

## GENERAL CONDITIONS OF SALE OF GOODS

### 1. SCOPE OF APPLICATION

1.1 These general conditions of sale of goods (hereinafter the "Conditions"), apply to all goods supplied by us to the buyer ("the Buyer") unless explicitly otherwise agreed upon in writing. In case of a regular business relationship with us, the Conditions shall also apply to future transactions for the supply of goods in which the Conditions might not explicitly be referred to. By placing an order for the goods or entering into a contract with us, the Buyer confirms and is deemed to have read and accepted the Conditions and to have renounced his general terms and conditions, if any. We explicitly reserve the right to amend, modify or otherwise alter the Conditions from time to time.

1.2 In case of conflicting provisions, the provisions of our written confirmation of an order of the Buyer shall prevail over these Conditions.

### 2. OFFERS AND ORDERS

Any order of the Buyer, placed either orally or in writing, shall be considered a binding offer to us to enter into a contract on the terms and conditions stipulated therein. Contracts, as well as supplements, modifications or ancillary agreements, shall be deemed entered into only upon (i) our written confirmation through a quotation (without prejudice to any reservations to which the quotation is made subject) or (ii) initiation of fulfillment of the order. The Buyer cannot cancel any order, save with our explicit written approval. We have a discretion at all times as to whether to accept an order from the Buyer and/or to supply goods to the Buyer, and may take into account, amongst other things, the availability of stock, the timeous receipt by us of information relating to the goods which the Buyer requires and the Buyer's available credit.

All goods which we sell to the Buyer are sold voetstoots and are deemed to be supplied in good condition and free of any defects.

### 3. PRICES

3.1 Unless explicitly otherwise agreed upon in writing, the price of the goods will be the price of those goods on our price list at the time when we accept the Buyer's order. Such prices exclude value added tax which is for the Buyer's account and will be added to our invoice.

3.2 Unless explicitly otherwise agreed upon in writing, we shall be entitled to increase any quoted prices in relation to any changes in the costs of supplying the goods to the Buyer, such as but not limited to: import/export duties or other levies, taxes or duties, as far as allowed by applicable law.

3.3 Due to Foreign Exchange Rate movements, the price in the Sales offer is subject to reconfirmation.

3.4 All offers are subject to credit cover approval and / or credit cover being available.

### 4. INSTRUCTIONS AND INFORMATION

4.1 For all purposes hereunder the Buyer shall be deemed to have in relation to the Buyer's business, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of supply and all matter relating thereto and the Buyer undertakes to supply all pertinent information to us.

4.2 In supplying goods to the Buyer, we shall be entitled to rely upon the accuracy and completeness of any instruction and other information given to us by the Buyer and recorded in writing. There is no obligation upon us to abide by instructions/advice not recorded in writing.

4.3 We shall be entitled at any time to require the Buyer to furnish further information relating to the goods requested by the Buyer and shall be entitled to postpone performance of any obligation in terms hereof until such information is received.

4.4 In the absence of specific instructions given timeously in writing by the Buyer to us:

4.4.1 it shall be in our reasonable discretion to decide at what time to perform our obligations to the Buyer;

4.4.2 we shall have an absolute discretion to determine the means and procedure to be followed in performing all or any of our obligations to the Buyer;

4.4.3 in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the carrier, warehouseman, underwriter or other person, it shall be in our discretion as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.

4.5 Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to:

4.5.1 make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any goods or as to any special interest in delivery. In particular, the Company shall be under no obligation to make any declaration or to seek any special protection or cover from any carrier in respect of any goods classified as dangerous goods or other goods which require special conditions of handling or storage;

4.5.2 arrange for any particular goods to be carried, stored or handled separately from other goods.

### 5. DELIVERY

5.1 Unless agreed otherwise in writing and/or except to the extent that we agree to clear, forward, warehouse and/or transport the goods in terms of our General Conditions of Sale of Services, if the Buyer requests us to deliver the goods to it, the route and means of transportation shall be determined by us, as well as packaging of the goods.

