

TERMS AND CONDITIONS

- 1. APPLICABILITY**

These terms apply to the sale concluded between the Company and the Customer in respect of the goods set out on the front of this invoice, except insofar as any term thereof is expressly varied or excluded in terms of a written contract between the Company and the Customer.
- 2. PRICES**
 - 2.1. The price of goods will be the Company's official list price ruling for them at the date on which they are delivered to the Customer.
 - 2.2. The prices contained in any price list of the Company are subject to alteration at any time without prior notice.
 - 2.3. All prices quoted by the Company are based on the quantities relative to such quotation and the Company reserves the right to revise the prices in the event of the quantities ordered being reduced or increased.
 - 2.4. Prices quoted by the Company are, prior to delivery to the customer, subject to being increased with any increase in or caused by a fluctuation of any exchange rate, duties, surcharges, freight and transport costs, clearing agent's charges, the application of another (correct) Customs tariffs and prices of overseas suppliers.
 - 2.5. All prices will, unless the contrary is stated in writing by the Company, be exclusive of Value Added tax.
- 3. PAYMENT**
 - 3.1. Unless a credit facility has been agreed to by the Company in terms of a written communication to the Customer, payment of the purchase price of any goods will be made by the Customer to the Company against delivery thereof (as provided for hereafter) at the address of the Company.
 - 3.2. The purchase price is strictly net and not subject to any discount unless otherwise agreed in writing.
 - 3.3. If any discount is agreed to in writing it shall only be allowed if payment is received by the Company by the due date and shall only apply to the actual price of the goods themselves.
 - 3.4. Any promissory note, bill of exchange, or other negotiable instrument received by the Company from the Customer shall not be a novation of the debt for which it is given and the Customer waives the requirement of presentment, notice of dishonour and protest, where applicable.
 - 3.5. The Company shall be entitled to appropriate any amount due by the Customer against any liability of the Customer towards the Company, as the Company in its sole discretion elects.
- 4. DELIVERY**
 - 4.1. Unless agreed to in writing to the contrary, delivery shall be made to the Customer at the premises of the Company. Delivery shall be completed when the goods are set aside for the Customer or its agent or the carrier referred to in clause 4.2. below.
 - 4.2. In the event that the Company at the request of a Customer agrees to engage a carrier to transport the goods for the Customer then the Company is authorised to engage a carrier on such terms and conditions as it deems fit and the Customer will be deemed to have indemnified 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 towards the carrier arising out of the transportation of the goods.
 - 4.3. If the Customer fails to take delivery of the goods on the due date therefore, then it shall refund to the Company on demand the reasonable costs (including storage and insurance) of keeping the goods during the period of the delay.
 - 4.4. The Company shall be exempted from and shall not be liable under any circumstances in respect of any claim for any alleged shortage in delivery or damage to the goods in transit, unless notice of such damage or shortage is given in writing to both the Company and the carrier within 7 (seven) days of receipt of the goods and the relevant waybills/delivery notes/consignment notes have been endorsed accordingly by the consignee, or in the event of non-delivery (in the case of total loss) such non-delivery is notified to both the Company and the carrier within 10 (ten) days of the date of despatch as stated in the Company's advice note or invoice.
 - 4.5. All delivery times that may be quoted or agreed to, will be estimates only. The Company will use its best endeavours to adhere to such delivery times but will not be liable in whatever respect in the event of a failure to do so.
- 5. RISK**

The risk of any goods to be delivered or deemed to have been delivered to the Customer, will pass to the Customer on delivery or when the goods leave the premises of the Company, whichever is the sooner, or on the date that the Customer fails to take delivery as provided for in clause 4.3. above.
- 6. DEFECTS**
 - 6.1. The Company will use its best endeavours to ensure that the goods are delivered in working order to their specifications.
 - 6.2. It is recorded that the goods will or have been manufactured within manufacturing limits and a tolerance which are reasonable in the relevant trade and industry. Any special requirement regarding accuracy of manufacture, is to be separately agreed to in writing between the parties.
 - 6.3. Return of defective goods will only be accepted for credit if written notice of the defect is given to the Company within 7 (seven) days after the delivery thereof, in the event that the defect in such returned goods is acknowledged by the Company, the amount of the purchase price thereof will be credited to the account of the Customer.
- 7. WARRANTIES**
 - 7.1. The goods are sold on the basis that:
 - 7.1.1 no express or implied warranty or representation in respect thereof will be binding on the Company.
 - 7.2 no warranty is given to the suitability of the goods for the use thereof contemplated by the Customer, which is the sole responsibility of the Customer.
 - 7.3. all or any common law warranties are hereby expressly excluded.
 - 7.4. the only warranties that will be applicable to any goods sold or manufactured by the Company, will be those specifically given and/or made applicable to such goods, and no other. Any warranty of any nature given or reply will in any event be subject to the following limitations:
 - 7.4.1 The Company's liability under such warranty shall be limited to the repairing or replacing any parts failing to comply therewith, with reasonably promptness, at such place as the Company may elect, providing it receives written notice of the alleged defect in that part within 7 (seven) days from the date of receipt of the goods.
 - 7.4.2. The Company shall not be liable for any expenses, apart from the cost of the parts themselves, which may be incurred in returning and repairing or rejecting the parts.
- 8. RETURN OF GOODS**

In the exercise of its discretion the Company agrees, at the request of the Customer, to accept the return of any goods which were correctly supplied by the Company and are not faulty or subject to any claim, then the Customer shall automatically and without the necessity for further agreement be liable to pay to the Company a handling charge of 10% (ten per centum) on the invoice price of the goods so returned.
- 9. OWNERSHIP**

