

SECTION B – TERMS AND CONDITIONS OF SALE

1 PRICE

- 1.1 The price of the goods shall be the price that is stated in writing by the Company by email or by fax relating to any particular order.
- 1.2 In the absence of the price of the goods being specified for any order, the Company reserves the right to charge the Company's usual price for the goods from time to time, current at the time of the invoicing of the goods.
- 1.3 Company price shall be considered merely as a guide by the Customer and the Company has the right, from time to time, without notice to the Customer, to change the prices of its goods.

2 PAYMENT AND CREDIT TERMS

- 2.1 The Customer agrees that the amount reflected in a Tax Invoice as issued by the Company shall be due and payable unconditionally either: (a) prepayment; or (b) if the Customer is a Credit Approved Customer, within 30 (thirty) days from the end of the month in which a Tax Invoice has been issued by the Company. Settlement is effected only on receipt of cash or funds via electronic transfer into the Company's bank account or due honour of cheque or similar payment instrument and shall be made to the Company free of exchange and without deductions of any nature. Any credit facilities granted to the Customer by the Company is entirely at the discretion of the Company, and may be withdrawn at any time.
- 2.2 No rebates or discounts will be allowed on any basis whatsoever unless and until a director of the Company shall have agreed to such rebate and discounts in writing in advance.
- 2.3 Interest is not payable by the Customer provided that the Customer pays for each invoice on the due date and in the manner as determined for each respective invoice as prescribed by this clause.
- 2.4 In the event that the Customer fails to pay each respective invoice on due date:
 - 2.4.1 the Customer shall pay interest at a rate of 2% (two percent) per month on the full outstanding balance of that particular invoice, and
 - 2.4.2 all rebates and discounts shall be forfeited if payment is no made in full on due date; and
 - 2.4.3 any and all other invoices which are not then due for payment shall, by virtue of the default on the Customer in respect of any one invoice, all immediately become due and payable, and if not paid forthwith in full, shall attract interest at a rate of 2% (two percent) per month on the full outstanding balance.
- 2.5 The Company may appropriate all payments made by the Customer to such accounts as it will in its sole and absolute discretion decide and shall be entitled to set off amounts owed to the Company from such accounts.
- 2.6 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.
- 2.7 The Company shall have the right to suspend deliveries and to exercise the full extent of its rights if any amount due by the Customer is unpaid.
- 2.8 Any decline in the value of the South African Rand relative to the United States Dollar, and any increase in the cost of labour, materials, freight and import duty between the date of quotation and the date of supply of goods shall be paid by the Customer.
- 2.9 The Customer agrees that the amount due and payable to the Company, including interest may be determined and proven by a Certificate issued and signed by a director of the Company, which Certificate shall be *prima facie* proof of the Customer's indebtedness to the Company.
- 2.10 Where the Customer has not used the facility granted in terms of the agreement for 12 (twelve) months the Customer will be required to re-apply for such facility.
- 2.11 All payments shall be made to the Company's place of business from where the goods were ordered. In the event of any payments being mislaid; lost in the post; or transferred to the incorrect banking account the Customer shall still be liable to the Company for payment. Should the Company at any time advise the Customer of any change to the Company's banking account details the Customer shall confirm such change with a Director of the Company before effecting any further payments, provided however that nothing contained herein shall be interpreted as obliging the Company to afford the Customer any such indulgence to effect payment after the due date. The Customer shall reimburse the Company for any cash deposit fees which are charged by its bankers as a result of the Customer depositing cash into the Company's bank account.

3 ORDERS

- 3.1 All orders or variations to orders, whether oral or in writing, shall be binding on the Customer and subject to these terms and conditions and the Customer shall be estopped from denying the validity of such order notwithstanding that it may have been given or signed by a person not authorized by the Customer.

4 DELIVERY

- 4.1 In the case of the export of goods to customers outside the Republic of South Africa, delivery and risk shall take place at the place of business of the Company, unless otherwise agreed to by the Customer and the Company in writing.
- 4.2 In all other instances, unless otherwise agreed to in writing by the Company:
 - 4.2.1 delivery to the Customer takes place at the place of business of the Company, and *prima facie* proof of delivery to the Customer can be by means of an original/copy of:
 - 4.2.1.1 the Company's delivery note signed and stamped with the Company's official stamp by the Customer; or
 - 4.2.1.2 proof of delivery to any transporter if the goods are transported or shipped to the Customer by a third party.
 - 4.2.2 In the case of clause 4.2.1.2 above, the transporter is deemed to be the Customer's agent and the Customer authorises the Company to engage such third party to transport the goods to the Customer on such terms as the Company deems fit. The Customer indemnifies the Company against any claims that may arise from such agreement with the third party transporter.
 - 4.2.3 All deliveries are subject to the availability of the goods and the Company shall be entitled, in its sole discretion, to split delivery of the goods ordered by the Customer in the quantities and on the dates it decides and to invoice

them separately to the Customer.

