

Standard Terms and Conditions

1. (a) The Purchaser agrees that this Agreement represents the entire Agreement between the Purchaser and THE COMPANY and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by a duly authorised representative of both the Purchaser and THE COMPANY; (b) this Agreement will govern all future contractual relationships between the parties; (c) this Agreement is applicable to all existing debts and future debts between the parties; (d) this Agreement is final and binding and is not subject to any suspensive or dissolutive conditions; (e) any conflicting conditions stipulated by the Purchaser are expressly excluded; (f) these terms supersede all previous conditions of Agreement without prejudice to any securities or guarantees held by THE COMPANY; (g) these terms apply to all servants and subcontractors of THE COMPANY and the Purchaser shall not be entitled to cede its rights in terms of this Agreement to any party without first notifying THE COMPANY in writing of such cession, failing which the Purchaser shall still be liable to THE COMPANY for all amounts due to it in terms of this Agreement. THE COMPANY shall, at any time, in its sole discretion, be entitled to cede all or any of its rights in terms of this Agreement to any third party, without prior notice to the Purchaser.
- 2.1 This Agreement only becomes final and binding on receipt and acceptance of this offer by THE COMPANY at its business address.
- 2.2 Any order only becomes final and binding on receipt and acceptance of such order by THE COMPANY at its business address.
3. The signatory to this Agreement warrants that he/she has the necessary authority to enter into this Agreement on behalf of the Purchaser.
4. The Purchaser acknowledges that it does not rely on any representations made by THE COMPANY, in regard to the goods or any of its qualities, leading up to this Agreement, other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by THE COMPANY in respect of the goods or services orally or in writing will not form part of the Agreement in any way unless agreed to in writing by THE COMPANY.
- 5.1 The Purchaser agrees that neither THE COMPANY nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Purchaser.
- 5.2 It is the sole responsibility of the Purchaser to determine that the goods or services ordered are suitable for the purposes of intended use.
- 5.3 Prices are exclusive of VAT.
- 5.4 The prices are based on the cost to THE COMPANY of material, labour, transport, customs, excise of other duties, landing charges, if any, insurance and the rates of exchange ruling at the date of the sale. In the event of there being any increase which affects any such costs prior to delivery, the prices will be subject to variation proportionally and without prior notice, at the discretion of THE COMPANY.
- 6.1 All quotations will remain valid for a period of 14 days from the date of the quotation, unless otherwise specified in writing, or until the date of issue of a new price list, (which price list will be furnished to the Purchaser by THE COMPANY), whichever occurs first.
- 6.2 All quotations are subject to the availability of the goods or services and subject to correction of good faith errors by THE COMPANY and the prices quoted are subject to any increases in the cost price, including currency fluctuations, before acceptance of the order.
- 6.3 The Purchaser hereby confirms that the goods or services on any Tax Invoice issued duly represent the goods or services ordered by the Purchaser at the prices agreed to by the Purchaser and, where delivery / performance has already taken place, that the goods or services were inspected and that the Purchaser is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects. Failure on the part of the Purchaser to object to any item appearing on THE COMPANY'S statement of account within 14 days of date of dispatch of such statement, shall deem the account to be in order.
- 6.4 All orders or agreed variations to orders shall be binding and subject to these standard conditions of Agreement and may not be cancelled.
- 6.5 THE COMPANY shall be entitled in its sole discretion to split the delivery / performance of the goods or services ordered in the quantities and on the dates it decides.
- 6.6 THE COMPANY shall be entitled to invoice each delivery / performance actually made separately.
- 6.7 Any delivery note or waybill (copy or original) signed by the Purchaser or a third party engaged to transport the goods and held by THE COMPANY shall be proof that delivery was made to the Purchaser. In the event of any order being given to THE COMPANY on an order form reflecting the Purchaser's name as the entity from which the order emanates, such order shall be deemed to have emanated from the Purchaser, notwithstanding the fact that such order may have been given or signed by a person not authorised by the Purchaser, and such order will be deemed to constitute valid delivery.
- 6.8 The risk of damage to, destruction or theft of goods shall pass to the Purchaser upon delivery of the goods, and the Purchaser undertakes to comprehensively insure the goods until paid for in full.
- 6.9 Delivery and performance times quoted are merely estimates and are not binding on THE COMPANY.
- 6.10 THE COMPANY shall not be responsible for freight or courier or any other delivery charges, and the Purchaser is required to appoint its own delivery agent at its own cost. Goods to be dispatched to the Purchaser by rail or other carriers shall be at the Purchaser's risk from the time delivery is made by THE COMPANY to the carrier.
- 6.11 Claims for shortages or damages must be notified in writing within 48 hours after delivery of goods, failing which no claim will be recognised.
