

TERMS AND CONDITIONS OF SALE

Including cession of book debts and Suretyship

In these conditions “the goods” means the goods indicated on any company forms, letters, price lists, quotations, delivery notes, orders or invoices, including the documents of any of the company’s or Customer’s agents.

1. PRELIMINARY

- 1.1. All goods are sold in accordance with these terms and conditions of sale. No variation from these conditions and no contrary stipulation by the Customer shall be valid unless specifically accepted by the Company in writing.
- 1.2. These conditions apply to all goods whether or not such sales are pursuant to orders by telefax, cable, telephone, e-mail, or orders placed with representatives or agents on behalf of the Company.
- 1.3. These conditions take precedence over any other terms and conditions which may be contained in any Company forms, price lists, quotations, delivery notes, orders or invoices including the documentation of any of the Company’s transport agents.
- 1.4. The Company will not tolerate any changes to these terms and conditions of sale including cession of book debts and suretyship. Particularly, the Company will not accept this credit application if any of the terms and conditions set out herein are deleted in any way or altered in any way by the Customer and/or its agents.

2. PRICE

- 2.1. The price of the goods shall be the usual price current at the time of the despatch of the goods.
- 2.2. Company price lists shall be considered merely as a guide by the Customer and the Company has the right, from time to time, for any reason and without notice to the Customer, to change the prices of its goods without reflecting such changes on any price lists.

3. PAYMENT

- 3.1. Payment is to be made 30 (thirty) days from date of the company’s statement, except when the customer is in default, when all amounts will immediately become due and payable.
- 3.2. The Company does give discounts to the Customer from time to time. However such discounts are only given within the discretion of the Company. No discounts may be claimed by the Customer or taken unless the Company shall have received payment within the payment period specified for the granting of any discount. Furthermore the Company must agree in writing to the provision of such discount.
- 3.3. The Company’s accounting month is from the first to the last calendar day of each month. Disbursements made on behalf of customers will be debited to the Customer’s account on the Bill of Entry date that may differ from the date when the goods as cargo are released by customs and received by the Customer.
- 3.4. In all cases where the Customer uses postal, banking, electronic or similar such services to effect payment, such services shall be deemed to be the agent of the Customer.
- 3.5. Should any amount not be paid by the Customer on due date then the whole amount in respect of all purchases by the Customer shall become due, owing and payable irrespective of the dates when the goods were purchased.
- 3.6. The Customer shall be liable to pay interest in respect of amounts unpaid as at the due date. The rate of interest levied by the Company on the amount outstanding will be the compound rate of 2% per month from due date until date of payment, calculated and payable monthly in advance and should the said interest not be paid in full as aforesaid, the same shall be added to the principal sum, and the total shall form the principal debt which shall then bear interest in the matter as set out above.
- 3.7. The Customer shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to the company for goods or services supplied.
- 3.8. The Company may appropriate all payments made by the Customer to such accounts as it will in its sole and absolute discretion decide.



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- 3.9. The Company shall have the right to suspend deliveries and to exercise its rights in terms of clause 7.1 if any amount due by the Customer is unpaid.
- 3.10. The Customer shall not be entitled to counterclaim against the Company for a debatement of account to frustrate making payment to the Company. Furthermore, the Customer undertakes to keep a comprehensive set of books at all material times from which it will be able to ascertain its liability to the Company without the need for any debatement. The Customer agrees that the Company may view its books in the event that a dispute in this regard occurs.
- 3.11. In the event of the Customer disputing any portion of the amount owing by it to the Company on its account, such portion of the amount owing which is not in dispute shall be paid forthwith. A dispute over portion of the total amount owing shall not give the Customer any right to withhold payment of the total.

4. CREDIT FACILITIES

- 4.1. The Customer understands that the Company's decision to grant credit facilities to the customer is at the sole discretion of the Company.
- 4.2. The Company reserves the right to withdraw any credit facilities at any time with prior written notice and the nature and extent of such facilities shall at all times be in the Company's sole discretion.
- 4.3. Despite the fact that the Company may grant the Customer a credit limit or a credit facility up to a certain amount, the Company reserves the right to increase or decrease this amount at its sole discretion and with notice to the Customer. The credit limit shall not be deemed to be the limit of a customer's indebtedness to the Company.
- 4.4. Failure to abide to payment terms will result in revoking of credit facilities.

