by reason of any of the following events or circumstances (hereinafter a “**relevant delay event or circumstance**”):

13.1.1.1 any delay, impediment or prevention (including a breach of this Supply Agreement) by the Purchaser or for which the Purchaser is responsible under the Supply Agreement;

13.1.1.2 a change in the Laws of the Country after the Base Date (comprising (i) the enactment of any new law, (ii) the modification or repeal of any law, (iii) the commencement of any law which was not in full force and effect at the Base Date (except to the extent that such law was enacted prior to the Base Date with an intended start date after the Base Date and such law takes effect without material amendment) and/or (iv) a change in the interpretation or application of a law by judicial or other authority having the authority to interpret or apply such law);

13.1.1.3 a Variation Order (unless the extension has been agreed by the Parties in the Variation Order);

- 13.1.1.4 a declared Event of Force Majeure (pursuant to **clause 17**); and
- 13.1.1.5 a delay in issue of a Notice to Deliver contemplated in **clause 2.2.4**.
- 13.1.2 The Supplier shall not be entitled to an extension to the Time for Delivery if and to the extent:
- 13.1.2.1 Delivery would in any event have been delayed by an event or circumstance which is not a relevant delay event or circumstance;
- 13.1.2.2 the Supplier fails to take reasonable steps to mitigate the effect of the relevant delay cause; and/or
- 13.1.2.3 the event or circumstance results from the delay, default, error or negligence of the Supplier or anyone for whom the Supplier is responsible.
- 13.2 **Supplier's Claims**
- 13.2.1 If the Supplier considers itself to be entitled to any additional payment under **clause 2.2.5.1; clause 11**, or otherwise or an extension of time under or in connection with this Supply Agreement, the Supplier shall:
- 13.2.1.1 give written notice to the Purchaser's Representative, within 5 (five) Business Days after the Supplier became aware, or should reasonably have become aware of the event or circumstance giving rise to the entitlement, of its intention to claim additional compensation or extension of time under the Supply Agreement (specifying the details of the event or circumstance in the notice); and
- 13.2.1.2 submit a detailed claim to the Purchaser's Representative within a further 14 (fourteen) Calendar Days which, when reasonably considered, (i) substantiates the entitlement under and in accordance with the Supply Agreement and (ii) includes the necessary supporting particulars.

13.2.2 If the event or circumstance is of a continuing nature the Supplier shall thereafter submit monthly updates of the claim and shall submit a final claim no later than 15 (fifteen) Business Days after the effects of the event or circumstance have ceased.

13.2.3 If the Supplier fails to comply with the notice requirements of **clause 13.2.1.1** or, having complied therewith, fails to comply with the claim requirements of **clause 13.2.1.1** or **clause 13.2.1.2**, the Supplier shall not be entitled to any additional compensation or extension of time for, and the Purchaser shall be discharged from all liability in connection with, the claim and/or the event or circumstance in question.

13.3 **Purchaser Notification of Claim Entitlement**

13.3.1 The Purchaser's Representative shall within 14 (fourteen) Business Days after receipt of detailed claim (or final claim, as the case may be) required under **clause 13.2.1.2** or **clause 13.2.2**, notify the Supplier, in writing, of the Cost adjustment (and in respect of a claim under **clause 11**, Cost and profit adjustment) and extension of time, if any, which the Purchaser agrees the Supplier is entitled to ("**the Purchaser Claim Entitlement Notice**").

13.3.2 Should the Supplier dispute the additional payment and extension of time provided for in the Purchaser Claim Entitlement Notice the Supplier shall advise the Purchaser's Representative of such dispute in writing, setting out its reasons.

13.3.3 Should the Supplier fail to furnish such written notice to the Purchaser's Representative within 20 (twenty) Business Days of the date of the Purchaser Claim Entitlement Notice the Supplier shall be deemed to have accepted the Purchaser's assessment of the Supplier's Cost and extension of time entitlement in accordance with the Purchaser Claim Entitlement Notice.

