

# TVET CAMPUS CONNECTION PROJECT



## **ANNEXURE 5: SABEN STANDARD TERMS AND CONDITIONS OF PURCHASE**

14 November 2018

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## 1 DEFINITIONS

- 1.1 **Agreement** means the agreement between the parties as embodied herein, together with the Purchase Order;
- 1.2 **Goods and/or Services** means the Goods and/or Services as specified on the Purchase Order;
- 1.3 **Purchaser** means the South African Broadband Education Network, a NFP and NGO set up specifically by TENET and the SCA to serve the TVET community.;
- 1.4 **Purchase Order** means the Purchase Order accompanying these Terms and Conditions of purchase, specifying the Goods and Services, the purchase price and delivery dates;
- 1.5 **Seller** means the supplier of Goods and/or Services, as specified on the Purchase Order;
- 1.6 **Shipping** means the delivery of the Goods either by the Seller directly to the Purchaser, or via a forwarding agent for conveyance by land or water, and Shipment or Shipped shall have a similar meaning; and
- 1.7 **Invoice** means, either a valid tax invoice issued in terms of and complying with the Value-Added Tax Act, 1991 (Act No. 89 of 1991) (VAT Act) of the Republic of South Africa; or a Shipping Invoice issued specifically for customs purposes, in order to properly allow for customs duties and taxes; and/or an invoice issued by a supplier who is either not a registered VAT Vendor or a foreign supplier.

## 2 INTERPRETATIONS

- 2.1 **Words.** Words in the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and shall not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.
- 2.2 **Supplier to Inform Itself.** The Supplier shall be deemed to have carefully examined all documents furnished by the purchaser and fully satisfy itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods and/or services.
- 2.3 **Ambiguities.** If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify the Purchaser in writing. The Purchaser shall then determine the correct interpretation of the Purchase Order. The Purchaser's determination shall be final and binding on the Supplier and have no effect on the Purchase Order Price.
- 2.4 **Use of Documentation.** The documents shall not be copied or used for any other purpose than the supply of the Goods, and/or Services without the prior written approval of the Purchaser.
- 2.5 **Confidentiality.** Any information provided by the Purchaser to the Supplier that is noted as confidential shall not be disclosed to any third party without the prior written consent of the Purchaser. This obligation shall continue and survive the completion or termination of the Purchase Order.
- 2.6 **Waiver.** No failure or delay on the part of the Purchaser in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.
- 2.7 **Subcontracting and Assignment.** The Supplier shall neither subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Purchaser. Approval by the Purchaser to any subcontract shall not relieve the Supplier of any of its obligations under the Purchase Order.
- 2.8 **Communications.** Any notice or other communication required under the Purchase Order shall be delivered in

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writing. Verbal instructions or directions from the Purchaser shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

- 2.9 **Licenses and Laws.** The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders, rules, Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), (including all subsequent amendments) as well as the Construction Regulations issued under section 43 thereof; Health and Safety rules and regulations in force on the Site and all reasonable safety related instructions given by the Purchaser, and with the lawful requirements of Public and other Authorities in any way related to the supply of the Goods and/or services.

- 2.10 **Entire Agreement.** This document and the Purchase Order constitutes the entire agreement between the parties in regard to the subject matter thereof and neither party shall be bound by any undertaking, representation or warranty not recorded herein.

No alteration, variation, addition or agreed cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by both parties and their duly authorised signatories.

## 3 GOODS AND SERVICES

- 3.1 The Seller agrees to provide the Goods and/or Services in accordance with the Purchase Order and these Terms and Conditions.
- 3.2 By accepting a Purchase Order, the Seller will be deemed to have accepted and agreed to these Standard Terms and Conditions.

## 4 PASSING OF RISK OF LOSS AND OWNERSHIP

- 4.1 Title to the Goods and the risk of loss or damage shall pass to the Purchaser only upon formal acceptance of the goods and/or services by the Purchaser as per sign off of the Customer Acceptance Certificate (CAC).

## 5 INSPECTION AND ACCEPTANCE

- 5.1 The Purchaser shall have a reasonable time after receipt of the Goods and/or Services and before payment in order to inspect the Goods and/or Services so as to ensure conformity with the specifications of the Purchase Order.
- 5.2 If Goods and/or Services tendered by the Seller do not wholly conform to the specifications of the Purchase Order, the Purchaser shall have the right to reject such Goods and/or Services. Non-conforming Goods will be returned to the Seller at the sellers cost, and risk of loss will pass to the Seller upon the Purchaser's delivery to the Seller. Non-conforming Services will be discontinued and subjected to correction/remediation – see clauses 6 & 10 below.

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## 6 REJECTIONS

- 6.1 If any of the Goods furnished and/or Services rendered hereunder are found at any time to be defective in material or workmanship or otherwise not in conformity with the specifications of the Purchase Order, the Purchaser (in addition to any other rights which it may have under all applicable warranties or otherwise) may at its option correct or have corrected the nonconformity at the Seller's expense, or reject and return such Goods and/or discontinue such Services at the Seller's expense. Such Goods shall not be replaced and nor shall the Services be continued without authorisation from the Purchaser.
- 6.2 The Purchaser may accept, without prejudice, a portion of the Goods, and, at its option, have the Seller repair or replace any non-conforming portion of the Goods, at the Seller's expense. Items rejected shall be removed promptly by the Seller at its expense and at its risk.
- 6.3 Final acceptance shall not be conclusive with respect to latent defects, fraud or such gross mistakes as amount to fraud or with respect to the Purchaser's rights under the Warranty clause, clause 10 below.