5. ORDERS

- 5.1. Orders by the Customer for the Company's goods shall be made in writing to such address, "virtual", electronic or otherwise, as may be nominated by the Company from time to time. If telephonic orders are placed by the Customer, the Customer shall follow up such orders with a written order. The Company will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to make orders in writing. It is the Customer's responsibility to ensure that orders are received by the Company.
- 5.2. Orders constitute irrevocable offers to purchase the goods in question at the usual prices of the Company and shall be capable of acceptance by the Company by the delivery of the goods or by the written acceptance or confirmation of the order.
- 5.3. The Customer shall provide the Company with an order number when placing any order with the Company.
- 5.4. Orders accepted by the Company shall not be varied or cancelled by the Customer, except with the written consent of the Company.
- 5.5. Notwithstanding the aforementioned, and should the Company in its absolute discretion decide to perform pursuant to a Telephonic order, such order shall be valid.

6. DELIVERY (EXPORT)

- 6.1. The Company is not a common or public carrier and deals only on this basis with goods.
- 6.2. The Customer shall be responsible to ensure that all national and international regulations and requirements regarding goods coming into the Customer's country or place of delivery have been complied with and all necessary procedures for the importation of the goods have been followed by the Customer.
- 6.3. The Customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes and indemnifies the Company against all claims, penalties, losses, damages, expenses and fines howsoever arising, from any inaccuracy or omission, even if not due to negligence on the Customer's part.
- 6.4. In all cases where there is choice of tariff, rates or premiums offered by carriers, warehousemen, underwriters or others, depending on the value declared or the extent of the liability assumed by the carrier, warehouseman, underwriter or other person, it shall be in the entire discretion of the Company as to what declaration, if any, shall be imposed on the carriers, warehousemen, underwriters or other persons, unless express instructions in writing are received by the Company from the Customer.



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- 6.5. Pending forwarding and delivery, goods may be warehoused or otherwise held, at any place at the sole discretion of the Company and at the Customer's risk and expense.
- 6.6. The Customer and/or its agents shall be liable for any duties, taxes, levies, deposits or outlays of whatsoever nature levied by the authorities in any port or place in connection with the goods and for any fines, payments, expenses, loss or damage howsoever incurred or sustained to the goods during transport and delivery of such goods to the Customer.
- 6.7. In all cases where delivery to the Customer occurs by carrier, the carrier shall be the Customer's agent and delivery to such carrier by the Company shall be deemed to be delivery to the Customer. The signature of any employee of the carrier on a document recording such delivery to the carrier, shall be prima facie proof of proper delivery to the Customer.
- 6.8. Whilst every effort will be made to despatch goods to the Customer as advised, the Company does not guarantee despatch or delivery on any specific date and shall not be liable for any damages whether in contract or in delict, for failure to effect delivery/despatch timeously for any reason beyond the Company's reasonable control, including but not limited to, inability to secure transport, labour, power, materials, equipment 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. The Customer shall not be entitled to cancel any order by reason of such delay.
- 6.9. In the event that the Company makes delivery to the Customer in instalments each instalment shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery of any instalment shall not affect the balance of the contract or entitle the Customer to cancel the contract.
- 6.10. When goods are delivered in instalments, invoices relating to separate deliveries shall be paid 30 days from delivery and no payment shall be postponed until such time as all the goods ordered have been delivered.
- 6.11. The Customer will be liable for payment of all fees, charges, expenses and the like due to the said carrier in respect of the transport of the goods to the Customer.
- 6.12. Should the Company, at the Customers request, agree to engage a carrier to transport goods to the Customer, such carrier shall be the Customer's agent and the Company shall engage the carrier on such terms and conditions as it deems fit and the Customer indemnifies the Company against all demands and claims which may be made against it by the carrier so engaged and all liability which the Company may incur to the carrier arising out of the transportation of the goods.
- 6.13. If the Customer fails to take delivery of the goods ordered, or in any way delays the delivery of goods ordered, then the risk in the goods shall immediately pass to the Customer and the Customer shall be liable to pay the Company the reasonable costs of storing, insuring, and handling the goods, until delivery takes place.
- 6.14. The Customer shall be barred from lodging any claim in respect of discrepancies between goods charged and goods delivered, unless the Customer has specified on the delivery note or by telefax to the Company on the same day as delivery occurs,, the nature of the discrepancy.

