



# TERMS AND CONDITIONS

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**TRADING TERMS AND CONDITIONS****1. INTERPRETATION**

For the purposes of these terms and conditions, unless the context otherwise indicates, the following words will have the following meanings, namely: "**these terms and conditions**" means the terms and conditions set out herein; "**day**" means a business day and, for the purpose of the calculation of any time period provided for in these terms and conditions, will include every day other than a Sunday or official public holiday in the RSA; "**delivery address**" means the address, specified in the invoice, at which the Purchaser will accept delivery of the goods; "**goods**" means materials or products as manufactured for and/or supplied to the Purchaser by the Seller and described in an invoice; "**incoterm**" means the international sales terms published by the International Chamber of Commerce in 2000; "**international transactions**" means purchases made by customers resident / registered outside of the RSA; "**local transactions**" means purchases made by customers resident / registered in the RSA; "**invoice**" means the VAT invoice describing the goods sold and delivered, incorporating these terms and conditions and, upon signature of receipt by the Purchaser, constituting documentary proof of delivery of the goods therein described; "**parties**" means the Seller and the Purchaser and "**party**" means one of them; "**RSA**" means the Republic of South Africa; "**sale**" means the sale transaction effected pursuant to the placing and acceptance of an order in terms of these terms and conditions; "**statement**" means a statement of account corresponding to the invoice; "**VAT**" means Value-Added Tax, as levied in terms of the Value Added Tax Act 89 of 1991, as amended; "**Purchaser**" means the entity identified as such in the invoice; "**Seller**" means the party identified as such in the invoice, provided that, where more than one entity is so identified, then the Purchaser enters into an agreement separately with each; "**shipping document**" means the invoice, bill of lading or other document applicable to any shipment of goods.

**2. PRICE ESTIMATES AND QUOTATIONS**

- 2.1 Any price estimate given by the Seller in respect of any quantity of goods is given exclusive of VAT and for guidance purposes only. Such estimate should not be regarded as a firm quotation, unless agreed to in writing by the Seller, in which case, such firm quotation shall be valid for a period of 7 days from the date of such written agreement. The Seller may, at any point prior to having received a purchase order pursuant to having issued a firm quotation, revoke such firm quotation without notice to the Purchaser.
- 2.2 Any advice given by the Seller in respect of material selection, or in a similar respect, is given free of charge, and the Seller does not guarantee the correctness or accuracy thereof.

**3. PLACEMENT AND ACCEPTANCE OF ORDERS**

- 3.1 The Purchaser shall by telephone, fax or e-mail convey to the Seller any order for goods, specifying therein type and quantity (including width and weight) required and any additional requirements of the Purchaser. The Seller, if it elects to accept an order, shall by telephone convey such acceptance.
- 3.2 The Purchaser hereby consents to the recording, in any manner whatsoever, by the Seller of all telephone calls pursuant to **clause 3.1**, and agrees that such recordings, in whatever media recorded, will be *prima facie* proof of the orders to which they relate.

**4. EXECUTION OF ORDERS**

- 4.1 Every reasonable endeavour will be made by the Seller to attend, within 2 days of its acceptance of an order in terms of **clause 3.1**, to the execution thereof by delivering the goods so ordered into the custody and possession of the Purchaser at the delivery address. The Seller does not, however, guarantee the foregoing, nor does it accept any responsibility whatsoever for delays in delivery which are due to acts of god (as described in **clause 13**).
- 4.2 Upon execution of any order, the Seller shall deliver to the Purchaser, together with the goods so ordered, a corresponding invoice.
- 4.3 The Seller and the Purchaser may, where necessary, each appoint agents to attend to the delivery and collection, respectively, of the goods ordered by the Purchaser.
- 4.4 Prices and discounts are those ruling at the date of dispatch of the goods and the Seller reserves the right to adjust or change any prices and/or discounts at any time and without notice.

