

1. REMUNERATION

- 1.1 Unless otherwise agreed, the Customer shall pay to the Supplier, the Supplier's charges stipulated in its tax invoice within the time period stipulated in the quotation or tax invoice submitted to the customer, without any deduction, demand or set-off whatsoever. No amount may be deferred or withheld by reason of any claim or counterclaim which the Customer may allege to have.
- 1.2 The Customer shall pay any other additional costs or expenses of any nature whatsoever arising due to factors beyond the control of the Supplier.
- 1.3 The Customer shall pay any Value Added Tax.
- 1.4 All transportation costs and delivery charges incurred by the Supplier shall be paid by the Customer on demand, unless agreed to in writing.
- 1.5 Where the Supplier has agreed to accept payment of any contract price in instalments, failure to effect payment of any one instalment on due date, shall render the full balance becoming due, owing and payable immediately and without notice to the Customer.
- 1.6 All contract prices quoted are based inter alia (amongst other factors), on the cost to the Supplier of raw materials, labour, freight, import and duty charges ruling at the date of contract, fuel costs, and of the then prevailing rate of exchange operating between the Rand and currency to be provided by the Supplier in obtaining supplies of the goods to be delivered. In the event of an increase in any such cost or charge, or in the event of a change in the rate of exchange, causing an increase in cost to the Supplier, the Supplier shall have the right to increase the contract price accordingly.
- 1.7 The Supplier shall inform the Customer in writing of any proposed increase in terms of clause 1.6 above, as soon as practically possible after the Supplier becomes aware of such increase.
- 1.8 A certificate signed by any Member of the Supplier, whose appointment as such need not be proved, as to the amount outstanding and due by the Customer, shall be regarded as prima facie (on the face of it) proof of the amount outstanding by the Customer to the Supplier at any time, including interest, or of any fact therein referred to.

2. DELIVERY AND CONTRACTUAL RELATIONSHIP

- 2.1 A delivery note or job card signed by the Customer, or its employee, or its duly authorised agent, or representative, will constitute prima facie (on the face of it) proof that either the goods specified therein, or in the corresponding invoice, have been delivered to, and received in sufficient quantity and in a satisfactory condition, by the Customer, or the work to be done and materials to be supplied has been satisfactorily completed.
- 2.2 Notwithstanding anything to the contrary:
  - 2.2.1 The obligation to deliver goods or undertake work and supply materials, will in all cases be conditional upon the availability to the Supplier of the goods or raw materials as ordered and, in addition, timeous receipt by the Supplier of all quantities and specifications that may be required by the Supplier from the Customer.
  - 2.2.2 Where no terms for the delivery of any goods have been agreed between the Supplier and the Customer, the Supplier shall make such goods available for collection by the Customer at the Supplier's premises;
  - 2.2.3 Time will not be of the essence of any sale, or work to be done, and delivery/completion dates will be treated only as estimates, based on the latest information available to the Supplier. Under no circumstances may the Customer withdraw from, or terminate this agreement and/or any contract on account of any delay in delivery/completion, or have any claim of any nature whatsoever against the Supplier arising from late delivery/completion.
  - 2.2.4 The Supplier shall not under any circumstances whatsoever be liable for any damages of any nature whatsoever (including, without limitation, any indirect, consequential or special damages or loss of profit) which the Customer may suffer as a result of any delay in the delivery of the goods as ordered, or completion of the work to be done.

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- 2.3 Quotations given by the Supplier to the Customer shall only be valid for a period of fifteen (15) days, unless otherwise stated in writing.
- 2.4 Notwithstanding anything to the contrary contained herein, the Supplier shall have the right, despite acceptance of any written purchase order, to cancel any contract concluded at any time prior to delivery of the goods ordered, or work to be done and materials to be supplied, in which case the Supplier's liability shall be limited to refunding any amounts paid by the Customer to the Supplier in respect of such contract concluded.
- 2.5 The Supplier shall not be liable for any damages of any nature whatsoever (including any indirect, consequential, special damages, or loss of profit) which the Customer may suffer by reason of the Supplier's cancellation of any contract concluded as provided for in clause 2.4 above.
- 2.6 The Customer acknowledges that it is aware that the Supplier's employees, agents, sub-contractors and representatives have no authority to vary these terms and conditions of trade, and that the Supplier shall not be bound by any statements, warranties or representations made by such employees, agents, sub-contractors or representatives, save as expressly stated in writing and signed by both the Supplier's and Customer's duly authorised representatives.
- 2.7 These terms and conditions are the sole terms and conditions applicable to all contracts concluded between the Supplier and Customer. The Supplier shall not contract subject to any other terms and conditions. Should a purchase order be submitted by the Customer subject to any other terms and conditions, the supply of goods or completion of work by the Supplier shall constitute a counter offer to do business upon these terms and conditions, and acceptance of delivery of the goods, or acceptance of work done by the Customer, shall be acceptance of the Supplier's counter offer, incorporating these terms and conditions of trade.
- 2.8 The Supplier shall not be bound by any representations, warranties or undertakings which precede the conclusion of any contract as provided for herein.
- 2.9 Without prejudice to any other rights or remedies it may have, the Supplier reserves the right to cancel or suspend any contract, should any payment by the Customer be overdue.
- 2.10 The risk of loss and damage in and to any goods sold or work done by the Supplier to, or for the Customer shall pass to the Customer on delivery of the goods to the Customer, or completion of work for and on behalf of the Customer.
- 2.11 Should the Supplier be prevented from delivering any goods or completing any work as a result of any fault on the part of the Customer, or as a result of any cause beyond the Supplier's control, any additional expenses incurred by the Supplier for storing and handling the goods in the interim shall be for the Customer's account.
- 2.12 The Supplier does not give any warranty or guarantee or make any representations whatsoever in respect of the goods delivered, or work done and materials supplied, or their fitness for any particular purpose (whether or not that particular purpose is known to the Supplier), other than any warranty or guarantee that may be expressly stated on the Supplier's quotation or invoice or any manufacturer's warranty in respect of the goods sold or work done and materials supplied.
- 2.13 The Customer shall ensure that:
- 2.13.1 All goods sold are stored, handled and used for the purposes intended and in the manner indicated in any owner's manual or directions for the storage, handling and use thereof, or any warranty booklet, and for which the goods concerned were designed and supplied;
- 2.13.2 Any warning notices displayed on any goods sold must not be removed or obscured.
- 2.14 Any warranty given in respect of any goods sold and delivered by the Supplier to the Customer shall not cover:
- 2.14.1 Any goods that have been modified without the Supplier's prior written consent, or that have been subjected to physical stress, misuse, unauthorised use, negligence or accident, or that have been improperly stored, or used.
- 2.14.2 Any defects in the goods which had been caused after the date of delivery;