7. OWNERSHIP & RISK

- 7.1. Notwithstanding that all risk in and to all goods sold by the Company to the Customer shall pass on delivery, ownership in all goods sold and delivered shall remain vested in the Company until the full purchase price has been paid and in the event of a breach of these terms and conditions by the Customer, or if the Customer is sequestrated or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgment granted against it within 7 days of the date of judgment or changes the structure of its ownership, the company shall be entitled to take possession of the goods without prejudice to any further rights vested in the company, and is hereby irrevocably authorised to enter upon the Customer's premises to take possession of such goods.
- 7.2. In the event of the Customer obstructing the Company in the process of removing its goods from the Customer necessitating the obtaining of a Court order, the Company shall be entitled to obtain an award of costs against the customer on a punitive scale.
- 7.3. Furthermore, the Customer shall have no claim against the Company for damages caused due to loss of profits or otherwise occasioned by the removal of goods from the Customer's premises as aforesaid notwithstanding that such removal was effected without Court order.
- 7.4. Goods in the possession of the Customer bearing the Company name, trademarks and labels shall be deemed to be those for which payment has not yet been made, and should any breach of these terms occur, may be repossessed by the Company.



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- 7.5. It shall not be necessary for the Company to prove either to the Customer or the Customer's liquidator or trustee which goods owned by or formerly in the possession of the Company have actually been paid for and which have not been paid for.
- 7.6. The Customer shall fully insure the goods purchased from the Company against loss or damage, until the full purchase price has been paid by the Customer for such goods. Pending payment to the Company for goods purchased, all benefits in terms of the insurance policy relating to such goods are ceded to the Company.
- 7.7. The Company shall be entitled to identify its goods merely by way of packaging and other distinguishing marks. The Company shall not be obliged to identify its goods by way of serial numbers or any other form of intricate identification.
- 7.8. Specifically, the Company shall be entitled to remove all goods of whatsoever nature owned by it from the Customer's premises notwithstanding that certain of such goods removed may have been paid for. The rationale for permitting the Company to act in this manner is due to the fact that the Customer's account is in debit and after reconciliation thereof, should it emerge that with the recovery of all goods on the premises of the Company, the said Company is due a credit, such credit shall be passed.

8. LEGAL PROCEEDINGS

- 8.1. Regardless of the country of domicile of the Customer, or place of offer and acceptance, delivery or execution or performance under these terms and conditions, these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and construed under and in accordance with the laws of the Republic of South Africa.
- 8.2. A certificate issued and signed by any director or Credit Manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Customer to the Company or in respect of any other fact, including the fact that such goods were sold and delivered, shall be prima facie evidence of the Customer's indebtedness to the Company and prima facie evidence of such other fact and prima facie evidence of the delivery of the goods.
- 8.3. The Customer's physical address as given on the front page of this document, shall be recognised as the Customer's domicilium citandi et executandi (domicilium) for all purposes in terms of this agreement, whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature.
- 8.4. The Customer shall pay all legal costs, including attorney/own client costs, tracing agent's fees and collection charges which the Company may incur in taking any steps pursuant to any breach or enforcement of these terms and conditions by the Customer.

9. ARBITRATION

- 9.1. The Company has the sole option to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall bind both Company and Customer.
- 9.2. The arbitrator must be a person agreed upon by the parties or failing agreement, an arbitrator must be appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of SA.

10. NEGOTIABLE INSTRUMENTS

Acceptance of a negotiable instrument by the Company shall not be deemed to be a waiver of the Company's rights under this agreement. In relation to cheques furnished by the Customer to the Company, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonoured.

11. RETURNED GOODS

Goods sold by the Company are not returnable save at the option of the Company. Should the Company in its absolute discretion elect to accept the return of any goods, the following shall apply:-

- 11.1. All goods returned must be complete, clean, saleable and undamaged and in their original packaging.
- 11.2. The value of credit for goods returned will be calculated at the invoice value when the goods were purchased, less 10% handling charge.
- 11.3. The Credit Control Department must be notified of relevant invoice, packing slip and batch numbers before any claim will be considered.

11.4. All goods are to be returned at the Customer's expense and the risk in the goods remains with the Customer until the goods are received by the Company.

12. WARRANTIES & INDEMNITY

12.1. Warranty on the goods is limited to the manufacturer's warranty. All other warranties either express or implied, including any warranty that the goods are fit for a particular purpose are expressly excluded. The Company's liability for any breach of warranty shall be limited to and fully discharged by the Company when it supplies, free of charge, goods replacing those found to be defective, having regard to the use already or previously obtained from them. The cost of transportation of such replacement goods shall however be borne by the Customer. The Company's decision as to whether goods are defective or not shall be binding on all parties.

12.2. The Company disclaims all liability to the Customer in connection with the Company's performance or the Customer's use of the goods supplied and in no event will the Company be liable to the Customer for special, indirect or consequential damages including but not limited to, loss of profits.

12.3. Any liability of the Company for breach of contract will not exceed in the aggregate of damages, costs, fees and expenses capable of being awarded to the Customer, the total price paid or due to be paid by the Customer for the services rendered or goods supplied.

