

**GENERAL TERMS & CONDITIONS FOR
SUPPLYING MATERIALS TO MOZAL (GTCM)**

Annexure III

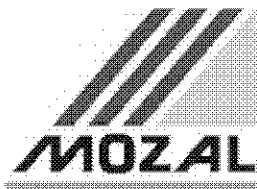
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Signed for on behalf of SUPPLIER and hereby warrants that (s)he is fully aware of the contents of and duly authorised to sign and accept this complete GTCM, consisting of 7 (seven) pages and all it Appendices, on behalf of SUPPLIER

SUPPLIER NAME:	
VENDOR NR:	
SIGNATURE:	
NAME:	
DESIGNATION:	
DATE:	
PLACE:	

All Suppliers shall be expected to fully comply with all Health, Safety & Environment legislation, rules and procedures at all times. Failure to comply to any such applicable rules may result in immediate termination of the commercial and or any other relationship between Mozal and the offending supplier.

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These terms and conditions shall apply to all PURCHASE ORDERS and Supply AGREEMENTS issued by MOZAL unless otherwise indicated.

1. DEFINITIONS

- 1.1 **AGREEMENT** – AGREEMENT is reached when the PARTIES have reached consensus, in writing, on the PRICE, the item in question, the DELIVERY DATE and the method of payment including the written AGREEMENT entered into by and between MOZAL and SUPPLIER for the execution of the AGREEMENT as well as all documents incorporated by reference, which establish the rights and obligations of the parties under the said AGREEMENT.
- 1.2 **DELIVERY DATE** – The date stipulated as such on the ORDER and/or AGREEMENT, or such other date as may be stipulated in writing by MOZAL.
- 1.3 **GTCM** – These General Terms and Conditions which are for supplying MATERIALS to MOZAL.
- 1.4 **HSE** – Health, Safety and Environment
- 1.5 **MATERIAL** – Machinery, plant, equipment, material, apparatus, and/or goods to be supplied in terms of the ORDER and/or AGREEMENT. Said material shall at all times be compliant with all applicable HSE requirements.
- 1.6 **MOZAL** – Mozal SARL together with its authorized representatives.
- 1.7 **ORDER** – PURCHASE ORDER documents, any special terms and conditions contained in the ORDER, these general terms and conditions and any specifications, data sheets, drawings, exhibits, annexures or appendices attached to the order or referred to therein as specifically forming part of the ORDER.
- 1.8 **ORDER DATE** – The date specified as such on the ORDER.
- 1.9 **PURCHASE PRICE** – Price quoted by the SUPPLIER and accepted by MOZAL.
- 1.10 **QUOTATION** – Responses by SUPPLIERS to Requests for QUOTATION by MOZAL. MOZAL will make use of a closed tender system to acquire these QUOTATIONS.
- 1.11 **SPECIALIST PROCUREMENT** – MOZAL's Procurement employee responsible for placing the specific ORDER and/or AGREEMENT.
- 1.12 **SUB-SUPPLIER** – Any person(s), firms, company or organization(s) to whom any part of the ORDER has been subcontracted by the SUPPLIER and includes the legal representatives and successors of such person(s), firm(s), company or organization(s).
- 1.13 **SUPPLIER** – Entity or person or individual to whom the ORDER and/or AGREEMENT is addressed as well as employees and any person or party that the SUPPLIER involves in the subject matter of an AGREEMENT with MOZAL. Also includes all its successors, legal representatives, assigns, liquidators and trustees.
- 1.14 **VAT** – Value added tax in South Africa and/or Mozambique, as amended from time to time.

