

**STANDARD TERMS AND CONDITIONS OF SALE**  
as applicable to an application for credit and  
**INCORPORATING A SURETYSHIP**

1. PREAMBLE

1.1 The Purchaser agrees that:

1.1.1 This agreement and the Credit Application ("the/this Agreement") represent the entire agreement between The Purchaser and The Supplier and that no alterations or additions to this Agreement may be affected unless agreed to by both parties, reduced to writing and signed by The Purchaser and a duly authorised representative of The Supplier;

1.1.2 This Agreement will govern all current and future contractual relationships between the parties, and is applicable to all existing and future debts between the parties;

1.1.3 This Agreement is final and binding and comes into existence upon signature by the Purchaser of this and the Credit Application and delivery of them to the Supplier or upon commencement of business between the Purchaser and the Supplier, whichever is the earlier.

1.1.4 In the event that the parties commence business with each other before conclusion hereof then this Agreement shall apply retrospectively including any suretyships that are applicable in terms of this Agreement.

1.1.5 Any conflicting conditions stipulated by The Purchaser (for instance through a purchase order) are expressly excluded;

1.1.6 These terms supersede all previous conditions of Agreement, without prejudice to any securities or guarantees held by The Supplier; and

1.1.7 These terms apply to all servants and sub-contractors of The Supplier.

2. FACILITY AND VALIDITY

2.1 The Supplier reserves the right to withdraw or amend any credit facilities which may have been granted to The Purchaser

- 2.2 The Purchaser acknowledges that it does not rely on any representations made by The Supplier in regard to the goods and services, other than those contained in this Agreement.
- 2.3 All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by The Supplier in respect of the goods or services, orally or in writing, will not form part of the Agreement in any way, unless agreed to in writing by The Supplier.
- 2.4 The Purchaser shall be liable for all debts notwithstanding the fact that it may have exceeded the credit limit agreed upon.

### 3. APPROPRIATENESS OF GOODS OR SERVICE

- 3.1 The Purchaser agrees that neither The Supplier nor any of its employees, suppliers or agents will be liable for any negligent or innocent misrepresentations made to The Purchaser.
- 3.2 It is the sole responsibility of The Purchaser to determine that the goods or services ordered are suitable for the purposes of intended use.
- 3.3 The Supplier reserves the right, at its sole discretion, to provide alternative goods at the prevailing prices to those ordered by The Purchaser, should such goods be superseded, replaced or the manufacture thereof terminated.

### 4. DELIVERY

- 4.1 The price of goods is reflected on The Supplier's official price list, applicable on the date that the goods are delivered to the Purchaser and are subject to variation without notice.
- 4.2 The Supplier shall be entitled in its sole discretion to split the delivery/ performance of the goods or services ordered in the quantities and on the dates it decides. Should The Purchaser order quantities which do not conform with factory packed quantities, the Seller may vary the quantities ordered to correspond to the nearest factory packing, in which case The Supplier may also vary the total price directly pro-rata with the quantities delivered.
- 4.3 The Supplier shall be entitled to separately invoice each delivery / performance actually made.
- 4.4 Any delivery note or waybill (copy or original) signed by The Purchaser or a third party engaged to transport the goods on The Purchaser's behalf shall be conclusive proof that delivery was made to The Purchaser.
- 4.5 The risk of damage to, destruction or theft of goods shall pass to The Purchaser on conclusion of delivery as envisaged in 4.4 above and The Purchaser undertakes to comprehensively insure the goods until fully paid for.

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- 4.6 If The Purchaser agrees to delivery by a third party, the Supplier is hereby authorized to engage a third party to transport the goods on The Purchaser's behalf and on the terms deemed fit by The Supplier.
- 4.7 Delivery, installation and performance times given are merely estimates and are not binding on The Supplier. The Purchaser indemnifies The Supplier against any claims which may arise here from.

