



## TERMS & CONDITIONS OF SALE

In these conditions:

1. **“THE GOODS”** means the goods indicated on any company forms, price lists, quotations, delivery notes, orders or invoices.

### 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 in full within 30 days from date of the company's statement.

3.2 In all cases where the Customer uses a postal, banking, electronic or similar such service to effect payment, such services shall be deemed to be the agent of the Customer.

3.3 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 and the Customer shall be liable to pay interest in respect of amounts unpaid as at the due date at the compound rate of 4% above the prime overdraft lending rate of the Company's Bank on all overdue amounts 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 manner as set out above.

3.4 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.

3.5 The Company may appropriate all payments made by the Customer to such accounts as it will in its sole and absolute discretion decide.

3.6 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.

3.7 The Customer shall not be entitled to counter claim 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 liable to ascertain its liability to the Company without the need for any debatement.

### 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 without prior 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. The credit limit shall not be deemed to be the limit of a customer's indebtedness to the Company.



## 5. ORDERS

- 5.1 Orders by the Customer for the Company's goods or services shall be made in writing to such address as may be nominated by the Company from time to time.
- 5.2 Orders shall 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 and / or provision of the services or by the written acceptance or confirmation of the order.
- 5.3 Oral orders shall similarly be capable of acceptance by the Company, but the Company will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to make orders in writing.
- 5.4 The Customer shall provide the Company with an order number when placing any order with the Company.
- 5.5 Orders accepted by the Company shall not be varied or cancelled by the Customer, except with the written consent of the Company.

## 6. DELIVERY

- 6.1 In the event that the Company transports the goods to the Customer, delivery and passing of the risk in the goods, shall be deemed to have taken place when the goods are off-loaded at the Customer's premises. The signature of any employee of the Customer on a Company delivery note or invoice shall be prime facie proof of the proper delivery of the goods.
- 6.2 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 shall be prime facie proof of proper delivery to the Customer.
- 6.3 Delivery of goods to any delivery address by the Customer shall constitute proper delivery of the goods, despite the fact that such address may not have been the address or premises of the Customer.
- 6.4 Whilst every effort will be made to despatch goods as advised, the Company does not guarantee despatch on any specific date and shall not be liable for any damages 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.
- 6.5 In the event that the Company makes delivery to the Customer in installments each installment shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery of any installment shall not affect the balance of the contract or entitle the Customer to cancel the contract.
- 6.6 When goods are delivered in installments, 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.
- 6.7 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.
- 6.8 Should the Company, at the Customer's 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.
- 6.9 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.
- 6.10 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, 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 without Court order.
- 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.
- 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 in the possession of the customer have actually been paid for and which have not been paid for.
- 7.6 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.
- 7.7 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 a reconciliation thereof, should it emerge that with the recovery of all goods on the premises of the Company, the said Customer is due a credit, such credit shall be passed.

## 8. LEGAL PROCEEDINGS

- 8.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, 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 The company shall, at its option and notwithstanding that the amount of its claim exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such court.
- 8.3 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.
- 8.4 The Customer's physical address as recorded on this document shall be recognised as the Customer's domicilium citandi et executandi (resides or carries on business) 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.
- 8.5 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.
- 8.6 Setoff shall not operate and the customer shall not make any deductions from the purchase price in respect of alleged setoff or counterclaim.



## 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 to the Arbitration Foundation of SA.

## 10. NEGOTIABLE INSTRUMENTS

- 10.1 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 Customer will be responsible for the upliftment and cost of returning the stock to Benoni.
- 11.3 All goods returned at the Customer's expense, risk in the goods remains with the Customer until the goods are received by the Company.

## 12. DEFECTIVE GOODS

- 12.1 The seller's liability in respect of defective goods shall be limited to replacing or repairing the goods, at the election of the seller, or to refunding the purchase price paid in respect of the goods which are defective.

## 13. WARRANTIES & INDEMNITY

- 13.1 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 Company's decision as to whether goods are defective or not shall be binding on all parties.
- 13.2 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.
- 13.3 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.
- 13.4 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.
- 13.5 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.



## 14. GENERAL

- 14.1 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.
- 14.2 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.
- 14.3 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 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.
- 14.4 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.
- 14.5 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 waiver of any of the Company's rights in terms of any contract.
- 14.6 The Customer shall not cede its rights nor assign its obligations.
- 14.7 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.
- 14.8 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.
- 14.9 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement.
- 14.10 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.
- 14.11 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.