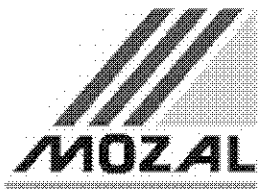
2. PURCHASE PRICE

- 2.1 Unless otherwise specifically stated in the ORDER:
- 2.1.1 All PRICES shall be fixed and firm through delivery and shall not be subject to any variations except in terms of provisions made in clause 17 – "AMENDMENTS".
- 2.1.2 All PRICES shall include delivery to specified destinations, including, but not necessarily limited to freight charges, insurance, custom duties, import surcharges, tariffs, clearance and wharfage.
- 2.1.3 All item PRICES shall reflect PRICES exclusive of VAT, VAT as a separate amount, a VAT inclusive PRICE, and the applicable VAT percentage.
- 2.1.4 The cost of appropriate packing materials and containers of whatever nature, to allow for safe and secure transportation, shall be deemed to be included in the PURCHASE PRICE and such material and/or equipment shall become the property of MOZAL upon delivery of MATERIAL, unless otherwise detailed in the ORDER, SUPPLIER shall be liable for any loss or damage due to inadequate packing.
- 2.2 ORDERS placed on a "Price to be Agreed", "Estimated Price" or "Price Subject to Adjustment" basis are issued on the condition that the PRICE is to be agreed prior to the execution of the specific ORDER.
- 2.3 No additional charges of whatever nature shall be recoverable from MOZAL unless the SUPPLIER has, prior to the execution of the ORDER, obtained the SPECIALIST PROCUREMENT's agreement in writing in relation to such additional charges.

3. ENTIRE AGREEMENT

- 3.1 The ORDER constitutes the entire AGREEMENT between the parties and all previous negotiations, proposals and writings pertaining to the ORDER or the subject matter thereof are superseded hereby.
- 3.2 Provisions in the SUPPLIER'S documentation are not part of the AGREEMENT, unless specifically incorporated into the each specific ORDER, as provided for in clause 17 – "AMENDMENTS".

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4. ORDER ACKNOWLEDGEMENT

- 4.1 SUPPLIER shall acknowledge receipt of the ORDER within twenty-four (24 hours) of receipt thereof, in writing, unless otherwise agreed with the SPECIALIST PROCUREMENT.
- 4.2 Failure to acknowledge receipt of ORDER may delay or prevent payments of invoices connected to the specific ORDER.

5. EXPEDITING

- 5.1 MOZAL, or its appointed agent, shall have the right to expedite MATERIAL ordered, and MOZAL will be allowed reasonable access to the SUPPLIER or SUB-SUPPLIER'S premises for such purposes when required. SUPPLIER shall ensure that any SUB-SUPPLIER'S similarly allow for such access.

6. INSPECTION

- 6.1 MOZAL shall at all reasonable times be entitled to inspect the MATERIAL to be supplied in terms of the specific ORDER at the premises of the SUPPLIER or SUB-SUPPLIER and MOZAL will therefore be allowed reasonable access to the SUPPLIER'S or SUB-SUPPLIER'S premises for such purposes. SUPPLIER shall ensure the any SUB-SUPPLIERS similarly allow for such access.
- 6.2 MATERIAL rejected at such inspections shall be replaced, at the SUPPLIER'S cost, with acceptable MATERIAL, without any delay and, in any event, by the agreed DELIVERY DATE.
- 6.3 The fact that MOZAL inspects the MATERIAL does not release the SUPPLIER from its obligations or liabilities in terms of the ORDER.

7. PACKAGING

- 7.1 SUPPLIER shall pack all MATERIAL in such a manner as to prevent loss or damage in transit to the point of delivery specified in the ORDER, failing which; MOZAL may reject MATERIAL.
- 7.2 MATERIAL rejected by MOZAL due to inadequate packaging shall be replaced immediately by SUPPLIER, with acceptably packaged MATERIAL, if requested to do so by MOZAL.
- 7.3 Each and every individual package shall be securely bundled or packed and shall further be marked in clear, legible lettering with the MOZAL ORDER number, MOZAL ORDER item number and MOZAL Material Master number and commodity code/size as applicable. Marking shall be in at least the English language but preferably in both English and Portuguese. MOZAL reserves the right to reject accept of materials if the requis above are not fully observed.
- 7.4 Where applicable SUPPLIER shall include three copies of the Material Safety Data Sheet (MSDS) for each material inside the packaging, clearly indicating all required information in terms of acceptable standards for a MSDS.

