

# FOXOLUTION SYSTEMS ENGINEERING (Pty) Ltd

## TERMS AND CONDITIONS OF CONTRACT

*The following Terms and Conditions of Contract apply to all orders accepted and tenders made by Foxolution Systems Engineering (Pty) Ltd (hereafter referred to as Fox) unless otherwise agreed to in writing by both Fox and the Purchaser. Such written agreements are not retrospective and shall be structured in accordance with the laws of the Republic of South Africa and shall remain in force until all obligations flowing from such an agreement are fulfilled.*

### 1. TIME PERIOD FOR ACCEPTANCE OF TENDER:

Unless otherwise agreed and confirmed in writing by both Fox and the Purchaser, the period for acceptance of tender is deemed to terminate 30 days from the date of the initial offering.

### 2. RIGHT OF CANCELLATION:

Fox reserves the right to withdraw any formal offering within the thirty (30) day time period for the Acceptance of Tender. Such withdrawal is to be confirmed in writing between Fox and the Purchaser to be of effect. Furthermore, Fox shall retain the right to cancel the formal offering to the Purchaser in the event that the Purchaser is placed under provisional or final liquidation, judicial management or sequestration or commits any felonious/criminal act or act of insolvency as defined in the Insolvency Act, or ceases to operate as a business.

### 3. RIGHT TO RESERVATION OF OWNERSHIP:

Notwithstanding delivery to the Purchaser and/or to the Purchaser's agent and/or the Purchaser's client, and/or any third party authorised by the Purchaser to receive such goods and services on behalf of the Purchaser, Fox shall reserve the right to retain ownership of such goods until such time as both such goods and services rendered are paid for in full by the Purchaser.

### 4. TRANSFER OF RISK:

The risk of loss or damage, sequential or otherwise, shall pass in totality from Fox to the Purchaser from the time of delivery or part delivery and signed acceptance of such goods, irrespective of whether ownership of such goods has been transferred to the Purchaser or whether the goods have been delivered in full or part delivered in accordance with the initial offering.

### 5. LIABILITY EXEMPTION

Fox shall be held exempt from any liability, damage, injury, loss and/or consequential liability damage, injury or loss of any sort or kind, causal or otherwise to any person(s) and/or property(ies), originating directly and/or indirectly by any goods sold/delivered and/or any services rendered by Fox and/or its personnel, and/or its duly authorised sub-contractors due to failure of sub-standard materials and/or workmanship, acts, omissions, negligence or wilful default on their part either individually and/or collectively.

### 6. TECHNICAL DRAWINGS AND SPECIFICATIONS:

Fox reserves the right to alter/modify any of its engineering drawings/specifications of a mechanical, electrical and/or an electro-mechanical nature without prior notice. In such instances Fox absolves itself of all responsibility and liability, consequential or otherwise arising from such alterations/modifications. This absolvment is to be extended to include all hardware/software specifications.

### 7. PAYMENT:

Payment for local goods and services rendered by Fox shall be made within seven (7) days of date of invoice, or alternatively under such terms and conditions of sale that are specified on the said invoice. For imported goods, an initial 50% down payment of the final contract price including VAT (where applicable) shall accompany the Purchase Order on Acceptance thereof – see Clause 1 & 2. Payment of the outstanding balance shall be provided for by documentary credit or as otherwise agreed in writing between Fox and the Purchaser. No monies and/or discount(s) is/are to be deducted from the net invoice amount without authorized approval by Fox. All overdue accounts shall bear compound interest at 2.5 percent per month. Should payment of an account be delayed for whatever reason, then Fox reserves the right to unilaterally terminate any outstanding orders/supply agreements without prejudice or penalty. All costs/liabilities flowing from such termination(s), direct, indirect, consequential or otherwise, shall be borne by the Purchaser.

### 8. PRICE VARIATIONS:

This contract is structured on the freight, insurance, import duty, VAT, import surcharge(s), clearance fee(s), ruling exchange rate at date of quotation. Any increases thereto prior to the delivery or part delivery of the goods and services quoted herein will be for the client's account. Furthermore, as this contract is structured upon the cost of materials and ruling wage rates at date of Acceptance of Tender, any adjustments to these costs shall be added

to or subtracted from the initial contract price as the case may be. A letter from the Fox's auditors substantiating such adjustments is to be considered final and binding.

### 9. DELIVERY:

Fox accepts no liability for the late delivery of goods and services arising from situations beyond its control. This exclusion of liability is extended to include such situations as, but not limited to, strike action, lockout, war, defective material(s) late delivery by suppliers etc. Furthermore, in such situations, the Purchaser remains bound to take part delivery of goods for which the Purchaser shall pay for the same as per the initial contract price at date of Acceptance of Tender or the variable adjusted price as per Section 8 as the case may be.

### 10. INSTALLATION AND COMMISSIONING:

Installation and commissioning of plant and machinery shall only commence once reasonable site access has been provided to Fox and/or its authorized subcontractors/agents. Should Fox and/or its authorized subcontractors/agents be denied such reasonable site access due to instances beyond their control, then Fox shall be able to reclaim costs arising from such instances from the Purchaser in addition to the agreed contract price. In such instances, the Purchaser forfeits its right to claim damages, direct, indirect, consequential or otherwise arising from late delivery of goods and services detailed in Fox's original offering.

Furthermore, reasonable site access is deemed to include access to such services as an appropriate electricity and/or compressed air supply for the express purpose of installation/commissioning and is to be extended to include the provision of safe and secure working conditions in accordance with those stipulated by the OHSACT (1993) for such work.

### 11. WARRANTY:

Fox warrants that all physical products manufactured by Fox for a 12 (twelve) month period from date of delivery, against any material defect arising from substandard materials and/or workmanship during the normal use of the said product/s. The Foxolution Oxygen Generator range come standard with a 3-year unconditional worldwide warranty on parts and workmanship (molecular sieve excluded) subject to the adherence to the Foxolution scheduled maintenance program.

Should any defects be noted, then Fox, at its sole discretion, reserves the right to repair or replace the faulty product on its return to Fox. All expenses incurred in the return of the defective product Fox and its return to the Purchaser and/or the mobilization of a Fox representative to/from the Purchaser's site, will be for the Purchaser's account. All costs to repair/replace in componentry, consumables and/or labour will be for Fox's account. All other warranties arising from the purchase and re-sale of equipment not expressly manufactured by Fox, shall be passed on to the Purchaser as and where applicable along with the incumbent liabilities arising from such a transfer.

### 12. GOODS RETURN POLICY:

Goods will only be accepted for credit under the following conditions:

- (a) The goods have not been used, mounted, or tested in any way or form,
- (b) The goods are in the original packaging
- (c) The goods were purchased less than three (3) months prior to return,
- (d) Positive proof of purchase is provided,

A standard 15% handling fee will be levied on goods accepted for return, provided all 4 conditions are met. In the event that Fox do accept, at its own discretion, returns that do not comply to all 4 conditions, a handling fee of 70% will be levied. No incomplete rolls of tubing will be accepted for credit.