14. **INSURANCE**

14.1 The Supplier shall procure and maintain in the joint names of the Supplier and Purchaser:

- 14.1.1 Goods insurance for the full replacement value of all Goods ordered (irrespective of whether they are supplied directly by the Supplier or by a subcontractor), until the issue or deemed issue of a Delivery Certificate; and
- 14.1.2 suitable public liability insurance to cover the suppliers risk until the issue or deemed issue of a Delivery Certificate.
- 14.2 The Supplier shall provide proof that the required insurances have been effected and premiums paid, including copies of the relevant policies within 5 (five) days of being requested by the Purchaser to do so.
- 14.3 Should the Supplier fail to effect the required insurance or keep the insurance in force, the Purchaser may effect such insurance and recover the costs of doing so from the Supplier. Should the Purchaser elect not to effect such insurance in these circumstances, the Supplier indemnifies the Purchaser against all loss, damages, claims, proceeding and expenses resulting from its failure to procure and/or maintain the insurance.

15. INTELLECTUAL PROPERTY RIGHTS, INDEMNITIES & LIABILITY

- 15.1 The Supplier warrants that neither the Goods nor any Batch will infringe upon or violate any trademarks, patents, copyright, inventions, designs, drawings, protectable creations and the like or other legal rights of third party, whether or not capable of registration.
- 15.2 The Supplier hereby indemnifies and holds the Purchaser, and the Purchaser's directors, officers, employees and agents, harmless from and against all claims, losses, damages, costs, expenses and/or liabilities:
- 15.2.1 arising from or which may be attributable to a breach of the warranty in **clause 15.1**; and/or
- 15.2.2 in connection with the bodily injury, death or sickness of any person whatsoever (including any employees of the Supplier and of anyone for whom the Supplier is responsible) arising in the course of or by reason of the performance of this Supply Agreement by the Supplier or otherwise arising from or which may be attributable to the Goods; provided, however, that this

indemnity shall not apply to the such extent that such bodily injury, death or sickness is attributable to the negligence, breach of contract or wilful act of the Purchaser or the Purchaser's Personnel, Installation Contractors or Transporters.

15.3 Subject to, and save as provided in **clause 15.2**, the liability of the Supplier for loss and/or damages, in terms of, in connection with and/or arising from this Supply Agreement shall be limited to direct damages and the Supplier shall not be liable to the Purchaser for any loss of profits or any indirect or consequential damages arising from or in connection with this Supply Agreement.

15.4 The Purchaser shall not be liable to the Supplier for:

15.4.1 any loss of profits; or

15.4.2 any indirect or consequential damages arising from or in connection with this Supply Agreement.

16. CONFIDENTIALITY

The Supplier undertakes to use the Confidential Information solely for the purpose of this Supply Agreement and to keep the Confidential Information at all times in the strictest of confidence.

17. FORCE MAJEURE

17.1 If any Party is or will be prevented or delayed in performing any of its obligations under this Supply Agreement by an Event of Force Majeure (in this **clause 17** the "**affected Party**"), then, as a precondition to any relief from performance of its obligations, it shall:

17.1.1 notify the other Party of the occurrence of the Event of Force Majeure immediately the affected Party becomes aware thereof; and

17.1.2 notify the other Party as soon as reasonably possible, and in any event no later than 14 (fourteen) Business Days after the affected Party becomes aware of such Event of Force Majeure, of its obligations the performance of which

are thereby delayed or prevented.

- 17.2 The affected Party shall issue further notices as reasonable from time to time (but no less frequently than weekly) to update the other Party as to the status of the notified Event of Force Majeure and its ability to perform.
- 17.3 The affected Party giving notice as provided for in **clause 17.1** shall thereafter be excused the performance or punctual performance, as the case may be, of the obligations notified for so long as the notified Event of Force Majeure continues and the affected Party shall be deemed not to be in breach of this Supply Agreement to the extent that such breach is caused by such Event of Force Majeure.
- 17.4 The affected Party shall nevertheless use all reasonable endeavours to mitigate and minimise the adverse effects of the notified Event of Force Majeure and shall keep the other Party informed of material developments relating to such Event of Force Majeure.
- 17.5 If the affected Party shall be excused from the performance or punctual performance of any material obligation under this Supply Agreement by reason of the notified Event of Force Majeure for a continuous period of **[•] ([•] Business Days)** from the date first notified under **clause 17.1**, or by reason of any notified Events of Force Majeure for an aggregate period of **[•] ([•] Business Days)**, the other Party may at any time thereafter, and provided performance or punctual performance by the affected Party is still excused, terminate this Supply Agreement by notice to the affected Party. Any termination under this **clause 17.5** shall take effect 7 (seven) Business Days after the notice is given and shall be without prejudice to the existing rights of either Party in terms of this Supply Agreement.
- 17.6 If the carrying out of the Supplier's obligations under this Supply Agreement is terminated in terms of **clause 17.5** the Supplier shall be entitled to receive (in each case to the extent it has not already received payment for the same):
- 17.6.1 payment of the portion of Purchase Order Value due to the Supplier in accordance with this Supply Agreement;
- 17.6.2 the Cost of any Goods in the process of fabrication at the time the notice in terms of **clause 17.1** was issued and which, subject to any directions or

instructions or agreed steps for minimisation of the effects of the notified Event of Force Majeure pursuant to **clause 17.5**, were ready for despatch by the Supplier within 20 (twenty) Business Days of the date of termination of this Supply Agreement in terms of **clause 17.5**; and