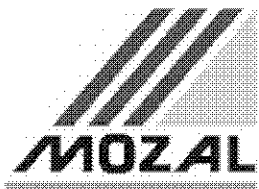
8. UNITS OF MEASURE AND LANGUAGE

- 8.1 All units of measure utilized in terms of the ORDER shall be Systeme Internationale (SI) units.
- 8.2 All communications, specifications, drawings and other documents shall be in at least the English language, but preferably in both English and Portuguese.
- 8.3 Whilst these GTCM may also be provided in the Portuguese language, in the event of a conflict between the English and Portuguese versions, the English version shall prevail.
- 8.4 MOZAL confirms that the English version of the GTCM conforms with and is true and correct translation of the Portuguese version.

9. DELIVERY

- 9.1 SUPPLIER shall deliver the MATERIAL in accordance with the directions and dates set forth in the ORDER by not later than the DELIVERY DATE, unless delayed or advanced by prior written instruction from MOZAL.
- 9.2 Should SUPPLIER determine that delays have occurred that could affect the timeous delivery of the MATERIAL, the SUPPLIER shall immediately notify MOZAL, in writing, of such delays, and the expected DELIVERY DATE.
- 9.3 SUPPLIER hereby acknowledges that time is of the essence in AGREEMENTS between the SUPPLIER and MOZAL, and that should delivery of the MATERIAL be delayed beyond the DELIVERY DATE, MOZAL may, without prejudice to any other rights under the ORDER or at law, either cancel the ORDER in whole or in part, or grant an extension of time, at its sole discretion and/or recover from the SUPPLIER such damages as MOZAL may suffer as a result of such delay. Alternatively, and at the sole discretion of MOZAL, MOZAL may elect to recover a penalty in respect of any delay in delivery beyond the DELIVERY DATE, at the rate of penalty specified in the ORDER, or if no rate is specified, at 10% of the total ORDER value, excluding VAT.
- 9.4 MOZAL shall not be obliged to make payment for MATERIAL not delivered to the point of delivery specified in the ORDER.

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9.5 SUPPLIER shall obtain, and keep available, a proof of delivery document (POD), from the point of delivery stipulated in the ORDER, for all deliveries made. Failure to do this may result in delayed payment.

10. SECURITY CHECKING

10.1 The SUPPLIER shall be aware that deliveries to MOZAL are subject to security checking.

10.2 Staff on delivery vehicles should be in possession of a valid identification document or passport so that their identity may be established by MOZAL and shall submit to search of their persons.

10.3 MOZAL reserves the right to request random alcohol tests to all staff on delivery vehicles and incoming suppliers, as deemed necessary.

11. HEALTH SAFETY & ENVIRONMENT

11.1 All Suppliers shall be expected to fully comply with all Health, Safety & Environment legislation, rules and procedures at all times. Failure to comply to any such applicable rules may result in immediate termination of the commercial and/or any other relationship between MOZAL and the offending supplier.

11.2 Unless otherwise stated, the use of hazardous substances including chlorinated solvents is prohibited at MOZAL. SUPPLIER shall not supply or deliver any chlorinated solvents to MOZAL.

12. EFFECTIVE DATE

12.1 The ORDER shall take effect and an AGREEMENT, between the SUPPLIER and MOZAL, shall come into effect upon issuance of the ORDER by MOZAL (EFFECTIVE DATE).

13. ACCEPTANCE

13.1 The risk in the MATERIAL to be supplied in terms of the ORDER shall remain the SUPPLIER'S until delivery of such MATERIAL has been effected at the point of delivery stated in the ORDER, and have been accepted by MOZAL after inspection in terms of clause 6 – "INSPECTION", whereupon the risk shall pass to MOZAL.

14. INVOICING AND PAYMENT

14.1 Unless otherwise stated in the ORDER, MOZAL shall pay to the SUPPLIER the PURCHASE PRICE within 30 days after receipt of a valid invoice and after the MATERIAL is delivered and accepted by MOZAL.

14.2 MATERIAL delivered prior to the DELIVERY DATE shall, for the purpose of the ORDER, including the conditions of payment, be deemed to have been delivered on the DELIVERY DATE.