## 5. DEFECTS OR RETURNS

- 5.1 Liability for returns is restricted to the cost of replacement of faulty goods or services or granting of a credit at the sole discretion of The Supplier.
- 5.2 No claim by the Purchaser under this Agreement shall arise unless The Purchaser has within 7 (seven) days of the alleged breach or defect occurring, given The Supplier 30 days written notice to rectify any defect or breach of Agreement.
- 5.3 To be valid, claims must be supported by the original Tax Invoice.
- 5.4 The Supplier will uplift any defective goods, should the Purchaser return any defective goods to the premises of The Supplier it will be at The Purchaser's own cost and where possible packed in the original packaging of the goods. The Supplier reserves the right levy a 10% handling and admin charge for returns. Non-stocked goods may not be returned for credit.
- 5.5 All guarantees and cause for return are immediately null and void should any goods be tampered with or should the seals on goods be broken by anyone other than The Supplier; or should the goods be operated or stored outside the Manufacturers specifications; or contrary to the directions accompanying the goods or in any technical literature published by The Seller; or if the goods were applied in any manner which in the opinion of The Supplier caused the alleged defect or failure.

## 6. CONSEQUENTIAL LOSS

- 6.1 Under no circumstances shall The Supplier be liable for any consequential damages or for any delictual liability of any nature whatsoever.
- 6.2 Under no circumstances shall The Supplier be liable for any damage arising from any misuse or abuse of the goods.
- 6.3 Where The Supplier has delivered goods, off-loading shall be carried out by The Purchaser's employees at the sole risk of The Purchaser; should The Supplier's employees assist in such off-loading, at the request of The Purchaser or otherwise, such unloading will be at the sole risk of The Purchaser.

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## 7. INVOICING AND PAYMENT

- 7.1 The Purchaser agrees that the amount contained in a tax invoice or statement issued by The Supplier shall be due and payable unconditionally and without deduction:
- 7.1.1 cash on order; or
- 7.1.2 if The Purchaser is a Credit Approved Customer, within the agreed credit period referred to in the Credit Application or if no period has been agreed then within 30 days of the date of the tax invoice or statement.
- 7.2 All payments shall be made so that the amount due is available as cash in the hands of the Supplier by the due date. It shall be the responsibility of the Purchaser to ensure that the method of payment it chooses is made in time to ensure the above. The risk of payment by cheque through the post rests with The Purchaser which shall bear the onus of having made payment in that fashion.
- 7.3 The Purchaser has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be provided to The Purchaser, unless reduced to writing and signed by the duly authorised representative of The Supplier.
- 7.4 The Purchaser is not entitled to set off any amount due to The Purchaser by The Supplier, against any debt arising from this Agreement, including any dispute that may be pending
- 7.5 All trade discounts shall be forfeited if payment in full is not made on the due date.
- 7.6 The quoted price is strictly net (exclusive of VAT and any other surcharges) and not subjected to any settlement discount, unless otherwise agreed in writing between The Supplier and The Purchaser. If any settlement discount is agreed to in writing, it shall only apply and be allowed if payment is received at the offices of The Supplier timeously as set out herein. Settlement discount only applies to the actual price of the goods (i.e. excluding VAT, transport costs, insurance and similar charges)
- 7.7 The Purchaser agrees that interest shall be payable to The Supplier on the monies past due and in arrears at the legal rate applicable from time to time calculated from the time the debt was due to date of payment.
- 7.8 Should any amount not be received by The Supplier on or before due date all other amounts payable but not yet due by The Purchaser to The Supplier shall immediately and without notice to The Purchaser become due and payable together with interest as referred to in 7.7.

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- 7.9 The Purchaser agrees that if it receives credit in terms hereof and an account is not settled in full within the agreed time period The Supplier is:
- 7.9.1 entitled to provide written notice of such default requesting that it be rectified and advising that it may be referred, if the Purchaser is a natural person to a debt counsellor, to an alternative dispute resolution agent, consumer court or ombud with jurisdiction with a view to resolving any dispute under this agreement or agreeing on a plan to bring the repayment due hereunder up to date; and
- 7.9.2 if the Purchaser, after notice referred to in terms of 7.9.1, has been in default for at least 20 business days and at least 10 business days have elapsed since the aforesaid notice entitled to proceed against the Purchaser to cancel the agreement and take possession of any goods delivered to The Purchaser and claim damages. These remedies are without prejudice to any other rights The Supplier may be entitled to in terms of this agreement or in law.
8. PROOF OF DELIVERY
- 8.1 A delivery note shall be signed by The Purchaser, it's employee or agent and shall thereby constitute prima facie proof that the type and quantity of product / service recorded therein was delivered and accepted by The Purchaser.
- 8.2 If The Purchaser appoints its own transport contractor to effect delivery of any product, The Supplier's responsibility for providing proof of delivery will be limited to proving that the product was accepted by the transport contractor. In this case, risk will pass to The Purchaser on delivery of the product to the transport contractor.
9. RESERVATION OF OWNERSHIP
- 9.1 All goods supplied by The Supplier remain the property of The Supplier until such goods have been fully paid for whether such goods are attached to other property or not. The Purchaser is responsible for insuring such goods.
- 9.2 The Purchaser irrevocably authorises The Supplier, without recourse to any court of law, to enter its premises to repossess any goods delivered and indemnifies The Supplier completely against any damages whatsoever relating to the removal of repossessed goods.
10. RECOVERY ACTION
- 10.1 The Purchaser shall be liable to The Supplier for all recovery and legal expenses. For legal fees, The Purchaser will be liable on the attorney-and-own client scale for any attorney and advocate's costs incurred by The Supplier in the event of any default or delay in payment by The Purchaser or any litigation in regard to the validity and enforceability of this agreement.