5.2 If we (or our agent) deliver the goods to the Buyer, delivery takes place when the Buyer (or its agent) begins unloading the goods at the delivery address set out in the Buyer's order. If the Buyer (or its agent) collects the goods from our premises, delivery takes place when the Buyer (or its agent) begins loading the goods on collection at our premises.

5.3 All transport documentation must be completed immediately after completion of loading or unloading the goods, as the case may be.

5.4 Unless we have agreed to provide the Buyer with a credit facility, goods will not be delivered to the Buyer unless and until we receive suitable proof of payment from the Buyer and the full amount due in respect of the goods as freely available funds in our bank account.

5.5 The delivery dates are not binding but are merely given as an indication, unless expressly agreed upon otherwise in writing. Although we will try to deliver the goods to the Buyer by the delivery date requested in the Buyer's order, we are not bound to do so. We are not liable under any circumstances whatsoever, for any loss or damages of any nature (including consequential damages, loss of profit or special damages), whether within the contemplation of the parties or not, and which the Buyer may suffer as a result of any delay in the delivery of the goods. The Buyer may not cancel an order as a result of any delivery delay. We may deliver the goods to the Buyer in more than one instalment.

5.6 A delivery note signed by or on behalf of the Buyer constitutes prima facie (on the face of it) proof that the goods have been delivered to and received by the Buyer in good order and condition.

5.7 Our obligation to supply shall be suspended as long as the Buyer is in arrears with any payment towards us, this without notice and

without prejudice to our right to claim compensation. If any doubt exists as to the Buyer's ability to fulfill his payment obligations towards us, we reserve the right to suspend transport or deliveries until satisfactory securities have been provided or advance payment has been made, as requested by us in our sole discretion.

## **6. TRANSPORT AND RISK**

- 6.1 Risk in and to the goods passes to the Buyer on delivery thereof in accordance with these Conditions.
- 6.2 Unless we agree otherwise in writing, we shall not be obliged to procure any insurance or related cover of any nature for the goods on the Buyer's behalf or otherwise. We may by agreement with the Buyer, procure any requested insurance cover on the Buyer's behalf and at the Buyer's expense. Should the insurer dispute its liability in respect of the goods, the Buyer shall have a claim against the insurer only and not against us.
- 6.3 Transport rates quoted are subject to 3 hours loading/unloading time.
- 6.4 Loading times are 7am - 4pm (flexible dependent on demand and prior notice).
- 6.5 Transport is subject to vehicle availability at time of booking.
- 6.6 Transport rates are subject to re-confirmation at time of booking.
- 6.7 Transport rates quoted exclude any additional documentation required.
- 6.8 Warehouse operating hours 7am – 5pm Monday to Friday.
- 6.9 Transport over weekends and overtime are by prior arrangement and acceptance from both parties, at an agreed overtime charge.

## **7. ACCEPTANCE, INSPECTION AND CLAIMS**

- 7.1 Without prejudice to its right to inspect the goods, the Buyer must take delivery of the goods immediately upon presentation. All costs incurred by us relating to the Buyer's refusal to take delivery of the goods are for the Buyer's account, including costs of transportation and storage. If the risk for loss or damage to the goods has not yet been transferred to the Buyer as provided in these Conditions, such risk shall be deemed to have transferred to the Buyer at the time of refusal to take delivery and the Buyer shall be deemed to have taken delivery of the goods at such time.
- 7.2 The Buyer must inspect the goods without delay. Any claims or returns concerning quality or quantity must be notified to us. The goods shall be deemed to have been delivered to the Buyer in good order and condition unless we receive such claim or notice of return within 10 business days after delivery of the goods to Buyer. .
- 7.3 Defects that could not have been discovered even through diligent inspection must be notified in the same manner as set out in the preceding paragraph 7.2 within 10 business days after the date of delivery thereof.
- 7.4 No claims or returns will be accepted once the goods are changed in any way, processed or resold. Further, the Buyer shall lose all rights to claim for defects in case the goods were improperly handled or stored by or for the account of the Buyer.
- 7.5 No express or implied warranties are made by us regarding the suitability of the goods for the purpose intended by the Buyer; as such no consequential damage claims will be entertained.
- 7.6 For justified or accepted claims, we shall, in our sole discretion, as the case may be (i) supply additional or replacing goods at our expense; or (ii) partly or in full refund the invoice amount or issue a credit note. Any and all further claims or demands of the Buyer on whatever legal basis are hereby rejected.