15. SUB-SUPPLIERS

15.1 SUPPLIER shall not enter into AGREEMENTS with SUB-SUPPLIERS for performance of the ORDER, in whole or in part, without first obtaining the written consent of the SPECIALIST PROCUREMENT.

15.2 The SUPPLIER shall at all times remain fully responsible for the performance of any SUB-SUPPLIER, and shall ensure that the SUB-SUPPLIER is bound to the SUPPLIER in the same way "mutatis mutandis", as the SUPPLIER is bound to MOZAL, and shall also ensure that all guarantees or other undertakings requested by MOZAL, be transferred from such SUB-SUPPLIER to MOZAL.

15.3 In the event that this ORDER is terminated for any reason, MOZAL shall, without prejudice to any of its other rights, be entitled to take over and enforce any Sub-Contracts.

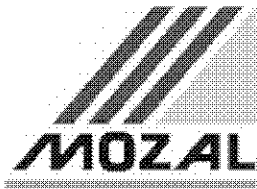
15.4 MOZAL shall be entitled (whether in terms of sub-clause 14.3 above or otherwise) to effect payments directly, to the SUB-SUPPLIER in which event the PURCHASE PRICE shall be reduced accordingly. Should MOZAL decide to make payment directly to a SUB-SUPPLIER, MOZAL shall notify SUPPLIER of its decision, and of the amount of the payment made or to be made to the SUB-SUPPLIER.

16. WARRANTY

16.1 The SUPPLIER warrants that:

16.1.1 The MATERIAL covered by the ORDER comply in all respects with the description set forth in the ORDER, are new, fit and sufficient for the purpose for which they are intended, of appropriate material, design and workmanship and free from defects. Should the MATERIAL manifest any defects (being any non-conformity with the undertaking given, either prior to, or within a period of 12 months from the DELIVERY DATE, or 12 months from the date that the MATERIAL is first used for the purposes intended (whichever is the latter) or such other period as may be stipulated in writing in the ORDER, the SUPPLIER shall, if requested by MOZAL and within the time period specified by MOZAL, and at the sole cost and expense of the SUPPLIER, repair, or at the option of MOZAL, replace the defective MATERIAL, and shall also be liable for all other costs, damages or expenses suffered by MOZAL as a result of such defect. Should the SUPPLIER, fail to fulfil its obligations in terms hereof, MOZAL shall be entitled, at the risk and expense of the SUPPLIER, and without prejudice to its other rights in terms of the ORDER, or at law, to undertake the repair, or replacement of the MATERIAL, or to have such repairs or replacement effected by a third party, and to recover the costs thereof and any other damages occasioned thereby from the SUPPLIER. The obligations of the SUPPLIER in terms of this

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Clause 15.1, shall, in respect of all repaired, replaced or re-executed MATERIAL, be extended for a further period of 12 months (or such other period as may have been agreed in writing) from the date of completion of such repair, replacement or re-execution.

16.1.2 The MATERIAL comply in all respects to required HSE standards and that the MSDS submitted with the MATERIALS (where applicable) clearly stipulates all required data.

16.1.3 It is entitled to pass title in respect of the MATERIAL.

17. YEAR 2000 COMPLIANCE

17.1 SUPPLIER shall ensure that, where applicable all MATERIAL, including but not limited to computer equipment and software and MATERIAL with computer or software components, supplied by it is year 2000 compliant.

18. AMENDMENTS

18.1 No deviation from the item description, specifications or any other requirements contained in the ORDER shall be permitted unless the responsible SPECIALIST PROCUREMENT has issued a formal ORDER AMENDMENT to such effect.

19. FORCE MAJEURE

19.1 Neither party hereto shall be liable to perform any obligation hereunder in the event and to the extent that such failure is caused by a condition of force majeure.