**5. PAYMENT**

- 5.1 Payment of any statement will be made within 30 days from the date appearing thereon. Interest will be charged on any overdue amount, in respect of local transactions, at the maximum rate of interest permitted, from time to time, by the National Credit Act 34 of 2005, and in respect of international transactions, at 2% per annum above LIBOR, from due date to date of payment, calculated daily and capitalised monthly. Payment will be made in cash or by bank-guaranteed cheque, direct deposit or electronic fund transfer ("EFT"). If made by cheque, it must be hand-delivered or sent by registered post. The Seller's bank account details will appear on the invoice. Payment shall be regarded as having been received only once it clears in the Seller's bank account. Any change to the Seller's bank account details will be notified by the Seller to the Purchaser in writing. Payment made into any account not notified to the Purchaser in terms of this 5 shall not constitute payment for purposes of this agreement and the Purchaser shall remain liable to the Seller for such payment.
- 5.2 All amounts due by the Purchaser to the Seller will be paid by the Purchaser in full, free of bank exchange and without deduction or set-off.
- 5.3 The Purchaser agrees that the Seller may at any time set off against any amount/s owing by the Seller to the Purchaser any amount due and payable by the Purchaser to the Seller.

**6. OWNERSHIP AND RISK**

- 6.1 In respect of local transactions, notwithstanding delivery of any goods and transfer of possession thereof to the Purchaser, ownership therein will not pass to the Purchaser and will remain vested in the Seller until the full purchase price, together with any interest thereon, has been paid. All risk in goods will, however pass to the Purchaser upon delivery.
- 6.2 Notwithstanding 6.1, the Purchaser shall be responsible for insuring all goods being delivered to it from the moment the goods leave the possession of the seller.
- 6.3 In respect of international transactions, the transfer of possession and risk in goods and the responsibility for insuring the goods will occur in accordance with the specific incoterm reflected on the relevant invoice and or contract.

**7. BREACH AND CANCELLATION**

- 7.1 The Purchaser agrees and acknowledges that if the Purchaser breaches any term of the invoice, fails to pay any amount on due date, suffers any civil judgment to be taken or entered against it, causes a notice of surrender of its estate to be published in terms of the Insolvency Act 24 of 1936, as amended, dies and/or is placed under any order of provisional or final sequestration, winding up or judicial management, as the case may be, then all amounts owing to the Seller by the Purchaser will immediately become due and payable and the Seller may, without detracting from any other remedies which may be available to it -
- 7.2 summarily cancel any sale without notice to the Purchaser. In view of **clause 6**, the Purchaser consents to the Seller repossessing any goods delivered to, but not paid for in full by, the Purchaser, and the Purchaser hereby waives any right that it may have thereupon to issue any proceedings which do not require the proving of ownership in such goods; or
- 7.3 claim specific performance of all of the Purchaser's obligations, whether or not such obligations would otherwise then have fallen due for performance,
- in either event without prejudice to the Seller's right to claim damages.

**8. DELIVERY**

- 8.1 A delivery note signed by the Purchaser or its employee or its duly authorised agent or representative, or a shipping document signed by the shipping agent (meaning the person engaged by the Seller to ship the relevant goods), will constitute *prima facie* proof that the goods specified therein or in the corresponding invoice have been delivered to and received, in sufficient quantity and in satisfactory condition, by the Purchaser.
- 8.2 Notwithstanding anything to the contrary:
- 8.2.1 the obligation to deliver goods will in all cases be conditional upon the availability to the Seller of the goods as ordered and, in addition, timeous receipt by the Seller of all drawings, designs and/or specifications that may be required by the Seller from the Purchaser, provided that such will be deemed to have been given to the Seller for the purpose of description only and will not form part of the sale;
- 8.2.2 where no terms for the delivery of any goods have been agreed between the Seller and the Purchaser, the Seller shall make such goods available for collection by the Purchaser at the Seller's premises;
- 8.2.3 time will not be of the essence of any sale, and delivery dates will be treated only as estimates, based on the latest information available to the Seller. Under no circumstances may the Purchaser withdraw from or terminate any sale on account of any delay in delivery or have any claim of any nature whatsoever against the Seller arising from late delivery; and
- 8.2.4 the Seller shall not under any circumstances whatsoever be liable for any damages of any nature whatsoever (including, without limitation, any indirect, consequential or special damages or loss of profit) which the Purchaser may suffer as a result of any delay in the delivery of the goods as ordered.
- 8.3 The Seller shall not, under any circumstances, be liable for any defects, shortages in delivery or non-compliance of goods with the Purchaser's specifications, and the Purchaser shall not withhold any payment in respect of such goods from the Seller pending the resolution of any dispute or complaint. Subject to the foregoing, the Seller may, at its discretion, remedy any failure by replacing such goods or, should the Seller so require, by refunding all or part (as the case may be) of the contract price paid in respect thereof after return of such goods to the Seller.