## **8. RETENTION OF TITLE**

- 8.1 The goods remain our property until full and final payment of the related invoice in the event the Buyer buys from other suppliers or manufacturers goods that are identical or similar to the goods bought from us, the Buyer shall be obliged to, if not yet the case, affix to the goods a sign clearly indicating that the goods are our property.
- 8.2 If this retention of title is not enforceable towards third parties under any relevant law or in any relevant jurisdiction, or as a result of any other reason, under any relevant law or in any relevant jurisdiction, we shall be conferred to the security and collateral rights permissible under such law/in such jurisdiction as security for due payment of the invoice. The Buyer shall inform us of the measures we have to take to safeguard our rights and shall co-operate in taking such measures.

## **9. PAYMENTS**

- 9.1 We will send the Buyer an invoice and statement for the amount which the Buyer owes to us for the Goods. Except where we have granted credit facilities to the Buyer, the Buyer must pay us the full amount due in respect of the goods on presentation of our invoice. If we have granted credit facilities to the Buyer, full payment of our invoice must be made within 30 days after the date of our statement, unless the parties agree otherwise in writing.
- 9.2 Payments are to be performed on the terms and in the currency as mentioned in the invoice. Any claim relating to the invoice must be presented to us not more than 12 business days after receipt of the invoice.
- 9.3 The Buyer undertakes to collect/accept all documents when presented by us. Further, it will carry out all measures necessary for the immediate transfer of necessary funds.
- 9.4 Interest shall accrue on overdue payments at the "mora" interest rate in terms of Section 1 of the Prescribed Rate of Interest Act, 1975.

## **10. FORCE MAJEURE, HARDSHIP**

- 10.1 Neither party is liable for any failure to meet any of its obligations in terms of this Agreement, or any delay in meeting them, to the extent to which the failure or delay is caused by Force Majeure. For the purposes of this clause, Force Majeure means any event or circumstance which makes it permanently or temporarily impossible for a party to perform all or some of its obligations and which:
  - 10.1.1 is beyond a party's reasonable control;
  - 10.1.2 could not reasonably have been provided against before concluding this agreement;
  - 10.1.3 cannot reasonably be avoided or overcome;
  - 10.1.4 is not attributable to the other party; and
  - 10.1.5 which may include war, invasion, hostilities, civil war, acts of terrorism, riot, civil commotion, disorder, labour dispute, strike, lock-out, go slow, accident, vehicle breakdown, load shedding, cybercrime, any government act or omission, roadblocks, searches, natural catastrophes such as earthquake, hurricane or cyclone; but
  - 10.1.6 which does not include any inability to pay by any party because of a lack of funds.
- 10.2 The affected party must give notice to the other party immediately upon the occurrence of a Force Majeure or as soon as reasonably possible and must resume performance of its obligations as soon as the cause of the Force Majeure has ceased.
- 10.3 Each party must take all reasonable and necessary steps at its own expense to mitigate the consequences of any Force Majeure which affects the performance of its own obligations.