- 6.12 THE COMPANY will repair or at its discretion replace, at THE COMPANY'S premises, any goods sold which are proved within 12 (twelve) months from delivery, not to conform to specification or to be defective due to faulty workmanship or materials. Under no circumstances shall THE COMPANY be responsible for loss of the Purchaser's profit or for any consequential or indirect or any other damages of any nature whatsoever and from whatever cause arising.
- 6.13 The Purchaser indemnifies THE COMPANY against any claims for damages consequential or otherwise, that may arise from any shortages or damages as per clause 6.11.
- 6.14 All goods taken on a consignment basis by the Purchaser are deemed sold if not returned within 7 days in the original condition, in the original packaging and with all accessories and manuals intact.
- 6.15 Should THE COMPANY agree to accept return of goods, the Purchaser warrants the good condition thereof and a minimum of 15% (fifteen percent) handling charge shall apply.
7. Goods are sold voetstoots with no warranty against patent or latent defects and all other guarantees including common law guarantees are hereby specifically excluded, save for the 1 (one) year guarantee provided by THE COMPANY, from date of invoice. Services carry no guarantee.
- 8.1 Under no circumstances shall THE COMPANY be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever.
- 8.2 Under no circumstances shall THE COMPANY be liable for any damage arising from any misuse, abuse or neglect of the goods or services.
- 9.1 The Purchaser agrees that the amount contained in a Tax Invoice issued by THE COMPANY shall be due and payable unconditionally (a) cash on order; or (b) if the Purchaser is a Credit Approved Purchaser, within 30 days from the end of the month in which a Tax Invoice has been issued by THE COMPANY; or (c) on other terms agreed in writing with the COMPANY.
- 9.2 The Purchaser agrees to pay the amount on the Tax Invoice at the offices of THE COMPANY or at such other place THE COMPANY may designate in writing.
- 9.3 THE COMPANY does not accept payment by cheque.
- 9.4 If the Purchaser orders goods that are non-stocked goods or services, which do not appear in THE COMPANY'S most recent catalogue, the Purchaser shall pay 50% (fifty percent) of the selling price on order, as a non-refundable deposit. All non-stocked goods are not returnable.
- 10.1 The Purchaser has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Purchaser and any such extension will not be applicable or enforceable unless agreed to by THE COMPANY, reduced to writing and signed by the Purchaser and a duly authorised representative of THE COMPANY.
- 10.2 The Purchaser is not entitled to set off any amount due to the Purchaser by THE COMPANY against this debt, and THE COMPANY shall be entitled to allocate any payments received from or credit granted to the Purchaser towards any obligation owed by the Purchaser.
11. The Purchaser agrees that the amount due and payable to THE COMPANY may be determined and proven by a certificate issued and signed by any director or manager or member or partner of THE COMPANY, whose authority need not be proven or by any independent auditor nominated by THE COMPANY. Such certificate shall be binding and shall be proof of the indebtedness of the Purchaser and the Purchaser shall bear the onus of proving that the amount is not due and payable.
12. Any printout of computer evidence tendered by the Company shall be admissible evidence.
- 13.1 The Purchaser agrees that interest shall be payable at the maximum legal interest rate prescribed in terms of the National Credit Act on any monies past due date to THE COMPANY and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.
- 13.2 A Credit Approved Purchaser acknowledges that the extension of credit by THE COMPANY for the purchase of goods, represents an Incidental Credit Agreement between the Purchaser and THE COMPANY, as defined by the National Credit Act.

Standard Terms and Conditions

- 14.1 The Purchaser agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 10.1 above in the case of a Credit Approved Purchaser, THE COMPANY is: (i) entitled to immediately institute action against the Purchaser at the sole expense of the Purchaser; or (ii) to cancel the Agreement and take possession of any goods delivered to the Purchaser and claim damages. These remedies are without prejudice to any other right THE COMPANY may be entitled to in terms of this Agreement or in law. THE COMPANY reserves its right to stop supply immediately on cancellation or on non-payment.
- 14.2 A Credit Approved Purchaser will forthwith lose this approval when payment is not made according to these terms and conditions, and all amounts then outstanding shall immediately become due and payable.
- 14.3 THE COMPANY shall be entitled to withdraw or amend credit facilities at any time within its sole discretion.
- 14.4 In the event that the Purchaser is a company and the board of the company resolves that the company voluntarily begin business rescue proceedings, or in the event that the business rescue proceedings are commenced by a third party in terms of the provisions of Chapter 6 of the Companies Act 71 of 2008, this agreement is deemed to have terminated on the date on which the Purchaser's board passed the said resolution or such proceedings were commenced by a third party.
- 15.1 The Purchaser irrevocably authorises THE COMPANY to enter its premises to repossess any goods delivered, with a duly authorised court order, and indemnifies THE COMPANY completely against any damage whatsoever relating to the removal of repossessed goods.
- 15.2 In the event of cancellation of the Agreement by THE COMPANY, it is entitled not to produce the goods in respect of the unpaid balance of a contract and to recover any loss sustained thereby from the Purchaser.
