

1 FORMATION OF CONTRACT

- 1.1 Unless otherwise agreed in writing by Seller, all quotations, offers, tenders and contracts are made and all orders are accepted subject to the following terms and conditions. Except as otherwise provided in these terms and conditions, all warranties are excluded from any contract between Seller and its customers ("**Buyer**") unless expressly accepted in writing by Seller. Nothing in these terms and conditions shall affect the statutory rights of Buyer or Seller.
- 1.2 If there is a conflict between these terms and conditions and any other terms or conditions of Seller's quotation, offer, tender, acknowledgement of order or any other contract between Seller and Buyer, the latter terms and conditions of sale shall prevail. Quotations, offers and tenders may be withdrawn by Seller by written or oral notice to Buyer at any time prior to Seller's acceptance without Seller incurring any liability.
- 1.3 If any statement or representation has been made to Buyer by Seller or its officers, employees or agents (other than in the document(s) enclosed with Seller's quotation or acknowledgement of order), upon which Buyer wishes to rely it shall only be entitled to do so if the statement or representation is attached to or endorsed on Buyer's order and then only if Seller subsequently confirms in writing to Buyer that Buyer is entitled to rely on the statement or representation.
- 1.4 Unless specifically agreed to the contrary all commercial terms shall be interpreted in accordance with INCOTERMS current at the time the order is accepted.

2 PRICES AND PAYMENT

- 2.1 Unless otherwise agreed in writing, prices for delivery in South Africa are quoted delivered in South Africa (within a 50km radius of Seller's Head Office only) exclusive of VAT and for delivery outside South Africa prices are quoted net ex-works exclusive of VAT and all other duties, fees, or taxes. Quoted prices may fluctuate and the price charged will be Seller's price ruling on the date of dispatch. Buyer shall be solely responsible for obtaining all necessary licences, permits and consents (including export or import licences).
- 2.2 Unless otherwise agreed by Seller in writing, payment shall be due and

payable 30 days after the end of the month of invoice (30 days from date of statement). The time for payment shall be of the essence of any contract between Seller and Buyer.

- 2.3 Seller shall be entitled to submit its invoice with its delivery advice note or at any time afterwards except that where delivery has been postponed at the request of, or by the default of, Buyer, Seller may submit its invoice at any time after the goods are ready for delivery or would have been ready in the ordinary course but for Buyer's request or default. Where goods are delivered by installments Seller may invoice each installment separately and Buyer shall pay such invoices in accordance with these terms and conditions.
- 2.4 Buyer hereby acknowledges that should any amount not be paid on due date, the full amount owing by the Buyer to Seller shall immediately become due and payable without any notice of whatsoever nature, notwithstanding that any amount may, as at that date, not yet be due. Buyer shall pay interest on all overdue amounts at a compound rate of 3% per annum above the prime overdraft rate charged by Seller's bankers to Seller. Buyer further agrees that in the event of its default in any respect whatsoever towards Seller, Seller shall be entitled to place Buyer on "stop supply" without any notice notwithstanding that Buyer may have placed an order for the supply of goods prior to the stop supply date.
- 2.5 In the event of Seller instructing its attorneys to collect any overdue amounts from Buyer, all legal fees and collection charges and tracing agents' fees as between attorney and client shall be borne by Buyer and all payments made shall firstly be allocated towards such fees and charges and thereafter to accrued interest and finally to capital.

3 DELIVERY, RISK AND TITLE

- 3.1 Delivery of the goods shall be given and taken at Seller's premises unless Seller has specifically agreed in writing to arrange transport for the goods in which case delivery shall occur when the goods arrive at the designated place of delivery. Time for delivery is given as accurately as possible but is not of the essence of the contract.
- 3.2 Risk shall pass to Buyer (so that Buyer is then responsible for all loss or deterioration of the goods or for any damage occurring):

- 3.2.1 If Seller is responsible for delivering or arranging for delivery of the goods, at the time when the goods arrive at the place for delivery; or
- 3.2.2 In all other circumstances, at the time when the goods leave the premises of Seller or in accordance with the applicable INCOTERM specified in the contract.
- 3.3 Title to the goods shall only pass to Buyer upon the happening of any of the following events:
- 3.3.1 Buyer having paid to Seller all sums (including any default interest) due from it to Seller (**a**) under this contract and under all other contracts between Seller and Buyer including any sums due under contracts made after this contract whether or not the same are immediately payable and (**b**) under all contracts between Seller and any associate or subsidiary company of Buyer or any company under the ultimate control of the same parent company as has ultimate control of Buyer;
- 3.3.2 Seller serving on Buyer notice in writing specifying that title in the goods has passed.
- 3.4 Seller may recover goods in respect of which title has not passed to Buyer at any time and Buyer irrevocably authorises Seller, its officials, employees and agents to enter upon any premises of Buyer, with or without vehicles, for the purpose either of satisfying itself that Condition 3.5 below is being complied with by Buyer or of recovering any goods in respect of which title has not passed to Buyer.
- 3.5 Until title to the goods has passed to Buyer under these terms and conditions it shall possess the goods as fiduciary agent and bailee of Seller. If Seller so requires, Buyer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to Seller. During such time as Buyer possesses the goods with Seller's consent, Buyer may in the normal course of its business sell or hire the goods as principal but without committing Seller to any liability to the person dealing with Buyer. If the goods are processed or mixed by Buyer with other goods so that it loses its identity then the title in such goods shall thereupon pass to Buyer and provided further that if Buyer sells the goods or part of it to a third party the proceeds of such sale shall be held by Buyer for Seller's account until Seller has been paid in full.