17.6.3 any other Cost or liability which in the circumstances was reasonably incurred by the Supplier in expectation of delivering the Goods.

17.7 The total amount payable to the Supplier under **clause 17.6** when added to payments already received by the Supplier shall not exceed the lesser of the Purchaser Order Value as at the date of termination in terms of **clause 17.5** and the amount calculated in accordance with **clause 17.6**.

18. WARRANTY FOR THE GOODS

The Supplier shall provide a separate signed warranty for each Baseline System comprising the Goods in favour of the End User, in the form attached as **Schedule 5**.

19. WARRANTY AND UNDERTAKING IN RESPECT OF CORRUPT ACTS AND COLLUSIVE PRACTICES

19.1 Anti-Corruption Warranty and Undertaking

19.1.1 The Supplier warrants that, in entering into this Supply Agreement it has not committed any Corrupt Act and undertakes in the performance of this Supply Agreement not to commit any Corrupt Acts.

19.1.2 The Supplier shall notify the Purchaser of the occurrence (and details) of any Corrupt Act promptly on the Seller becoming aware of its occurrence.

19.2 Anti-Collusion Warranty

19.2.1 The Supplier warrants that neither it nor any of its Affiliates have engaged in any Collusive Practices in connection with the matters contemplated in this Supply Agreement.

20. BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND LOCAL CONTENT

20.1 In this clause:

20.1.1 “**the Required B-BBEE Recognition Level**” means a B-BEE Recognition Level of [•]. If there is no such Required B-BBEE level, then this clause shall not apply;

20.1.2 “**Local Content and Related Obligations**” means the local content and related obligations contained in **Schedule 6**.

20.2 The Supplier:

20.2.1 confirms that it has a valid B-BBEE accreditation certificate from a listed verification agent belonging to ABVA for the Required B-BBEE Recognition Level set out in the Purchase Order Schedule;

20.2.2 shall maintain the Required B-BBEE Recognition Level until the issue of the Final Acceptance Certificate;

20.2.3 will provide the Purchaser with a valid B-BBEE accreditation certificate whenever required; and

20.2.4 shall comply with and fulfil the Contractor’s obligations in respect of the Local Content and Related Obligations.

21. TERMINATION BY THE PURCHASER

21.1 Termination for Convenience

21.1.1 The Purchaser shall have the right at any time, at its absolute discretion, without giving reasons and without notice of breach, to terminate this Supply Agreement by giving the Supplier 20 (twenty) Business Days prior written notice to that effect.

21.1.2 Upon receipt of a written notice pursuant to **clause 21.1.1**, the Supplier shall forthwith discontinue the supply of the Goods or Batches (as the case may be) under current Purchase Order/s and shall be entitled to payment in accordance with **clause 17.6** as if such termination was under **clause 17.5**.

21.2 **Termination for Breach or Insolvency**

21.2.1 If the Supplier commits a breach of this Supply Agreement, the Purchaser may give written notice to the Supplier requiring it to make good such failure and remedy the same.

21.2.2 The Purchaser shall be entitled at its sole discretion and without prejudice to any of its other rights in law either to claim specific performance of the terms of this Supply Agreement or terminate this Supply Agreement immediately by written notice to the Supplier if:

21.2.2.1 the Supplier fails within 5 (five) Business Days after the date of receipt of the Purchaser's written notice under **clause 21.2.1**, to commence and thereafter to proceed, continuously and with all due diligence, to remedy such breach;

21.2.2.2 the Supplier repudiates this Supply Agreement;

21.2.2.3 the Supplier attempts or purports to cede any of its rights or delegate any of its obligations under this Supply Agreement or sub-contracts without the prior written consent of the Purchaser where such consent is required under the Supply Agreement; and/or

21.2.2.4 the Supplier suffers or incurs an Event of Insolvency.