- 4.2.4 Any date indicated by the Company for delivery of the goods shall be regarded as an estimated date of delivery and does not constitute a contractual obligation. The Company shall not be liable for any loss or damage of whatsoever nature incurred or connection with any late, incorrect, partial or non-delivery. The Company will make every endeavour to deliver timeously but the Customer shall not be entitled to cancel or repudiate this agreement or claim damages for consequential loss or otherwise or refuse to accept delivery or part delivery on the grounds of delay in the delivery of the order, or any part thereof, for any cause whatsoever.
- 4.2.5 In the event shipments are to be made over a period of time, the Customer shall allow for adequate lead time and shall specify by purchase order or otherwise in writing to the Company the quality, packing and delivery date desired for deliveries of the product during such period.
- 4.2.6 The Company shall have the right to cancel a Customer's order where the Company is unable to supply and deliver the goods due to *force majeure* from any cause beyond the control of the Company, including, but not limited to, inability to secure labour, power, materials or supplies, or by reason of an act of God, or civil disturbance, riot, state of emergency, strike, lockout, labour disputes, fire, flood, drought or legislation.

5 OWNERSHIP AND RISK

- 5.1 Risk in the goods shall pass to the Customer on delivery of the goods to the Customer as defined in clause 4, but ownership in the goods shall remain vested in the Company until the purchase price has been paid in full. The Company reserves the right to inform the end user or the owner of the premises in which the goods are situated of its claim to ownership. The Customer undertakes to insure the goods until fully paid for.

6 BREACH OF CONTRACT

- 6.1 Should the Customer fail to make payment on due date in terms of clause 2 hereof, or should the Customer commit any other breach of its obligations hereunder, then the Company shall have the option to either:
- 6.1.1 claim from the Customer all sums owing to the Company, whether then due and payable or not, which sums will then immediately become due and payable, the Customer forfeiting all discounts on the goods sold; or
- 6.1.2 without prejudice to any other remedy the Company may have in terms of these conditions, or by law, to cancel the contract with the Customer, retake possession of the goods supplied and not paid for and recover all amounts already due by the Customer as well as damages it may have suffered by reason of the Customer's breach. To give effect thereto, the Customer irrevocably authorises the Company to enter its premises to repossess its goods supplied and not paid for.
- 6.2 Subject to the provisions of clause 6.1, if execution is levied upon the Customer's assets or should the Customer make any offer of compromise with its creditors or commit any act of insolvency, or if it is a limited liability Company or Close Corporation, an application for the Customer's liquidation is made, the Company shall have the right to forthwith terminate the contract with the Customer without prejudice to any claim and remedies the Company might have against the Customer for payment of the amounts already due prior to cancellation and damages suffered by the Company by virtue of the Customer's breach.

7 LEGAL PROCEEDINGS AND CONSENT TO JURISDICTION

- 7.1 Should the Customer be domiciled outside the republic of South Africa, this Agreement and all contracts of sale between the Customer and the Company shall be governed and interpreted in accordance with the laws of the Republic of South Africa and the South African Courts shall have sole jurisdiction in respect thereof.
- 7.2 The Customer hereby consents and submits to the jurisdiction of the Gauteng Local Division of the High Court, Johannesburg in connection with any and all disputes that may arise from this agreement or from the relationship between the parties.
- 7.3 In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to the Company, the Customer agrees to pay, and shall be liable to pay, all legal costs incurred by the Company in enforcing its rights in terms of these terms and conditions on the attorney and own client scale, including collection charges and tracing agent's fees.

8 RETURNED GOODS

- 8.1 Whilst the Company is under no obligation to accept the return of goods, the Customer may apply in writing to the Company, within 7 (seven) days from the date of delivery of the goods, for permission to return goods and if written permission is given by the Company's sales department for such return, the following will apply:
- 8.1.1 goods returned for credit will only be accepted from those customers who initially purchased the stock from the Company or who have an account with the Company. All goods returned must be clean, saleable and undamaged and in their original packaging.
- 8.1.2 the value of credit for excess stocks returned will be calculated at the invoice value when the goods were purchased, less 10% (ten percent) handling charge.
- 8.1.3 the Credit Control Department must be notified of any relevant invoice, packing slip and batch numbers before any claim will be considered.

9 MANUFACTURER'S GUARANTEE, DAMAGED GOODS AND INCORRECT DELIVERIES

- 9.1 To be valid, any claims under the Manufacturer's guarantee or for damaged goods or incorrect deliveries shall be supported by the original Tax/Commercial Invoice or export documents (where applicable).
- 9.2 Claims in respect of incorrect deliveries or damaged goods will only be considered if made in writing within 7 (seven) days of delivery of the goods, after which time the Customer shall be deemed to have received and accepted the goods in good order and in full compliance with the orders placed.
- 9.3 Any warranty as to quality or freedom from latent defects of the goods sold or fitness for any particular purpose or otherwise is hereby excluded. The Company shall not be under any liability whether in contract, delict or otherwise, in

respect of defects in goods delivered or for any injury, damage or loss resulting from such defects or from any misuse or abuse of the goods.