## 7 PAYMENT

- 7.1 The Purchaser shall pay the Seller the amount agreed upon and specified in the Invoice issued against the Purchase Order.
- 7.2 Payment shall, however, not constitute acceptance of the Goods and/or Services.
- 7.3 The Seller shall, within sixty (60) days of delivery of the Goods and/or rendering of the Services, issue an Invoice to the Purchaser in respect thereof, such Invoice to reference the applicable Purchase Order.
- 7.4 The Purchaser reserves the right to return any incorrectly issued Invoice to the Seller. Unless otherwise specified on the Purchase Order, the Purchaser shall pay the invoiced amount within thirty (30) days after receipt of a valid Invoice at the Accounts Payable Office of the Purchaser, subject thereto that the Goods and/or Services fully complied with the specifications of the Purchase Order.

## 8 DELIVERY

- 8.1 Delivery of the Goods and/or rendering of the Services shall commence on receipt of the Purchase Order.

## 9 WARRANTY

- 9.1 The Seller warrants that it has clear title to all Goods furnished hereunder and that the same are being delivered free and clear of any encumbrances.
- 9.2 The Seller further warrants that all such Goods shall conform to the Purchaser's specifications, the requirements of the Purchase Order and approved sample or samples, if any, and that such items shall be free from defects in design, material and workmanship (collectively, the Seller's Warranty).
- 9.3 The Seller's Warranty shall remain in effect for a one (1) year period after acceptance of the Goods by the Purchaser, or for such longer period of time as the item is normally warranted.
- 9.4 Neither approval by the Purchaser of the Seller's design nor acceptance of the Goods shall release or discharge the Seller from liability for damages resulting from any breach of Seller's Warranty.

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- 9.5 If any defect, failure or other non-conformity appears, the Purchaser shall have the right to take the following actions:
- 9.5.1 To retain such defective items or portion of the Goods, in which event an equitable adjustment will be made in the price for such defective items;
  - 9.5.2 To require the Seller to repair or replace such defective items or portion of the Goods, at the Seller's sole expense, including all Shipping, transportation, and installation costs, if applicable; or
  - 9.5.3 To correct or replace such defective items or portion of the Goods with similar items and recover the total cost thereof from the Seller.
- 9.6 The aforesaid warranties shall survive acceptance and payment and shall operate in favour of the Purchaser and shall not be deemed to be exclusive, but shall be in addition to the Purchaser's other rights under the terms of the Purchase Order or under these Terms and Conditions or at law.
- 9.7 The Seller furthermore warrants that the Services will be rendered in a proper and workmanlike manner and that, as at the date of conclusion of this Agreement, it is - and will for the duration thereof remain compliant with all applicable legislation, including but not limited to the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), as well as the Construction Regulations issued under Section 43 thereof.

## 10 TERMINATION FOR BREACH

- 10.1 In the event of either of the parties (the defaulting party) committing a material breach of any of these Terms and Conditions, and remaining in default for a period of seven (7) calendar days after receipt by it of written notice from the other party (the innocent party) calling for such breach to be remedied, the innocent party shall be entitled, without prejudice to any other rights it may have in terms of this Agreement or in law, to terminate this Agreement by written notice to that effect given to the defaulting party.
- 10.2 Either party may terminate this Agreement at any time by giving to the other (the defaulting party) notice of such termination if:
- 10.2.1 the defaulting party is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation or under judicial management or under receivership or under the equivalent of any of the foregoing; or
  - 10.2.2 the defaulting party makes any arrangement or compromise with its creditors generally, or ceases, or threatens to cease, to carry on business.
- 10.3 Neither the termination nor expiry of this Agreement shall absolve the Seller from the obligation to observe the confidentiality measures and other restraints as set out herein.

## 11 GOVERNING LAW AND DISPUTE RESOLUTION

- 11.1 This Agreement and any dispute arising therefrom shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 11.2 In the event of any dispute arising from this Agreement, such dispute shall be adjudicated by a competent High Court in South Africa (unless otherwise agreed between the parties at the time by means of a written arbitration or other agreement) and for these purposes the parties agree to the exclusive jurisdiction of South

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African courts for the adjudication of such disputes.

## 12 INDEMNITY

- 12.1 The Seller shall indemnify, hold harmless, and at the Purchaser's request, defend the Purchaser, its agents and employees, from and against all claims, liabilities, damages, losses and expenses, including attorneys' fees on the scale as between attorney and client, arising out of or in any way connected with the Goods provided and/or Services rendered under this Agreement, including, without limitation, any claim by a third party against the Purchaser alleging that the Goods provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes.

## 13 PROTECTION OF THE PARTIES' NAME AND LOGOS

- 13.1 No reference may be made by either party to the other party's name or logos in any marketing or promotional material, or for any other purpose whatsoever without such party's prior written consent.

## 14 DOMICILIUM CITANDI AND EXECUTANDI AND NOTICES

- 14.1 The Parties hereto respectively choose as their *domicilium citandi et executandi* for all purposes of, and in connection with this Agreement, the physical addresses as they appear on the Purchase Order.
- 14.2 Any notice to be given hereunder shall be given in writing and addressed to the relevant party at its domicile or to such other address as shall be notified in writing by either of the parties to the other from time to time. Any notice given by registered post shall be deemed to have been served on the expiry of 7 (seven) calendar days after same is posted. Any notice delivered personally or via electronic communication shall be deemed to have been served at the time of delivery.

## 15 DEVIATION

- 15.1 In the event of any deviation between the provisions of the Purchase Order and these General Conditions of Purchase, the provisions of the Purchase Order shall prevail.