- 16.1 All goods supplied by THE COMPANY remain the property of THE COMPANY until such goods have been fully paid for whether such goods are attached to other property or not.
- 16.2 The Purchaser shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of THE COMPANY in and to the goods.
- 16.3 If any goods supplied to the Purchaser are of a generic nature and have become the property of the Purchaser by operation of law the Purchaser shall be obliged on notice of cancellation of the Agreement to retransfer the same quantity of goods in ownership to THE COMPANY.
17. The Purchaser shall be liable to THE COMPANY for all legal expenses on the attorney and own client scale (not limited by tariff) of an attorney and counsel (whether junior or senior) incurred by THE COMPANY in the event of (a) any default by the Purchaser or (b) any litigation in regard to the validity and enforceability of this Agreement. The Purchaser shall also be liable for any letter of demand, tracing, collection or valuation fees incurred as well as for any costs relating to security that THE COMPANY may demand. The Purchaser acknowledges that these charges have been fully explained to it, and that it shall be liable for payment thereof.
18. The Purchaser agrees that no indulgence whatsoever by THE COMPANY will affect the terms of this Agreement or any of the rights of THE COMPANY and such indulgence shall not constitute a waiver by THE COMPANY in respect of any of its rights herein. Under no circumstances will THE COMPANY be estopped from exercising any of its rights in terms of this Agreement.
- 19.1 Notwithstanding the amount which may at any time be owing by THE PURCHASER to THE COMPANY, the parties do hereby consent, in terms of Section 45 of the Magistrate's Court Act (No. 32 of 1944, as amended), to the jurisdiction of the Magistrate's Court having jurisdiction for the determination of any action or proceeding otherwise beyond the jurisdiction of the said court which may be brought by the THE COMPANY, at THE COMPANY'S discretion, against THE PURCHASER however, THE COMPANY reserves the option to waive said right and bring any proceedings against THE PURCHASER in any competent court or forum it may deem fit.
- 19.2 In the event of there being any dispute or difference between the Parties arising out of this Agreement, the said dispute or difference may, on written demand by any party, be submitted to arbitration in the geographical location where the dispute arose, in accordance with the AFSA (Arbitration Foundation of South Africa) rules.
- 19.3 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the local Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of no less than 5 (five) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.
- 19.4 Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgement in relation to a liquidated claim.
- 19.5 Any arbitration in terms of this clause (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 19.6 This clause will continue to be binding on the Parties notwithstanding any termination of the agreement.
- 20.1 Any document shall be deemed duly presented to and accepted by the Purchaser within 24 hours of being faxed or emailed to the Purchaser or any director, member or owner of the Purchaser.
- 20.2 The Purchaser chooses the address nominated for delivery of goods in the Credit Application form, as well as its email address reflected there, for any notification by THE COMPANY, or service of any legal documents or processes, as its domicilium citandi et executandi.
- 20.3 The Purchaser undertakes to inform THE COMPANY in writing within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address, or 14 days prior to selling or alienating the Purchaser's shares or business, and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, THE COMPANY reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Purchaser, it being acknowledged by the Purchaser that such discretion is exercised by THE COMPANY on reasonable commercial grounds.
- 20.4 The Purchaser hereby consents to the storage and use by THE COMPANY of the personal information that it has provided to THE COMPANY for establishing its credit rating and to THE COMPANY disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Purchaser agrees that THE COMPANY will not be held liable for the good faith disclosure of any of this information to such third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.
21. The Purchaser agrees to the standard rates of THE COMPANY for any goods or services rendered, which rates may be obtained on request by the Purchaser to THE COMPANY.
22. The invalidity of any part of this Agreement shall not affect the validity of the entire Agreement.
23. Any order is subject to cancellation by THE COMPANY due to Acts of God from any cause beyond the control of THE COMPANY. THE COMPANY shall be entitled to terminate the contract and to obtain payment in respect of deliveries already made and/or services already performed prior to date of such termination. No claim for damages of any nature whatsoever and from whatsoever cause arising shall lie against THE COMPANY in respect of such delay.
24. Any order is subject to cancellation by THE COMPANY if the Purchaser breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgment is recorded against the Purchaser or any of its principals. In this sentence, any goods delivered by THE COMPANY to the Purchaser and in respect of which payment has not been made at the date of winding up or sequestration shall immediately be returned to and recoverable by THE COMPANY and the agreement pursuant to which such goods were sold shall be deemed to have been cancelled in respect of the goods so returnable.
25. The Purchaser agrees that THE COMPANY will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 23 or 24 occur.
26. This Agreement and its interpretation is subject to South African law.
27. Should the goods supplied by THE COMPANY be used in the Purchaser's process and THE COMPANY is thereafter paid subject to and as a ratio of the Purchaser's production, THE COMPANY makes no warranty that the specific goods supplied by it will yield any particular production by the Purchaser.