19.2 A condition of force majeure shall arise from any circumstances beyond the reasonable control of the affected party, which prevents or impedes the execution of the ORDER, including but not necessarily limited to the following:

19.2.1 War or hostilities.

19.2.2 Riot or civil disturbance.

19.2.3 Earthquake, flood, fire or other natural physical disaster.

19.2.4 National or regional strike.

19.2.5 Confiscation, destruction or requisition by order of any government or public authority.

19.3 Conditions that shall not constitute force majeure, unless caused by circumstances which are themselves force majeure events, include but are not limited to:

19.3.1 Shortage of labour, materials or utilities or strike at SUPPLIER'S works or premises.

19.3.2 Failure of SUB-SUPPLIER to deliver.

19.3.3 Lack of financial resources on the part of the SUPPLIER.

19.4 The party claiming force majeure shall immediately give notice in writing to the other party of the occurrence of such event, as well as specifying the impact of such event on the performance of the specific party.

19.5 MOZAL reserves the right to terminate the ORDER should an event of force majeure cause a delay or foreseeable delay in excess of thirty (30) cumulative calendar days in performance.

20. TERMINATION

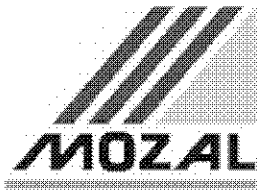
20.1 Should the SUPPLIER be in breach of any material obligations imposed in terms of the ORDER (it being recorded that the obligations of the SUPPLIER to deliver the MATERIAL timeously and to execute the delivery strictly in accordance with the ORDER shall be deemed to be material obligations) and fail to remedy such breach, or take positive steps towards remedying such breach, within 14 (fourteen) days of written notice of such breach from the non-defaulting party, or insolvency procedures have been or could be commenced by or against the SUPPLIER, then MOZAL shall be entitled, without prejudice to such other rights as MOZAL may have in terms of the ORDER or at law, to cancel the ORDER, and to recover such damages as it may have sustained as a result thereof, whether by separate action or by retention/set-off of any moneys otherwise due by MOZAL to the SUPPLIER.

20.2 MOZAL reserves the right to terminate the ORDER at any time prior to acceptance of the MATERIAL, by written notice to the SUPPLIER.

21. INDEMNITY

21.1 SUPPLIER hereby indemnifies, defends and holds harmless MOZAL from and against any liability, claim, cost or expense resulting from actual or alleged:

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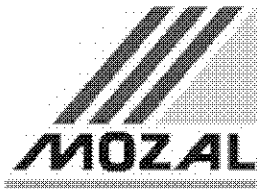