21.2.3 Any termination in terms of this **clause 21.2** shall be without prejudice to the Purchaser's other rights, powers and remedies in terms of this Supply Agreement or in law. Without derogating from the foregoing the Purchaser shall, pending the determination of damages for which the Supplier is liable to the Purchaser, be entitled to withhold payment of any amounts otherwise due to the Supplier in connection with the Supply Agreement.

21.3 **Termination for Corrupt Acts and Collusion**

- 21.3.1 If the Supplier, any shareholder, any Affiliate of any one of them (or anyone employed by or acting on behalf of any of them) admits to or is convicted of having committed any Corrupt Act or Collusive Practices in relation to the Project or in respect of this Supply Agreement then the Purchaser may terminate this Agreement with immediate effect by giving written notice to the Supplier
- 21.3.2 Without prejudice to its other rights or remedies under this clause, the Purchaser shall be entitled to recover from the Supplier, the greater of:
- 21.3.2.1 the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act or Collusive Practice; and
- 21.3.2.2 any damages sustained by the Purchaser in consequence of any breach of **clause 19** by the Supplier and the resultant termination.
- 21.3.3 Nothing contained in this **clause** or **clause 19** shall prevent the Supplier, shareholder, Affiliate or subcontractor from paying any proper commission or bonus to its employees within the agreed terms of their employment.

22. PURCHASER BREACH AND TERMINATION BY SUPPLIER

- 22.1 The Supplier shall be entitled to terminate this Supply Agreement on written notice to the Purchaser, if:
- 22.1.1 the Purchaser commits a material breach of its obligations under this Supply Agreement and fails to remedy the same within 14 days of notice to remedy from the Supplier; or
- 22.1.2 the Purchaser fails to pay an amount due under this Supply Agreement by the date for payment thereof and fails to make good such failure within 20 (twenty) Business Days of receipt of written notice from the Supplier requiring the breach to be remedied.
- 22.2 If this Supply Agreement is terminated under **clause 22.1**, the Supplier shall be entitled to payment of Cost and an additional penalty of 5% (five percent) of such Cost resulting from the termination.

23. DISPUTE RESOLUTION

- 23.1 Unless otherwise agreed by the Parties in writing, any and all disputes which are not resolved amicably within 10 (ten) Business days of notice of the dispute by either Party, shall be submitted to and determined by arbitration in accordance with this **clause 23**, which shall apply to and govern all disputes.
- 23.2 For the purpose hereof, “**dispute**” means any dispute or difference between the Parties in connection with or arising from this Supply Agreement in the widest sense, including, without limitation, any dispute or difference in connection with, or in respect of, the conclusion or existence of this Supply Agreement, the carrying into effect of this Supply Agreement, the interpretation or application of the provisions of this Supply Agreement, the Parties’ respective rights and/or obligations in terms of and/or arising out of this Supply Agreement and/or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Supply Agreement.
- 23.3 Either Party (hereinafter “**the Referring Party**”) shall be entitled to refer a dispute to arbitration, by a single arbitrator, in terms of this **clause 23** by notifying the other Party in writing of its intention to refer such dispute to arbitration (hereinafter, “**the Arbitration Notice**”). The Arbitration Notice shall state that it is given in terms of this **clause 23**.
- 23.4 Should the Parties fail to agree on the arbitrator within 7 (seven) days of receipt of the Arbitration Notice, the arbitrator shall be appointed, at the written request of either Party (which request shall be copied to the other Party and which shall emphasise the agreed expedited nature of such request), by the Chairman for the time being of Association of Arbitrators (Southern Africa) (or its successor) or its nominee.
- 23.5 Unless otherwise expressly agreed by the Parties in writing:
- 23.5.1 the arbitration proceedings shall be held at Johannesburg, Republic of South Africa and shall be conducted under the Standard Procedure Rules of the Association of Arbitrators applicable at the time the dispute arises (“**the Rules**”);

