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MANUFACTURE, SUPPLY AND INSTALLATION CONTRACT

Made and entered into by and between

(herein after referred to as “**the Contractor**”)
and

1. **Full names: ALL ROUND GLASS & ALUMINIUM CC represented
by Ulrich van Schoor**

Identity no: _____ (Reg. No,CK No.,ect.)

2. **Full names:**

Identity no:

(herein after referred to as “**the owner**”)

PREAMBLE

The Owner and the contractor desire to enter into a Manufacture, Supply and Installation Contract for the supply of certain products, and installation thereof.

1. DEFENITIONS

In this agreement, unless inconsistent with or otherwise indicated by the context, the following words or expressions shall have the following meanings:

- 1.1 **“Manufacture, Supply and Installation contract price”** the amount payable to the Contractor by the Owner for the works as set out in clause 4.1
- 1.2 **“drawings plan”** the plan annexed hereto and subject to clause 5.2
- 1.3 **“date of commencement”** the date on which the Contractor commences Manufacture, Supply and Installation on the owners land (such date being a date determined by the Contractor after approval of the signed acceptance of quotation)
- 1.4 **“Final completion form”** a completion form signed by the Owner certifying his satisfaction that the works have been satisfactorily and finally completed and as from which date of signature the Owner shall have no claim and the Contractor shall have no further obligation towards the Owner in terms of the supply and installation contract, save and except for the Contractor’s obligations as set out in clause 6.
- 1.5 **“Specification”** The specification including a Schedule of Finishes and \ or Provisional Amounts allowed for Finishes annexed hereto and subject to clause 5.2
- 1.6 **“Work”** the construction completion and finishing-off of Buildings, private domestic dwelling house, buildings (if any) substantially in accordance with the drawings plans and specification
- 1.7 Clause headings have been inserted for reference purposes only and shall be disregarded in the interpretation hereof.
- 1.8 Words signifying singular include plural and vice versa and words importing one gender shall include the others.

2. MANUFACTURE SUPPLY AND INSTALLATION CONTRACT

- 2.1 The parties enter into aforementioned contract at an agreed price as set out in **Annexure A (which is the signed acceptance of quotation)** on terms and conditions set out hereafter

3. POSSESSION AND OCCUPATION

- 3.1 The Contractor, his agents, servants and subcontractors shall at all times until the works have been completed and the Owner has signed and handed to the Contractor the final completion form, be entitled to enter and be present on the land for supply and installation purposes. At no time whatsoever shall the Owner be entitled to make claim, attach or in any way claim possession or retention of any of the Contractor's tools, equipment or material and by signature hereof the Owner waives all or any right which he may have acquired in this regard.
- 3.2 The Owner shall be obliged monitor progress of the works in order to enable him to make whatever arrangements which may be necessary or required by him to:
- 3.2.1 Sign for the all materials delivered on the premises or otherwise authorised personnel appointed by the owner
- 3.2.2 make payment of all or any amounts which may then be still be due by him to the Contractor.

4. SUPPLY AND INSTALLATION CONTRACT PRICE

- 4.1 The Manufacture, Supply and Installation Contract price shall be as set out in the quotation (Annexure A) and shall only be valid whereby the contractor and owner signed the aforementioned quotation
- 4.2 Progress payments shall be made:
- 4.2.1 Deposit: See quotation which shall both form part of this agreement
- 4.2.2 Second payment: _____
- 4.2.3 Final payment _____

- 4.3 Upon final payment (as calculated by the contractor) together with the signature of the Final Completion from the Owner but subject to clause 6 below, the Contractor shall be completely discharged from all its obligation in terms of his agreement.
- 4.3.1 Should the inspector referred to in clause 4.2 fail to authorise any progress payment or the final payment as contemplated in clause 4.3 **within three (3) days of a written request** by the Contractor for it to do so, the Owner shall immediately become liable of such payment and the provisions of clause 10. shall *mutates mutandis* apply upon expiry of the third (3rd) day after the date of such request.
- 4.3.2 Should there be any dispute relating to the completion of any section of the works, in particular the second and final section, then and in such event, a certificate issued by the _____, acting as an expert and not as an arbitrator, shall be sufficient and conclusive proof of the state of completion of such works.
- 4.3.3 Notwithstanding amounts having become payable to the Contractor as contemplated in clause 4.2 and 4.3 above, the Contractor may in its sole discretion and at any time claim one or more progress payments or any part thereof after the date upon which any portion or section of the works have been completed and such amounts have accrued in favour of the contractor and in so doing the Contractor shall not be deemed to have waived any of its rights.
- 4.3.4 Notwithstanding the above and the actual state of completion of any particular section or portion of the works, the parties may at any time agree that any amounts have accrued in favour of the Contractor whereupon the Contractor shall be entitled to make a claim for the payment of such amounts agreed upon.
- 4.3.5 In the event that no U-Value ratings are supplied by die requisitioned, all glass will be quoted as per the old/former regulations as laid out by the relevant bodies, and as per the drawing supplied i.e No U-Value calculations were performed