**9. LIMITATION ON PURCHASES**

The Seller may in its sole and absolute discretion place a limitation on the value of any purchase/s made / to be made by the Purchaser from time to time, and shall be entitled to withdraw, amend or vary such limitation at any time without prior notice.

**10. CREDIT INFORMATION**

The Purchaser consents to the Seller making enquiries about the Purchaser's credit record with any credit reference agency or other party. The Seller may also provide credit reference agencies with regular updates regarding the manner in which the Purchaser conducts its account including any failure to comply with these terms and conditions. The Purchaser further consents to such credit reference agencies making the Purchaser's credit record and details available to other credit grantors.

**11. RETURN OF GOODS**

Returns, if accepted by the Seller at its sole discretion and upon such terms as it may prescribe, will be credited in full, less a minimum of 10% (ten percent) as a handling charge, provided that such goods are within their specified shelf life, are in a marketable condition and that the Purchaser shall be liable for all costs of delivery to the Seller's designated premises.

**12. WARRANTIES, REPRESENTATIONS AND EXCLUSION OF LIABILITY**

- 12.1 All goods supplied by the Seller are sold as is, with all their faults, without any warranties or representations, either express or implied, as to the suitability of those goods for any purpose whatsoever or their quality. The Purchaser indemnifies and holds harmless the Seller against all claims and expenses of whatsoever nature and description arising from the sale, supply and/or use of all goods, and the Purchaser undertakes to pay to the Seller on demand any such claims and all of the Seller's costs, on the attorney and own client scale, of defending such claims. It shall be the duty of the Purchaser to inspect all goods before accepting delivery.
- 12.2 Save as otherwise specifically provided herein, the Seller shall not be liable to the Purchaser or to any other person for any indirect or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever, whether in the contemplation of the parties or not, which the Purchaser may suffer as a result of any breach by the Seller of any of its obligations under these terms and conditions or out of any other cause whatsoever. The Purchaser hereby indemnifies the Seller against any claim made against the Seller by any other person in respect of any matter for which the liability of the Seller is excluded in terms of the foregoing.
- 12.3 When the Seller is required to manufacture and/or supply goods to the Purchaser's specification and/or drawings, or carries out work according to the Purchaser's instructions or those of its nominees, the Seller accepts no responsibility for the efficiency or workability of goods so manufactured and/or supplied or work so carried out, and the Purchaser shall not be entitled to return such goods and/or to request a refund of any amount paid for such goods. The Seller may require that the Purchaser pay a deposit in such instance.
- 12.4 Should the Purchaser have any complaint of whatsoever nature concerning any goods which are not manufactured or supplied by the Seller, it may require the Seller to cede to it any rights that the Seller may have against the manufacturer or supplier of those goods, but the Purchaser shall have no other claim against the Seller in respect of the matter complained of and indemnifies the Seller accordingly. The Purchaser shall not for any reason whatsoever withhold payment from the Seller in respect of such goods.