- 23.5.2 the Arbitrator is empowered to decide upon the Arbitrator's own jurisdiction, and the scope of any dispute referred to the Arbitrator and may decide on provisional or interim relief;
- 23.5.3 the arbitration proceedings shall be conducted as expeditiously as possible but the time periods provided for in Section 23(a) of the Arbitration Act 42 of 1965 (as amended) ("the Arbitration Act") shall not apply thereto; and
- 23.5.4 the award of the arbitrator shall be final and binding and not subject to appeal.
- 23.6 The provisions of this **clause 23** shall prevail to the extent of there being any conflict between the Rules and this **clause 23**.
- 23.7 Subject to the other provisions of this **clause 23**, the arbitration proceedings contemplated herein shall be held in accordance with the provisions of the Arbitration Act.
- 23.8 Without detracting from the effect (if any) of any other act taken by any Party which may affect the issue of prescription, the Parties irrevocably agree and acknowledge that the dispute in question will be deemed to have been subjected to arbitration as contemplated in section 13 of the Prescription Act No. 68 of 1969 (or, as the case may be, the corresponding provision in any amendment thereto or in any replacement legislation) when the Arbitration Notice has been delivered in terms of this **clause 23**.
- 23.9 The provisions of this clause **clause 23**:
- 23.9.1 constitute an irrevocable consent by the Parties to the arbitration and other proceedings contemplated in terms hereof and neither of the Parties shall be entitled to withdraw from the provisions of this **clause 23** or claim at any arbitration or other proceedings contemplated herein that it is not bound by hereby or such proceedings; and
- 23.9.2 are severable from the rest of the Agreement and shall remain in effect despite the Termination of this Agreement or the cancellation, invalidity or alleged invalidity of the Agreement for any reason whatsoever.

23.10

Nothing in this **clause 23** shall, however, preclude either Party from seeking urgent interim relief, not otherwise provided for herein, from a Court of competent jurisdiction, and to this end, the Parties hereby consent to the jurisdiction of the [North Gauteng High Court].

**NATIONAL SOLAR WATER HEATER PROJECT
SCHEDULE 1 (PRO-FORMA PURCHASE ORDER)**

by

THE DEPARTMENT OF ENERGY

(•) (“the Purchaser”)

to

[INSERT COMPANY NAME]

(a company registered in accordance with the laws of South Africa with registration number [•]) and with its principal office at (•) (“the Supplier”)

PURCHASE ORDER FOR SUPPLY OF BASELINE SYSTEMS FOR THE NATIONAL SOLAR WATER HEATER PROJECT

1. DEFINITIONS

In this Purchase Order, unless inconsistent with the context, words and expressions shall have the meaning assigned to them in the Supply Agreement hereinafter referred to.

2. PURCHASE ORDER

2.1 The Purchaser and Supplier have entered into a Supply Agreement, in terms of which the Purchaser may order Goods from time to time and as required from the Supplier through a Purchase Order.

2.2 The Purchaser accordingly issues this Purchase Order for the supply of the Goods. The schedule attached to this Purchase Order sets out the details of the Purchase Order.

2.3 This Purchase Order is binding on the Supplier in accordance with the terms of the Supply Agreement.

SIGNED at _____ on _____ 2015

For: **DEPARTMENT OF ENERGY**

Signatory: _____
Capacity:

**NATIONAL SOLAR WATER HEATER PROJECT
PURCHASE ORDER SCHEDULE**

Item	Supply Agreement Reference	Entry
Commencement Date	3.2.1 (Master Purchase Order)	[•]
Quantity of Goods Ordered	3.2.2 (Master Purchase Order)	[•]
Part of the Goods forming a Batch	3.2.3 (Master Purchase Order)	Batch 1: Batch 2: Batch 3:
Delivery Place	3.2.4 (Master Purchase Order)	For Goods: [•] [or] Batch 1: [•] Batch 2: [•] Batch 3: [•]
Time for Delivery of the Goods/ Batch	3.2.5 (Master Purchase Order)	For Goods: [•] [or] Batch 1: [•] Batch 2: [•] Batch 3: [•]
Purchase Order Value for Goods or each Batch	3.2.6 (Master Purchase Order)	For Goods: [•] [or] Batch 1: [•] Batch 2: [•] Batch 3: [•]
Amount of Performance Security	7 (Conditions of Contract)	10% (ten percent) of the total Purchase Order Value
Purchaser's Representative's name and address	1.1.37 (Conditions of Contract)	Name: [•] Address: [•] Fax Number: [•] Tel Number: [•]

Item	Supply Agreement Reference	Entry
		E-mail: [●]
Approved methods of delivery for Notices	1.7.1.2 (Conditions of Contract)	Facsimile and/or Email

**NATIONAL SOLAR WATER HEATER PROJECT
SCHEDULE 2 (PRO-FORMA PERFORMANCE BOND)**

PRO-FORMA PERFORMANCE SECURITY

To:

Dear Sirs

Reference No. [●] *[Drafting Note: Bank reference number to be inserted]*

Performance Bond: *[Drafting Note: Name of Supplier to be inserted]*

[●] ([●]) Limited: Supply Contract Reference: - [●] *[Drafting Note: Supplier contract reference number to be inserted]*

1. In this Guarantee the following words and expressions have the following meanings:-

1.1 “**Bank**” - means [●], [●] Branch, (Registration No. [●]); *[Drafting Note: Name of Bank to be inserted]*

1.2 “**Bank’s Address**” - means [●]; *[Drafting Note: Bank’s physical address to be inserted]*

1.3 “**Expiry Date**” - means the [●] [●] 201[●]; *[Drafting Note: anticipated date of issue of installation to be inserted.]*

1.4 “**this Guarantee**” - means this Performance Bond;

1.5 “**Guaranteed Sum**” - means the sum of [●] ([●] [●]); *[Drafting Note: Guarantee amount to be inserted]*

1.6 “**Purchaser**” - means [●];

1.7 “**Supply Contract**” - means the written agreement entered into between the Purchaser and the Supplier, on or about [●] [●] 201[●] (Supply Contract Reference No. [●]), as amended, varied, restated, novated or substituted from time to time; *[Drafting Note: signature date and Supply Contract reference number to be inserted];* and

1.8 “**Supplier**” - means [●] a [●] registered in accordance with the laws of [●] with registration number [●]. *[Drafting Note: Name and details of Supplier to be inserted].*

2. At the instance of the Supplier, we hereby confirm that we hold the Guaranteed Sum at the disposal of the Purchaser, as security for the proper performance by the Supplier of all of his obligations in terms of and arising from the Supply Contract, and hereby undertake to pay to the Purchaser, on written demand from the Purchaser received prior to the Expiry Date, any amount or amounts as may be so demanded from time to time, subject to a maximum of the Guaranteed Sum in the aggregate.
3. A demand for payment under this Guarantee shall be made in writing at the Bank's address and shall:
 - 3.1 state the amount claimed ("**the Demand Amount**"); and
 - 3.2 state that the Demand Amount is payable to the Purchaser under the Supply Contract.
4. Notwithstanding the reference herein to the Supply Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
 - 4.1 is and shall be absolute and unconditional in all circumstances; and
 - 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
 - 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
 - 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the Purchaser and the Supplier.
6. The Purchaser shall be entitled to arrange its affairs with the Supplier in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Supplier or any variation under or to the Supply Contract.

7. Should the Purchaser cede its rights against the Supplier to a third party where such cession is permitted under the Supply Contract, then the Purchaser shall be entitled to cede to such third party the rights of the Purchaser under this Guarantee on written notification to the Bank of such cession.

8. This Guarantee:

8.1 shall expire on the Expiry Date until which time it is irrevocable;

8.2 is, save as provided for in 7 above, personal to the Purchaser and is neither negotiable nor transferable;

8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and

8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____ Date _____

For and behalf of the Bank

Bank Signatory: _____

Bank Signatory: _____

Witness: _____

Witness: _____

Bank's seal or stamp

**NATIONAL SOLAR WATER HEATER PROJECT
SCHEDULE 3A (PRO-FORMA MANUFACTURE COMPLETE CERTIFICATE)**

DELIVERY CERTIFICATE

PURCHASER:
NATIONAL SOLAR WATER HEATER PROJECT
SUPPLY AGREEMENT NO:
DESCRIPTION:
SUPPLIER:
<p>NOTICE is hereby given that on the date inserted below, in the opinion of the Purchaser's Representative, the Goods or Batch have been manufactured and are ready for delivery or storage in accordance with this Supply Agreement (see clause 3.2 of the Supply Agreement).</p>
DATE:
<p>This certificate shall in no way relieve the Supplier of any responsibilities under the warranty provisions of the Supply and Construction Agreements.</p>
SUPPLIER (signature) Print Name:
PURCHASER'S REPRESENTATIVE (signature) Print Name: (Purchaser's Representative)
PURCHASER (signature) Print Name:

**NATIONAL SOLAR WATER HEATER PROJECT
SCHEDULE 3B (PRO-FORMA DELIVERY CERTIFICATE)**

DELIVERY CERTIFICATE

PURCHASER:
NATIONAL SOLAR WATER HEATER PROJECT
SUPPLY AGREEMENT NO:
DESCRIPTION:
SUPPLIER:
<p>NOTICE is hereby given that on the date inserted below, in the opinion of the Purchaser's Representative, the Goods or Batch were delivered to the Delivery Place in accordance with this Supply Agreement (see clause 3.2 of the Supply Agreement).</p>
DATE:
<p>This certificate shall in no way relieve the Supplier of any responsibilities under the warranty provisions of the Supply and Construction Agreements.</p>
<p>SUPPLIER (signature) Print Name:</p> <p>.....</p> <p>.....</p>
<p>PURCHASER'S REPRESENTATIVE (signature) Print Name: (Purchaser's Representative)</p> <p>.....</p> <p>.....</p>
<p>PURCHASER (signature) Print Name:</p> <p>.....</p> <p>.....</p>

**NATIONAL SOLAR WATER HEATER PROJECT
SCHEDULE 4 (PRICING SCHEDULE)**

Number of Baseline Systems	Unit price of each Baseline System	Fixed Daily Rate for storage beyond the Initial Storage Period
500 to 999	[•]	[•]
1000 to 1499	[•]	[•]
1500	[•]	[•]

- Unit prices contained herein are valid for a 12 (twelve) month period.

**NATIONAL SOLAR WATER HEATER PROJECT
SCHEDULE 5 (WARRANTY)**

1. Definitions:

1.1 “**End User**” means the owner of the residence in which the Baseline System is installed;

1.2 “**Purchaser**” means [the Department of Energy], an organ of state;

1.3 “**Supplier**” means [•], a company registered in accordance with the laws of the Republic of South Africa, registration number [•]; and

1.4 “**Supply Agreement**” means the written agreement entered into between the Purchaser and the Supplier, on or about [•] [•] 200[•] (Supply Contract Reference No. [•]), as amended, varied, restated, novated or substituted from time to time; [Drafting Note: signature date and Supply Contract reference number to be inserted].

2. Words and expressions defined in the Supply Agreement shall, unless otherwise defined in this Warranty Agreement or otherwise required by the context of this Warranty Agreement, have the same meanings in this Warranty Agreement as those ascribed to them in the Supply Agreement.

3. WARRANTY

3.1 The Supplier hereby provides, in favour of the End-User, a comprehensive 5 (five) year warranty running from the date stated in **clause 5**.

3.2 The Supplier accepts, for the purposes of this Warranty that the Purchaser may initiate or submit claims hereunder, as agent for an End User.

3.3 The warranty covers all defects including faulty materials and/or workmanship in manufacture on each Baseline System, as well as damage or defects caused by improper installation by Accredited Installers.

4. WARRANTY NATURE

4.1 Claims under this warranty must include presentation of original proof of purchase and subject to compliance with the service plan set out below.

4.2 The Supplier reserves the right to test the Baseline System prior to any repair/replacement under this Warranty Agreement. The Supplier reserves the right to repair before replacing the tank, solar collector or any component thereof.

5. DATE OF COMMENCEMENT

5.1 The warranty commences from the date the Baseline System is installed and a Certificate of Completion is issued notwithstanding the date of purchase or Delivery.

6. NOTIFICATION OF CLAIM

6.1 Any claim under the warranty or replacement guarantee must include details of the defect and/or damage to the hot water unit and solar collector or components in the hot water unit and solar collector.

6.2 All claims must be made within [3 months] of the detection of the defect.

6.3 Warranty claims will be attended to within [•] working hours provided that the Baseline System in question is easily and readily available for inspection by the Supplier or his representative.

6.4 The costs for assessment, removal, transport and re-installation will be included under this warranty.

6.5 On no occasions will the Supplier entertain claims that were not substantiated by legitimate invoicing or where the claim was not initiated and signed by the End User, or the Purchaser acting as agent of the End-User.

7. NORMAL / INTENDED USE

7.1 This warranty is subject to the normal use of the Baseline System and does not apply where the Baseline System or components thereof have not been used in accordance with the user manuals supplied to the End-User or for purposes for which the Baseline System was not intended.

8. INSTALLATION OF THE BASELINE SYSTEM

8.1 The installation of the Baseline System must comply with the SANS applicable to this type of product. These may change from time to time and for the purpose of this warranty, the SANS applicable at the date of installation shall apply.

8.2 The installation of the Baseline System by an unaccredited Installer is not covered under this warranty and in cases of installation failure, subject to **clause [•]**. Defects or damage caused by Accredited Installers will be covered under this warranty.