## **11. SANCTIONS AND EXPORT CONTROL**

- 11.1 The Buyer represents and warrants that neither it nor any person or entity that owns or controls it or that it owns and controls is a designated target of any trade, and/or economic and/or financial sanction or sanctions (including without limitation any relevant law,

regulation, order, ordinance, resolution, decree, restrictive measure or other requirement having the force of law), adopted by the U.S., E.U. (or its respective Member States), U.N., or the country of origin or destination of the goods (collectively "Sanctions"). The Buyer agrees and undertakes to the other that it and its agents, contractors, and representatives will fully comply with the requirements of all applicable Sanctions in the performance of this Contract.

11.2 Buyer agrees and undertakes that the goods will not be:

- resold to;
- disposed of by; or
- transported on a vessel, or by a carrier, owned, flagged, chartered, managed or controlled by, directly or indirectly to, any country, person or entity, or for the purpose of any commercial activity, which would cause us or a person subject to U.S. or EU jurisdiction, our banks, insurers, agents, contractors or representatives to be in violation of applicable Sanctions and/or export or re-export controls. If required, Buyer shall provide us with appropriate documentation for the purposes of verifying the destination of the goods. We reserve the right to unilaterally terminate the contract if performance thereof would, or reject any restricted destination, vessel, transit route, person or entity that would cause the performance of this Contract to, violate any applicable Sanctions or which would cause us or our banks, insurers, agents, contractors, or representatives or a person subject to U.S. or EU jurisdiction to be in violation of or be penalized by any applicable Sanctions.

11.3 Buyer further represents and warrants that it will not make payment for the goods through or via such country, bank, or other entity or body or facility, as would cause us or a person subject to U.S. or EU jurisdiction, our banks, insurers, agents, contractors or representatives, directly or indirectly, to be in violation of or be penalized by any applicable Sanctions. Should payment for the goods be impeded, blocked, delayed, or prevented, for longer than three business days, by reason of Sanctions or their alleged applicability, Buyer shall use its best endeavors to make payment by alternative lawful means that do not, directly or indirectly, violate any Sanctions, (insofar as they apply or are applied or implemented by banks, governments, or other lawfully-constituted authority whatsoever).

11.4 Buyer confirms to comply with all applicable export compliance laws and regulations. This includes, but is not limited to the import and export restrictions related to military and dual use products and technologies, chemical precursors (drugs and explosives), dangerous chemicals, pesticides and substances that deplete the ozone layer.

11.5 Buyer warrants that Supplier's products will be purely used by their customer for civilian end-uses by civilian end-users. The products will not be used by Buyer and their customer in the design, development, manufacturing, or use in internal repression, improvised explosives devices, military applications, space launch vehicles, satellites; Buyers confirm that these obligations will be transferred to their customers and the End User.

11.6 The parties will not cooperate with, agree to, or comply with any terms or requests, including documentary requests, which violate or are otherwise prohibited or penalized under the Anti-Boycott laws or regulations of the U.S and the EU.

11.7 Without prejudice to the foregoing, the Buyer agrees to cooperate with our reasonable requests for information and/or documentary evidence to support and/or verify compliance with this clause.

11.8 Each and every obligation, warranty and undertaking in this clause shall be deemed to be a condition of the contract.

## **12. LIMITATION OF LIABILITY AND INDEMNITY**

Unless explicitly stated otherwise in these Conditions, any and all claims for damages for non-performance, breach of contract, damage, loss, costs, expenses or claims related to cybercrime, breach of pre-contractual obligations or extra-contractual liability vis-à-vis our employees, officers, agents, auxiliaries, or ourselves shall be excluded.

Our liability for any type of loss, including but not limited to gross negligence if permitted by law, shall not exceed the price of the goods concerned. We are not liable to the Buyer for any consequential, special or indirect damages which it may suffer in any way arising from, or in connection with, these Conditions or the goods which we supply to the Buyer.

The Buyer indemnifies us against any claims made against us by any third party arising out of, or in connection with, any goods which we supply to the Buyer, and/or the use of those goods.

## **13. LIEN**

13.1 We shall maintain a lien over all corporeal and incorporeal property in our possession, including but not limited to all goods and documents relating to goods such as bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, and associated with the indebtedness for any reason whatsoever by the Buyer in our favour.