**13. ACTS OF GOD**

The Seller shall not be liable to the Purchaser, or any other party, for any inability to perform (in full or in part) and/or any delay in performing in terms of these terms and conditions should such inability or delay arise from any cause beyond the reasonable control of the Seller, which causes will include (without limitation) strikes, lockouts, labour disputes, accident, plant and/or machinery and/or equipment breakdowns, fire, explosion, theft, war (whether declared or not), invasion, acts of foreign enemies, hostilities, riots, flood, earthquake, lightning, acts of local and national government, martial law, failure or delay on the part of the Seller's suppliers of services and/or goods to meet delivery dates or by the Seller or its agents to provide the Purchaser with free issue materials or specifications or defects or changes in such specifications.

**14. LEGAL PROCEEDINGS**

- 14.1 All matters arising from or in connection with the invoice, its validity, existence or termination will be determined in accordance with the laws, for the time being, of the RSA.
- 14.2 The parties consent to the jurisdiction of the South African courts for purposes of adjudicating on all matters/disputes in connection with this agreement.
- 14.3 Any action or proceeding that the Seller may institute against the Purchaser may, at the option of the Seller, be instituted in Magistrate's Court having jurisdiction over the Purchaser, notwithstanding that the amount in dispute in such action or proceedings is beyond the ordinary jurisdiction of such court. This clause constitutes consent in writing to such Court's jurisdiction in terms of s 45(1) of the Magistrate's Courts Act 32 of 1944, as amended. Notwithstanding the foregoing, the Seller may, in its sole discretion, institute any action or proceedings in connection with the sale in any other Court of the RSA having jurisdiction. All costs, charges and expenses of any nature whatever that may be incurred by the Seller in enforcing its rights in terms of these terms and conditions, including (without limitation) legal costs on the scale of attorney and own client, collection commission and counsel's fees as per brief, irrespective of whether any proceedings have been instituted or not, will be recoverable from the Purchaser and be payable on demand.
- 14.4 A certificate issued under the hand of any director or manager of the Seller (whose appointment need not be proved) as to the existence and the amount of the Purchaser's indebtedness to the Seller at any time, as to the fact that such amount is due and payable, the amount of the interest accrued thereon and as to any other fact or matter relating to the Purchaser's indebtedness to the Seller, will be prima facie proof of the contents and the correctness thereof for the purposes of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the Purchaser in any competent court and will be valid as a liquid document for such purpose.

**15. NOTICES AND SERVICE**

The Purchaser nominates as its address for service of any court process or documents, the giving of any notice or the making of any other communication of whatsoever nature arising from the sale and/or these terms and conditions, the delivery address and fax addresses reflected on the invoice.

**16. GENERAL**

- 16.1 No relaxation or indulgence which the Seller may grant to the Purchaser will constitute a waiver of the rights of the Seller and will not preclude the Seller from exercising any rights which may have arisen in the past or which may arise in the future.
- 16.2 The invoice constitutes the sole record of the agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 16.3 No addition to or variation of the invoice will be of any force or effect unless in writing and signed by or on behalf of the Seller.
- 16.4 The Seller may, at any time, and without notice to the Purchaser, cede any right, title or interest conferred upon, or delegate any obligation assumed by, it in terms of the invoice. The Purchaser, however, cannot do so without first obtaining the Seller's written consent.
- 16.5 The invalidity and/or unenforceability of any of the provisions of the invoice will not affect the validity or the enforceability of the remaining provisions and the invalid and/or unenforceable provision/s will be severable from the invoice.
- 16.6 Each party undertakes to procure that the provisions of the invoice will be binding upon any successor-in-title and any permitted assign of such party.
- 16.7 In the invoice, unless the context clearly indicates a contrary intention, –
- 16.8 words importing any one gender will include any other gender, the singular will include the plural and vice versa and natural persons will include created entities (whether corporate or unincorporate) and *vice versa*; and
- 16.9 any reference to a party will, if such party is liquidated or sequestered, be applicable also to, and binding upon, that party's liquidator or trustee, as the case may be.