4 RETURNED OR REJECTED GOODS

- 4.1 Goods may not be returned without the prior consent of Seller. Goods authorized for return must be returned within 10 (ten) days of Seller’s shipping date. Returned goods are subject to a restocking charge of 15% (fifteen) of the outright sales price.
- 4.2 Upon the return of goods pursuant to authorization Seller may at its option repair or replace the goods, refund from purchase price or issue credit.

5 GUARANTEE AND EXCLUSION OF LIABILITY

- 5.1 All goods are sold, rented, leased or exchanged “as is, where is” and without warranty of fitness for a particular purpose, or merchantability, or any other warranty, guarantee, or representation of any kind. Whether express or implied, Seller shall have no liability to Buyer, or any third party person/s for consequential damages, or for loss, damage, expense directly or indirectly arising from this transaction or the use of the goods or any inability to use the goods either separately or in combination with other parts or equipment or supplies or from any other cause, whatsoever.
- 5.2 It is for Buyer to satisfy himself of the suitability of the goods for his own particular purpose. Accordingly Seller gives no warranty as to the fitness of the goods for any particular purpose and any implied warranty or condition (statutory or otherwise) is excluded except in so far as such exclusion is prevented by law. Goods are warranted to accord with normal industrial quality. All other warranties or conditions as to quality or description (statutory or otherwise) are excluded except in so far as such exclusion is prevented by law.
- 5.3 In the case of goods not manufactured by Seller:
 - 5.3.1 Seller gives no assurance or guarantee that the sale or use of the goods will not infringe the patent, copyright or other industrial property rights of any other person, firm or company; and
 - 5.3.2 The obligations of Seller relating to defects in such goods are limited to the guarantee (if any) which Seller receives from the manufacturer or supplier of such goods.
- 5.4 Seller shall not be liable in respect of claims arising by reason of death or personal injury except in so far as the death or injury is attributable to a failure by Seller to exercise reasonable

care. Further, under no circumstances whatever shall Seller be liable for losses special to the particular circumstances of Buyer, indirect losses, work required in connection with the removal of defective goods and the installation of repaired or substituted goods, loss of profits, damage to property or wasted expenditure.

- 5.5 Notwithstanding the foregoing, Seller hereby assigns Buyer any assignable warranty approval to these terms to which Seller is entitled of any kind from Seller to Buyer of any such warranty.
- 5.6 Without prejudice to Condition 5.3, where goods are supplied for the purpose of a business, Seller’s liability, whether in respect of one claim or the aggregate of various claims (other than claims for death or personal injury to the extent that the same is caused by a failure of seller to take reasonable care), shall not exceed the contract price of goods and Buyer agrees to insure adequately to cover claims in excess of such amount.

6 INSOLVENCY AND FORCE MAJEURE

If Buyer is deemed by Seller to be unable to pay its debts as they fall due, Seller shall be entitled to cancel any and all contract between Seller and Buyer in whole or in part by giving written notice to Buyer, without prejudice to any other right or remedy available to Seller. All amounts invoiced by Seller to Buyer and not otherwise due for payment shall become immediately due. Neither Seller nor Buyer shall be under any liability for any failure to perform any of its respective obligations under any contract between Seller and Buyer if and to the extent that the failure is caused by reason of any cause outside the control of such party.

7 ASSIGNMENT AND THIRD PARTY RIGHTS

Buyer shall not be entitled to assign the benefit or burden of the contract or of any interest in it without the prior written consent of Seller. A person who is not a party to this contract or any other contract entered into by Seller and Buyer shall have no rights to enforce any of the terms and conditions contained therein.

8 LAW

This contract shall be subject to South African law and the exclusive jurisdiction of the South African

courts. All disputes shall, unless otherwise mutually agreed, be settled in accordance with the practice Rules promulgated in terms of the Republic of South Africa Arbitration Act No. 42 of 1965.

9 GENERAL

- 9.1 No relaxation or indulgence granted by Seller to Buyer and/or the surety/ies shall be deemed to be a waiver of any of the rights of Seller in terms of this contract and such relaxation or indulgence shall not be deemed to be a novation of any of the terms and conditions of this contract or any other contract entered into by Seller and Buyer.
- 9.2 For all purposes under this contract or any other contract between Seller and Buyer including giving any notice, the payment of any amount, the services of any process and for all other purposes arising from this contract or any other contract between Seller and Buyer, Buyer and the surety/ies hereby choose domicilium citandi et executandi at the physical address of Buyer stipulated on the document to which these Standard Terms and Conditions of Sale apply or are attached.