5. WORKS AND COMPLETION

- 5.1 The Owner acknowledges that he has inspected the draft drawings plan and the specification attached hereto (which shall both form part of this agreement) for the type of building, house and outbuildings, (if any), to be constructed as the works.
- 5.2 Notwithstanding the meaning of 'drawing plan' or 'specification' as defined in clause 1, the parties specifically agree that the Contractor shall be entitled to adapt or amend the drawing plan and/or the specification in any way which the Contractor considers necessary in its sole and absolute discretion:
- 5.2.1 to meet any or all the requirements of any competent authority;

- 5.3 Any such adaptation in terms of the a foregoing clause 5.2 shall be deemed to be the drawing plan and/or specification agreed upon between the parties it being specifically agreed that under no circumstances will any alterations or additions be acceptable by the Contractor at the insistence or request of the Owner once the prices have been agreed to and signed by the parties in writing.
- 5.4 The Contractor shall begin the works “commencement” within a reasonable time after signing of this agreement, and payment have been made unless:
- 5.4.1 the Owner has furnished adequate proof to the satisfaction of the Contractor that the Owner is financially able to meet his commitments in terms of this contract; and
- 5.4.2 all the required consents, approvals and authorisations have been obtained.
- 5.4.3 In the event where the client supplies the drawings to the Contractor. The Contractor shall accept the drawings as accurate and shall manufacture accordingly. Should there be any fault due to the drawings, the Contractor shall not be liable for any damages and the owner shall be liable for any additional expenses.
- 5.5 Should the completion of the works be delayed by any cause whatsoever or building industry holidays, whether statutory or generally recognised as customary in the industry, which may fall within the contract period, or in the event of any dispute, strike, lockout, squatting, invasion or any other situation causing delay, then the Contractor shall be entitled to a fair and reasonable extension of time for the completion of the works and the Owner shall not for that reason have any claim against the Contractor, whether for damages or otherwise.
- 5.6 Any unfixed materials required for the works and delivered to the land shall not become the property of the owner until they have been paid for. Excess material delivered to the land shall remain the property of the Contractor.

6. DEFECTS

- 6.1 The Owner shall before the date of completion, when requested by the Contractor to do so, attend an inspection of the section and compile a list (hereinafter referred to as the “Project Data Sheet”) signed by both the Contractor and the Owner setting out any items relating to the works requiring repair by the Contractor.
- 6.2 Upon repair of such items as reasonably require repair, the Owner shall be irrevocably deemed to have accepted that the works is in a fit, proper and workmanship state and condition in all respects and the Contractor shall be completely absolved and discharged from any further obligation towards the Owner in terms hereof.

- 6.3 Any dispute as to whether the said repairs in terms of this clause have been satisfactorily carried out, shall be referred to an expert and not as an arbitrator and his decision thereon shall be final and binding on the parties. Should the Owner fail to submit the Second List within the aforesaid period, or fail to sign the Final Completion Form on receipt, it shall be deemed that he has accepted the works in a fit, proper and workmanship state and condition in all respects and the contractor shall have no further obligation towards the Owner in terms hereof.
- 6.4 The Owner shall on demand be responsible for entering into any agreement or into any other arrangements that may be required for the supply of water and electricity to the land.
- 6.5 Where any section of the work has been partially completed, the value of the completed part shall be a fair and reasonable proportion of any progress payment and a certificate signed by any director or manager of the Contractor specifying 'the value of the work' shall be sufficient and conclusive evidence of that value.
- 6.6 The Contractor shall in its sole discretion and at its option be entitled to postpone the date of commencement of the supply and installation works for any period of time.
- 6.7 On the happening on any of the events set out in clause 5.5, the Owner shall have no claim whatsoever against the Contractor to complete the work or a claim for damages.

7. PARTY REPRESENTATIVES

Throughout the terms of this contract the owner may authorised a representative (attached Data Sheet) who shall act on the behalf of the owner whereby the owner will take full responsibly for any consequence signed on behalf of him.