12.4. The Company gives no warranty, express or implied, nor any representation that the goods sold by the Company are suitable for the purposes for which they have been ordered.

12.5. Any advice or opinion given by the Company's employees is for the Customer's benefit only and the Company accepts no responsibility for any damages that the Customer may incur as a result of the Customer relying upon such advice.

13. CESSION OF BOOK DEBTS

13.2. **The Company requires security for the provision of credit facilities to the Customer and as such, the Company seeks a cession of the Customer's book debts on the terms set out in paragraphs 14.2 to 14.4 below.**

13.3. The Customer does hereby irrevocably cede, pledge, assign, transfer and make over unto and in favour of the Company all of its right, title, interest, claim and demand in and to all book debts of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever ("the Customer's debtors") without exception as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter be or become owing by the Customer to the Company.

13.4. Should it transpire that the Customer at any time entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customer's reversionary rights. Notwithstanding the terms of the foregoing cession, the Customer shall be entitled to institute action against any of its debtors provided that all sums of money which the Customer collects from its debtors shall be collected on the Company's behalf and provided further that the Company shall at any time be entitled to terminate the Customer's right to collect such monies/debts.

13.5. The Customer shall be obliged to deliver all relevant information in documentary form or otherwise to the Company upon demand to enable the Company to claim monies owed to the Customer from third parties.

14. GENERAL

14.2. The Company reserves the right in its sole discretion to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the Customer from the time that the Customer is notified thereof. Any subsequent dealings shall be on the Company's amended terms and conditions.

14.3. This contract represents the entire agreement between the Company and the Customer and shall govern all future contractual relationships between the Company and the Customer and shall also be applicable to all debts which the Customer may owe to the Company prior to the Customer's signature hereto.

14.4. No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of the Company. No agreement, whether consensual or unilateral or bilateral, purporting to obligate the Company to sign a

written agreement to amend, alter, vary, delete, add to or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of the Company.

- 14.5. No warranties, representations or guarantees have been made by the Company or on its behalf which may have induced the Customer to sign this document.
- 14.6. No failure or delay on the part of the Company to exercise any of its rights in terms hereof or in terms of law, or relaxation or indulgence which the company may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of the Company's rights in terms of any contract.
- 14.7. The Customer shall not cede its rights nor assign its obligations.
- 14.8. The Company shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this application for credit facilities including all terms and conditions to any third party without prior notice to the Customer.
- 14.9. The Customer undertakes to notify the Company within a period of 7 (seven) days of any change of address or any changes in the information as set out in this agreement. Changes in ownership of the Customer will also be communicated to the Company.
- 14.10. The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement.
- 14.11. Each of the terms herein, shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 14.12. Provided that they do not conflict with any of the terms and conditions contained herein, such general practices, terms and conditions applicable to the industry or profession in which the Company conducts business shall be applicable to all dealings between the Company and the Customer.

16. **DISCLAIMER**

The Company accepts no responsibility for damages or other losses, directly or indirectly caused, to the Customer in connection with the Company's services and the performance of same arising from the Customer's order.

17. **FORCE MAJEURE**

Every effort will be made to carry out the Customer's order by the Company but the due performance thereof is subject to cancellation by the Company or variation of such order as may be required due to the inability of the Company to secure labour, materials, transport, freight or supplies as a result of any act of God, war, strike, lock-out, labour dispute, fire, flood, drought, legislation or other cause beyond the control of the Company.

18. **DISCLOSURE OF PERSONAL INFORMATION**

19. The Customer understands that the personal information given in this credit application form is to be used by the Company for the purposes of assessing its credit worthiness. The Customer confirms that the information given by it in this credit application form is accurate and complete. The Customer further agrees to update the information supplied, as and when necessary, in order to ensure the accuracy and completeness of the above information, failing which the Company will not be liable for any inaccuracies or lack of completeness of information.

- 19.1. The Company has the Customer's consent at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned in the credit application form and to obtain any information relevant to the Customer's credit assessment, including but not limited to, information regarding the amounts purchased from suppliers per month, the length of time Customer has dealt with such supplier, type of goods or services purchased and manner and time of payment.
- 19.2. The Customer agrees and understands that information given in confidence to the Company by a third party on the Customer will not be disclosed to the Customer.
- 19.3. The Customer hereby consents to and authorises the Company at all times to furnish credit information concerning the customer's dealings with the company to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Company.

I, the undersigned, do hereby warrant that all the information recorded in this application is true and correct and I agree that all transactions concluded with the Company shall be subject to the terms and conditions specified herein and agree to be bound by all such terms and conditions, and without limiting the generality thereof, especially the suretyship clauses, insofar as the latter relates to the signatories.