13.2 We reserve the right to enforce the above lien until all monies due to us by the Buyer are paid up together with interest accumulating thereon.

13.3 If any debt by the Buyer in our favour remains unpaid after the lapse of 30 days from the date upon which it became due, we may sell/dispose of the property forming the subject matter of the lien on any basis that we deem fit, and without in such circumstances, becoming liable for any loss consequent upon or incidental to the exercise of such right of sale.

13.4 Any expenses and charges which we incur or are levied against us in enforcing the lien, including; storing, handling and selling the said property shall be borne by the Buyer. The proceeds of the sale shall be applied towards offsetting the Buyer's entire indebtedness to us and any surplus accumulating thereafter will be refunded to the Buyer.

13.5 If property in question is not owned by the Buyer, the Buyer hereby confirms being empowered on behalf of the owner thereof, to deal with same and authorizes us to exercise our rights in terms hereof.

## **14. CESSION OF CLAIMS**

14.1 The Buyer and applicable Surety hereby jointly and severally, irrevocably and in rem suam (concerning (in) one's own affairs) cede and assign as a pledge unto and in our favour, all the right, title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Buyer and/or Surety may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Buyer and/or Surety from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in securitatum debiti (as security for the debt) and is not an out-and-out cession.

14.2 Should it transpire that the Buyer and/or Surety entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Buyers and/or Surety's reversionary rights.

14.3 This Cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Buyer and/or Surety's indebtedness to us.

14.4 For the purpose of giving effect to the foregoing Cession both the Buyer and Surety hereby nominate, constitute and appoint us to be their Attorney and Agent, in rem suam (concerning (in) one's own affairs), with full authority for the Buyer and/or Surety and in the Buyer and/or Surety's name to demand, sue for, recover and receive all sums of money hereby ceded and assigned and with the authority to sign all documents on the Buyer and/or Surety's behalf and in the Buyer and/or Surety's name in connection with the recovery of the said sums and to give acquittances and receipts for the Buyer and/or Surety.

14.5 The Buyer and Surety agree that, on our request, they shall be obliged to hand over to us all books of account, contracts, invoices, documents and the like which we may require for the purposes of ascertaining the amounts due to the Buyer and/or Surety for the purpose of recovery of payment.

14.6 The Buyer and Surety shall be obliged to furnish us with a schedule of all debts due to the Buyer and/or Surety by their respective debtors monthly and upon demand. Notwithstanding the foregoing, we or our nominee shall at all times be entitled to inspect all or any of the Buyer and Surety's records as we deem fit. Failure by either party to give effect to the foregoing shall not in any way prejudice our rights hereunder, and we shall at all times be deemed to have perfected our security in terms hereof.

#### **15. SEVERABILITY**

Each provision in this Conditions is severable from the others, notwithstanding the manner in which they may be linked together or grouped grammatically, and if in terms of any judgment or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force. In particular, and without limiting the generality of the foregoing, the Parties hereto acknowledge their intention to continue to be bound by these Conditions notwithstanding that any provision may be found to be unenforceable or void or voidable, in which event the provision concerned shall be severed from the other provisions, each of which shall continue to be of full force.

#### **16. LAW AND DISPUTES**

16.1 Within the scope of application of these Conditions, the ICC eTerms 2004 are applicable and the Buyer agrees to be bound by such ICC eTerms 2004.

16.2 These Conditions as well as all legal relations between the Buyer and ourselves within the scope of application of these Conditions are exclusively governed by the laws of South Africa, including the United Nations Convention on Contracts for the International Sale of Goods (1980) which shall apply.

16.3 The parties agree that any legal action or proceedings arising out of or in connection with these Conditions shall be brought in the division of the High Court of South Africa where our head office is situated at the commencement of the proceedings, and the buyer irrevocably submits to the non-exclusive jurisdiction of such court.