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- 21.1.1 Infringement of patent rights trademarks; copyright or other protected intellectual property rights in connection with the MATERIAL.
- 21.1.2 Death or personal injury resulting from or in connection with SUPPLIER'S performance of the ORDER.
- 21.1.3 Damage to property resulting from or in connection with SUPPLIER'S performance of the ORDER.
- 21.1.4 Public or private nuisance, pollution or contamination in connection with the performance of the ORDER.
- 21.1.5 Claims by government authorities regarding any failure of SUPPLIER to comply with any act of parliament, law, order, regulation or bylaw.
- 22. CONSEQUENTIAL DAMAGES**
- 22.1 It is agreed that neither party will be liable for special, indirect or consequential damages of any nature however arising from any breach of any of the terms and conditions of the ORDER or cancellation thereof.
- 23. ASSIGNMENT**
- 23.1 SUPPLIER shall not cede its rights, nor transfer or assign its obligations under the ORDER, in whole or in part, without first obtaining the written consent of MOZAL.
- 24. WAIVER**
- 24.1 No act of relaxation, indulgence or grace on the part of MOZAL shall in any way operate as or be deemed to constitute a waiver by MOZAL of any of its rights in terms of the ORDER or a novation thereof.
- 25. CONFIDENTIALITY**
- 25.1 In all matters concerning the ORDER an/or its general contact with MOZAL, the SUPPLIER and its employees undertake not to disclose to any third party any information whatsoever concerning matters such as MOZAL'S plant, equipment, operation, processes, technologies or commercial, financial or legal affairs.
- 26. DISPUTE RESOLUTION**
- 26.1 If any dispute arises relating to the ORDER or the GTCM or any claim for damages is made as the result of breach of any obligation resulting from the ORDER or the GTCM, the PARTIES shall use their best efforts to resolve such disputes through good faith negotiation. Each PARTY shall designate executive management and/or other senior representatives to conduct such good faith negotiations. Any dispute or claim for damages, as applicable, not resolved by such negotiations shall be resolved by arbitration as provided in sub-clause 25.2 below. While a dispute is continuing, both PARTIES are required to continue to perform their respective obligations under the ORDER.
- 26.2 Either PARTY can initiate arbitration by notice of intention to arbitrate to the other PARTY stating the dispute or claim for damages, as applicable, to be arbitrated. Upon the giving of such notice, the dispute or claim for damages, as applicable, shall be determined by an Arbitrator who is agreed upon in writing by the PARTIES. Failing such agreement within 4 (four) weeks after notice by either PARTY, the Arbitrator shall be appointed upon the application of any PARTY by the United Nations Commission on International Trade Law ("UNCITRAL"), acting under its rules for conciliation and arbitration ("the Arbitration Rules"). The Arbitrator shall be a person whose profession and experience make him qualified to consider the dispute.
- 26.3 Any Arbitrator in the conduct of proceedings before him shall not be bound by the rules of any court in any jurisdiction, but shall conduct the said proceedings according to the Arbitration Rules of the UNCITRAL (except to the extent they are inconsistent with the provisions of this clause).
- 26.4 The decision of the Arbitrator shall be given in writing as soon as reasonably possible. The decision shall be final and binding upon the PARTIES and shall not be subject to appeal to, or review by, any court or tribunal of any kind; provided however, that either PARTY may take action in any court of competent jurisdiction to enforce such decision.
- 26.5 The costs and expenses of the Arbitrator shall be paid by such PARTIES and in such proportions as the Arbitrator determines to be appropriate, and the PARTIES shall bear their own costs and expenses incurred in any such proceedings.
- 26.6 Any arbitration shall be held in Maputo, Republic of Mozambique or at such other place in the Republics of South Africa or Mozambique as may be agreed upon by those involved in the arbitration.
- 26.7 The arbitration proceedings shall be conducted in the English language.
- 27. APPLICABLE LAW**
- 27.1 The ORDER is subject to and shall be interpreted and construed in terms of the laws of MOZAMBIQUE or whichever law is agreed between the PARTIES, in writing, prior to placement of the ORDER.
- 27.2 SUPPLIER shall at all times comply with all applicable legislation.

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- 27.3 Without limiting the generality of 26.1 and 26.2 SUPPLIER shall in particular comply with all laws relating to Security, Safety and Occupational Health and Environment.
- 28. RIGHTS AND REMEDIES**
- 28.1 The provisions of the ORDER shall in no way limit or exclude any rights which MOZAL may have in terms of the applicable LAW.
- 29. SUPPLIER TERMS AND CONDITIONS**
- 29.1 Terms and conditions in SUPPLIER documentation shall be of no force or effect, unless specifically incorporated into the each specific ORDER.
- 30. DUTIES AND TAXATION**
- 30.1 Foreign SUPPLIERS and SUB-SUPPLIERS engaged, contracted and/or employed by MOZAL, shall be liable for all applicable import duties, excise duties (consumer tax), stamp duties, circulation tax, customs services fees, levies for the issue for import licenses and any other duties, surcharges, fiscal emoluments or levies, applicable to imports included in the categories referred to in all sections of the "Customs Import/Export classification List" (Pauta Aduaneira). SUPPLIERS and SUB-SUPPLIERS are urged to seek such specialist advice as they deem appropriate.
- 31. FUTURE AGREEMENTS**
- 31.1 The GTCM (as they may be amended from time to time by MOZAL and notified to the SUPPLIER) shall apply to any future oral or written ORDER and/or AGREEMENT for the supply of MATERIAL by the SUPPLIER to MOZAL, save to the extent that the GTCM are, in any future AGREEMENTS, specifically varied or excluded or are inconsistent with what is expressly agreed in any such future AGREEMENT.

End

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