9.4 The Company shall not be liable to the Customer for consequential losses, howsoever arising.

10 GENERAL

10.1 **Change of address**

The Customer undertakes to notify the Company in writing within 7 (seven) days of any change of address.

10.2 **Change of ownership**

The Customer undertakes to notify the Company, in writing, within 7(seven) days of any change in ownership of the Customer's business, or should the Customer be a company, of its share transactions whereby the majority shareholding is affected. The Customer acknowledges that immediately upon any change of ownership in the Customer, any outstanding amount, whether due or not shall be deemed to be forthwith payable by the Customer to the Company.

10.3 **Domicilium**

The Customer and the signatory hereto chooses *domicilium citandi et executandi* (in other words, the address at which the Customer and the signatory will accept all notices, legal documents and the like, whether or not the Customer and/or the signatory is still at the address chosen) for all purposes arising out of this application at the physical address stipulated in Section A, clause 3.2 of this application.

10.4 **Entire Agreement**

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 apply to all orders by the Customer to the Company, and shall be applicable to all debts which the Customer may owe to the Company prior to the Customer's signature hereto.

10.5 **Non-Variation Clause**

No amendment, alteration, variation, deletion, addition 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.

10.6 **Representations and Indulgences**

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. No 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. The Company shall not be bound by any promises that may be made by its employees or agents that are not recorded in this agreement.

10.7 **Cession**

The Customer shall not be entitled to cede its rights nor assign his/her obligations. 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 (including any suretyship) to any third party without prior notice to the Customer.

10.8 **Credit Bureau and Searches**

10.8.1 The Customer hereby consents to the Company:

10.8.1.1 performing a credit search on the Customer's record, as well as the record of its directors and/or its owners, with one or more of the registered Credit Bureaux when assessing the Customer's Application for Credit (any at any other time in the Company's discretion);

10.8.1.2 recording the existence of the Customer's account with any Credit Bureau; and/or

10.8.1.3 recording and transmit details of how the Customer has performed, and how the account is conducted by the Customer in meeting its obligations on the account.

10.8.2 The Customer acknowledges and agrees that any information regarding its credit worthiness, defaults in payment to the Company, and details of the way its account with the Company is conducted, may be disclosed to any other creditor of the Customer or any registered Credit Bureaux, after 20 (twenty) business days notice having been given to the Customer.

10.9 **Business Rescue**

The Customer agrees that in the event that the Customer is placed under business rescue in terms of Chapter 6 of the Companies Act 2008, the conclusion of any compromise of the debt under such approved business rescue plan will not reduce the liability of any person or entity that has signed surety for the debts due by the Customer to the Company and such surety shall remain liable for the full amount of the debt that was due before such compromise, notwithstanding that it is acknowledged, agreed and understood by the Customer that the surety may be entitled to have recourse against the Customer for amounts paid by the surety to the Company pursuant to such suretyship.

10.10 **Magistrates Court**

It shall be within the discretion of the Company as to whether to proceed against the Customer in the Magistrates Court or the High Court, having regard to the following in terms of Section 45 of the Magistrate's Court Act 1944, as amended, the Customer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction in terms of Section 28 of the said Act in respect of any action to be instituted against it by the Company in terms hereof.

10.11 **National Credit Act and Consumer Protection Act**

10.11.1 To the extent that the Customer is either:

10.11.1.1 a natural person; or

10.11.1.2 a juristic person with both an asset value and a turnover that is less than the threshold and a credit facility is granted by the Company to the Customer of less than R250,000.00, then the provisions of clauses 2.4.1, 2.4.3 and 5 of these terms and conditions will not be of application to such Customer.

10.12 **Copies**

The Customer and the Company agree that a scanned or electronically reproduced copy or image of this APPLICATION FOR CREDIT FACILITIES WHICH INCORPORATES STANDARD TERMS AND CONDITIONS OF SALE AND SURETYSHIP ACCEPTANCE will be deemed to be an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, and without the requirement that the unavailability of such original, executed counterpart of the APPLICATION FOR CREDIT FACILITIES WHICH INCORPORATES STANDARD TERMS AND CONDITIONS OF SALE AND SURETYSHIP ACCEPTANCE first be proven.

- 10.13 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement.
- 10.14 Each of the terms herein, shall be in 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 other terms.

SIGNATURE PROVISIONS

I/We the undersigned, warrant that the information given above is true and correct and that I/we have the authority to represent the Customer. I/We have read and understood the Company's Trading Terms and Conditions, which terms and conditions will govern all transactions between the Customer and the Company.

Signed at _____ on this the _____.

Full Name _____

As Witnesses

1. _____

2. _____

Signature _____
For the Customer