Notwithstanding the delivery of any goods to the Customer, ownership therein shall not pass to the Customer until the Company
- 10. EXCLUSIONS AND LIMITATION OF RIGHTS**
 - 10.1. The Customer shall not have any claim of any nature whatsoever against the Company for any failure by the Company to carry out any of its obligations under a contract or transaction as a result of *vis major, force majeure* or any other act or occurrence beyond its control, including but without being limited to any strike, lock-out, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier, riot, political or civil disturbances, the elements, any act of any State or Government, any delay in securing any permit, consent or approval required by the Company for supply of the goods under the contract, or any other authority, or any other cause whatsoever beyond the control of the Company.
 - 10.2. The Customer will not have the right to cancel any contract on the basis that the goods are not suitable for the purposes for which they are required, whether those purposes are known to the Company or not.
 - 10.3. If any goods or any part thereof are to be supplied in accordance with any specifications, measurements or other instructions furnished by the Customer, the Customer shall not have any claim of any nature whatsoever against the Company as a result of any error, discrepancy or defect in those specifications, measurements or other instructions.
 - 10.4. All specifications, illustrations, drawings, price lists, dimensions, performance figures, advertisements, brochures and other technical data furnished by the Company in respect of the goods, and whether in writing or not, are furnished only on the basis that they will not form part of any contract between the parties, or be relied upon by the Customer for any purpose, unless and to the extent that they are expressly agreed to in writing by the parties and are, as such, expressly stated by the Company to form part of the contract between the parties.
 - 10.5. The Company shall under no circumstances whatsoever be liable for any loss of profit or any damages, direct or indirect, consequential or otherwise, sustained by the Customer and arising from any transaction or purported transaction between the parties.
 - 10.6. The Company shall not be liable in damage to a Customer in respect of any negligence in performance of a contract or any other negligent act committed by itself, its agents or employees.
 - 10.7. Without in any way limiting the exclusion of the liability of the Company referred to in this clause, the Company's liability, if any, to the Customer for any damages sustained by the Customer from any cause whatsoever, including any damages arising out of the negligence of the Company or that of its servants, agents or subcontractors, shall in any event and under all circumstances be limited to the replacement of the defective goods.
- 11. SUSPENSION**
 - 11.1. If any amount owed by the Customer is not paid on the due date thereof, then the Company will be entitled, without prejudice to any of its other rights, to suspend the performance of any of its then uncompleted obligations until the payment is made.
 - 11.2. Any amount not paid by the Customer on the due date thereof, shall bear interest at the maximum rate permissible, from time to time, as provided for in the Usury Act number 73 of 1968, as amended, or any other applicable legislation.
- 12. TERMINATION**
 - 12.1. The Company may cancel this contract or any other specific contract concluded with the Customer or any uncompleted part thereof in the event that:
 - 12.2.1. the Customer commits a breach of any of the terms and conditions of this contract, or
 - 12.1.2. if the Customer is an individual, dies or is provisionally or finally sequestered or makes application for the surrender of his estate, or, if the Customer is a partnership, when the partnership is terminated, or if the Customer is a company or close corporation or any other corporate structure, and is placed under provisional order of liquidation or judicial Management, or
 - 12.1.3. if the Customer compromises or attempts to compromise generally with any of its creditors, or
 - 12.2. in the event of the cancellation of this contract, for any reason whatsoever, then:
 - 12.2.1. all amounts then owed by the Customer to the Company will become due and payable forthwith;
 - 12.2.2. The Company will be entitled to relative possession of any goods in respect of which ownership have not passed.
- 13. DOMICILIUM**

The Customer chooses its business address as set out on the front of this invoice, and if no address is stipulated therein, the business address of the Customer as it appears in the latest telephone directory, as its *domicilium citandi et executandi* for all purposes under this contract, whether in respect of notices or other documents, or in respect of all court process. The Customer will be entitled to change such *domicilium citandi et executandi* by written notice to that effect, which change will become effective on the 7th (seventh) day after the receipt of such notice. Any written notice or communication actually received by the Customer will however be adequate written notice or communication if it is notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.
- 14. CERTIFICATE**

A certificate signed by any director of the Company, indicating the amount due and owing by the Customer to the Company at any given time, as well as any other factor of which proof may be required, shall be prima facie proof of the facts therein stated for the purpose of all legal proceedings against the Customer.
- 15. GENERAL**
 - 15.1. This contract constitutes the entire agreement between the parties relative to the matters indicated or envisaged herein.
 - 15.2. No variation or amendment of this contract or any of its terms and conditions, the waiver of any right, or the release from any obligation arising from a contract between the parties, shall be of any force and effect unless reduced to writing and signed by the parties.
 - 15.3. Any attitude or extension of time which may be allowed by the Company to the Customer, shall not under any circumstances whatsoever constitute a waiver of its rights or operate as an estoppel against the Company.
 - 15.4. Time shall never be of the essence of any contract.
- 16. JURISDICTION AND COSTS**

The Customer hereby consents in terms of Section 45 of the Magistrates Court Act 32 of 1944, to the Company taking proceedings for the enforcement of its rights in terms of this contract in the Magistrates Court having jurisdiction, by virtue of Section 28 of the said Act, provided that the Company may at its option institute any such proceedings in the High Court of South Africa, in such event the Customer consents to the jurisdiction of the Witwatersrand Local Division of the High Court of South Africa for all purposes of this contract. The Customer will be liable to pay all legal costs, including collection charges and tracing costs which may arise, on the scale as between attorney and own client.