8. BREACH BY THE OWNER

Should the Owner commit any breach of this Agreement and remain or persist in such breach after the expiry of a period of seven (7) days after despatch of a written Notice to him requiring him to rectify or remedy such breach, then the Contractor shall be entitled, without prejudice to any other remedies that he may have at law, to:

- 8.1.1 immediately issue Summons against the Owner for specific performance and payment of the full balance of the supply and installation contract price plus interest and all other amounts still due in terms hereof; OR
- 8.1.2 cancel this agreement and to recover all damages suffered by the Contractor as a result of such cancellation; OR

- 8.1.3 immediately cancel this agreement without the intercession of any Court and whereupon all amounts paid by the owner in terms hereof will be forfeited to the contractor as its sole and exclusive property and which shall be retained by its partial 'rouwkoop' and/or as a genuine pre-estimate of liquidated damages suffered by it as a result of such cancellation. The parties agree that any amount thus retained represents a fair and reasonable estimate of the Contractor's damages.
- 8.1.4 Notwithstanding the provisions of clauses 8.1.2 and 8.1.3 hereof and without prejudice to any of the contractor's other rights, the parties agree that an amount of R _____ will be forfeited by the Owner to the Contractor as an agreed penalty should this agreement be cancelled for any reason whatsoever. The parties acknowledge and agree that such penalty is a fair and reasonable amount proportionate to the damages suffered (or which may be suffered) by the Contractor, within their contemplation and his deliberately and specifically enacted to provide for the Owner's failure or default.

9. DOMICILIUM

- 9.1 All or any notices given by either party to the other shall be deemed to have been received by and communicated to the Addressee on the date on which the same is delivered to the addressee's *domicilium citandi et executandi* by hand and the seventh (7th) day after posting thereof, if sent by prepaid registered post to the addressee's domicilium.
- 9.1.1 The Contractor chooses *domicilium citandi et executandi* at

- 9.1.2 The Owner chooses *domicilium citandi et executandi* at the address of the land or
_____ or
see Application Form which shall both form part of this agreement
- 9.1.3 Notwithstanding anything to the contrary contained herein any and all notices by the Owner to the Contractor shall only be regarded as validly effected if such notice is delivered by hand to the Contractor.

10. JURISDICTION, LEGAL COSTS AND INTEREST

- 10.1 The parties hereby consent to the jurisdiction of the Magistrate's Court pursuant to section 45 of the Magistrates' Court Act, no 32 of 1944, or any amendment thereof. The contractor shall, however have the right as its sole option and discretion to institute proceedings in any other competent court.
- 10.2 The Owner hereby agrees that should the Contractor utilize any legal services plus VAT thereon will be paid by the Owner on the scale as between attorney and own client.

11. AMENDMENTS AND CESSIONS

- 11.1 This agreement constitutes the whole and entire agreement between the parties and no stipulation, promise, warranty, representation or condition which is not recorded herein shall be binding on the Contractor unless same is reduced to writing and signed by or on behalf of both parties.
- 11.2 No alteration or variation of whatever nature of this agreement, including this clause, shall be of any force and effect unless same is reduced to writing and signed by both the Owner and the Contractor.
- 11.2.1 The Owner shall not cede, assign, make-over, alienate, pledge, burden or otherwise encumber any of his rights in terms of this agreement without the prior written consent of the Contractor first being had and obtained.

12. INDULGENCES AND WAIVERS

- 12.1.1 Any latitude, grace or extension of time which may be allowed or permitted by the Contractor to the Owner in respect of any payment provided for herein, or any matter or thing which the Owner is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of any of the Contractor's rights hereunder at any time to require strict and punctual compliance with each and every provision or term hereof or as a waiver of any of the Contractor's other rights hereunder.
- 12.1.2 The remission of any payment, grant or any extension of time or relaxation of any terms or condition or condonation of any breach hereof or any other permission, relation or indulgence which may be afforded by the Contractor to the Owner shall not be deemed to be a waiver or a novation of any of the Contractor's rights in terms hereof.
- 12.1.3 Unless expressly otherwise confirmed in writing by the Contractor, no receipt of any payment by the Contractor, will in any manner whatsoever prejudice the Contractor or be deemed to be a waiver, withdrawal or abandonment of any cancellation or right to cancellation which the Contractor may have acquired prior to such receipt.
- 12.1.4 Unless expressly otherwise confirmed in writing by the Contractor, no receipt for any payment by the Contractor, will in any manner whatsoever prejudice the Contractor or be deemed to be a waiver, withdrawal or abandonment of any cancellation or right to cancellation which the contractor may have acquired prior to such receipt.

13. INCOMPLETE DEVELOPMENT

The Owner acknowledges and agrees that he shall have no claim of whatever nature against the Contractor, its builders or any sub-contractor arising from any such building operations.

14. SPECIAL CONDITION

Signature of witness

1. _____
OWNER

Name of witness

The Owner is assisted herein insofar as may be necessary or required by his\her spouse who binds her\himself to the Contractor as surety and co-principal debtor, herby renouncing the benefits or division, excussion and cession of action.

SIGNED by the OWNER/ CONTRACTOR at _____ this ___ day of _____ 20

Witness Name:

Name of witness

2. _____
OWNER/SPOUSE

SIGNED by the OWNER at _____ this ___ day of _____ 20

Signature of witness

Name of witness

CONTRACTOR