9. AREA COVERED

9.1 The warranty is valid within the Designated Identified Areas in the Republic of South Africa only.

10. ACCESS FOR REPAIRS

10.1 Where the warranty applies but the tank and solar collector is installed or located in a position that does not comply with the installation instructions or any relevant statutory requirements due to installation by an unaccredited Installer, the [Purchaser / End-user] will be responsible for the costs of:

10.1.1 The dismantling/removal & re-fitment of cupboards, doors, walls, roof structures and other special equipment; and

10.1.2 Any labour required to gain access to and to bring the system/unit to a position that complies with the installation instructions or relevant statutory requirements.

10.2 The following free access is required to perform any maintenance and/or repair work:

10.2.1 500mm unobstructed space around the safety valve;

10.2.2 500mm unobstructed space around the draincock; and

10.2.3 1 000mm unobstructed space around the cover plate.

11. WARRANTY EXCLUSIONS

11.1 The warranty does not apply to any defects or damage not due to defective factory parts/materials or factory workmanship, including but not limited to defects or damage caused by or resulting from the following:

11.1.1 acts of God, (*force majeure*);

11.1.2 Accidental damage, abuse, misuse, maltreatment, abnormal stress or strain, harsh or adverse water conditions, contamination or corrosion from particles in the water supply, excessive water pressure, excessive temperature or neglect of any kind to the hot water unit and solar collector or their components;

11.1.3 Alteration or repair of the Baseline System other than by an Accredited Supplier agent or Installer;

11.1.4 Attachment of any parts or accessories other than those manufactured or approved or provided by the Supplier;

11.1.5 Faulty or improper installation other than by an Accredited Installer of the Baseline System, including installation otherwise than in accordance with the instructions contained in the Owner's Manual and Installation Manual;

11.1.6 Usage of the plumbing connections to carry the tank will invalidate the warranty;

11.1.7 Any damage caused by usage beyond the design specifications of the particular product (i.e. not used as designed for);

11.1.8 [Any damage or defects due to the water quality in the area not being equivalent to that in major metropolitan areas (below 600ppm TDS);]

11.1.9 Where the hot water temperature and pressure relief valve, cold water expansion valve, check valve and strainer is not fitted in areas where mains

pressure is likely to exceed [400 kPa];

- 11.1.10 [Where a closed circuit heat exchanger is not filled with the correct concentration of ST-5 heat transfer fluid in accordance with instructions];
- 11.1.11 In case of excessive pressure of closed circuit system beyond the [400kPa] maximum working pressure;
- 11.1.12 Damage through commissioning of the system without having filled the tank with water first or from exposure of the solar collectors to sunlight without being filled with water/heat exchange fluid;
- 11.1.13 Burnt out elements due to inadequate electric connections;
- 11.1.14 Where closed circuit has had water addition not in accordance with water quality specifications;
- 11.1.15 Frost damage to open circuit system if installed in frost affected areas;
- 11.1.16 Any plumbing or associated parts such as pressure limiting valves, stop cocks, non-return valves, electrical switches, pumps or fuses are not covered by this warranty; and
- 11.1.17 damage resulting from the transport of Goods to the Designated Identified Area;

is not covered by this Warranty Agreement, however the Purchaser may nevertheless instruct the Supplier to repair or remedy such damage or defect resulting from the above causes, provided that the Supplier shall have an entitlement to the Costs and reasonable profit (of 5% (five percent) of the Costs) of repairing or remedying the same.

12. LIMITATION OF LIABILITY

- 12.1 The Supplier's obligations under this warranty are limited to repairing or replacing the Baseline System or component parts as required. To the extent permitted by law, the Supplier will not be liable for any loss or damage to furniture, carpets, walls,

foundations or any other consequential loss of any kind caused by a defect in the Baseline System. The Supplier will therefore, under no circumstances, be held liable for any direct or indirect or consequential loss suffered by the Purchaser, End-user or any other third party.

13. NON-VARIATION

13.1 No amendments or additions to this warranty shall be binding on [•] unless recorded in writing and signed by a duly authorized officer of [•].

14. WARRANTY CONTACT DETAILS

14.1 Contact [•] on the following details:

[•]

[•]

[•]

14.2 These contact details may be subject to change from time to time on prior written notice.

**NATIONAL SOLAR WATER HEATER PROJECT
SCHEDULE 6 (LOCAL CONTENT OBLIGATIONS)**

SECTION 3: PURCHASER'S REQUIREMENTS