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- 10.2 The Purchaser shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that The Supplier may demand. The Purchaser also explicitly agrees that it forfeits any discount that may have been applicable in the event that it breaches any of the terms hereof.
- 10.3 The Purchaser agrees that The Supplier will not be required to furnish security in terms of Rule 62 (1) (c) of the Rules of Court of the Magistrates Court Act 32 of 1944 or in terms of Rule 47 of the of the High Court Act 59 of 1959.
- 10.4 Notwithstanding the amount of a claim The Supplier shall have the right, at its sole discretion, to institute any action in either the Magistrates Court or the High Court

## 11. NOTICES

- 11.1 The Purchaser chooses domicilium citandi et executandi at the address set out in Section 9 and/or 37 of the Credit Application.
- 11.2 Any notice or legal process sent by the Supplier to the Purchaser may be sent by:
- 11.2.1 registered mail in which event it shall be deemed to have been received on the seventh day after posting; or
- 11.2.2 telefacsimile in which event it shall be deemed to have been received on the time and date of a valid transmission report; or
- 11.2.3 email in which event it shall be deemed to have been received on the time and date of a valid transmission report; or
- 11.2.4 hand delivery in which event it shall be deemed to have been received on the time and date of either an acknowledgment of receipt thereof or on the time and date contained in a sworn affidavit by the person delivering the letter in the even that the Purchaser refuses to acknowledge receipt

## 12. CHANGE IN PARTICULARS

- 12.1 The Purchaser undertakes to inform The Supplier in writing within 7 days of any change in its directorship, membership, shareholders, owners, partners or address and The Purchaser's failure to so will constitute a material breach of this agreement.

## 13. GENERAL

- 13.1 The invalidity of any part this Agreement shall not affect the validity of any other part.
- 13.2 The Supplier may at its sole discretion cede and assign its rights and obligations in terms of this agreement without the prior consent of The

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Purchaser. Upon notification of such cession, The Purchaser shall be become liable to effect payment to the cessionary.

- 13.3 Any order by the Purchaser is subject to cancellation by The Supplier due to force majeure from any cause beyond the control of The Supplier including (without restricting this clause to these instances): inability to secure labour, power supply, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

HAVING READ AND UNDERSTOOD THE CONSEQUENCES CONTAINED ABOVE:

Signature \_\_\_\_\_

Print full names\_\_\_\_\_

Place\_\_\_\_\_

Date\_\_\_\_\_

Witness(1)\_\_\_\_\_Witness(2) \_\_\_\_\_

14. SURETY

14.1 The signatory hereby warrants that he is authorised to bind the Purchaser and:

14.1.1 binds himself as surety for and co-principal debtor with the Purchaser for the due performance by the Purchaser of all of its obligations to the Supplier arising from this agreement and the credit application to which it applies and, in addition, any transactions conducted between the Supplier and the Purchaser whether in terms of this agreement or not; and

14.1.2 waives and renounces any benefit which he is entitled to in law, without detracting from the generality of which include the benefits of excussion, division, cession of action which benefits he understands and the full force and effects and meaning of which have been explained to him and agrees that this agreement and its terms and conditions are applicable to him mutatis mutandi.

HAVING READ AND UNDERSTOOD THE CONSEQUENCES CONTAINED ABOVE:

Signature \_\_\_\_\_

Print full names\_\_\_\_\_

Place\_\_\_\_\_

Date\_\_\_\_\_

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Witness(1) \_\_\_\_\_ Witness(2) \_\_\_\_\_

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