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2.14.3 Any defects caused or attributed, directly or indirectly to the improper use, or operation, or fitment of the goods by the Customer, or any third party.

3. RESERVATION OF OWNERSHIP

3.1 The Supplier shall remain the sole and exclusive owner of the goods sold, or work done and materials supplied, until paid for in full by the Customer.

3.2 In the event of the Customer having already sold the goods which have not been paid for, the Customer herein and hereby authorises the Supplier to collect and retain the proceeds of the sale of the said goods sold, without prejudice to the Supplier's other rights.

4. INFORMATION TO BE SUPPLIED BY THE CUSTOMER

4.1 The Customer shall at all times provide the Supplier with:

4.1.1 full and precise details regarding the nature, quantity and exact specifications of the goods to be supplied or work to be done by the Supplier to, or for the Customer;

4.1.2 a written purchase order in respect of the goods to be supplied or work to be done.

4.2 The Customer hereby warrants and undertakes to and in favour of the Supplier the accuracy of all quantities and other particulars furnished to the Supplier in respect of the goods to be supplied or work to be done.

4.3 Only once the Supplier has received and accepted a written purchase order in respect of the goods to be supplied, or work to be done, shall a binding agreement then have been concluded between the Supplier and Customer, subject to the provisions of clause 2.4 above.

4.4 Should the Supplier agree to the cancellation of any contract by the Customer prior to delivery of goods purchased, or work to be done, in addition to any other damages suffered by the Supplier, the Supplier shall be entitled to a cancellation penalty of 20% of the value of the contract concluded. Cancellation shall only be valid and binding if in writing. The Supplier shall not be obliged to accept any request to cancel any contract concluded

5. QUANTITY AND CONDITION OF GOODS

The onus of proving the quantity, quality, type, specifications, and the condition of the goods supplied at the time of receipt thereof by the Customer shall at all times remain with the Customer. Any errors in the nature and extent of the goods delivered or work done, must be brought to the attention of the Supplier, in writing, within five (5) days from the date of delivery of such goods, or date of completion of the work to be done.

6. FORCE MAJEURE

6.1 The Supplier shall not be liable to the Customer for default in the performance or discharge of any duty or obligation under this agreement, or any contract concluded pursuant to this agreement when caused by, including but not limited to: acts of war, acts of God, floods, labour strikes, civil or military disobedience or unrest, riots, inclement weather, government intervention or lockdown, pandemic (including the Coronavirus Disease (COVID-19), Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) or any mutation or variation thereof, fire, explosion, failure of electrical power, including load shedding, or any other events beyond its control (each a "Force Majeure event"), and such performance shall be excused to the extent and for the time necessitated by such Force Majeure event.

6.2 The Supplier shall: (i) give prompt notice in writing to the Customer of the cause of force majeure; (ii) use reasonable efforts to avoid or remove such cause of non-performance; (iii) and continue the full performance of this agreement as soon as such cause is removed.

6.3 The Supplier shall take all reasonable steps to minimize the effects of force majeure on the performance of this agreement and shall, if necessary, agree on appropriate measures to be taken.

6.4 In the event that the Force Majeure event continues for a period of three (3) months or more, either party may terminate this agreement by giving thirty (30) days' written notice to the other party, provided that the Force Majeure event does not cease during that period of notice.

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6.5 The Supplier shall not be liable for any direct, indirect or consequential loss or damage suffered by the Customer caused by, or arising out of, resulting from, or relating to, either directly or indirectly, any Force Majeure event.

7. LEGAL COSTS AND INTEREST

7.1 The Customer shall be liable for all legal costs incurred in the recovery of any monies owing to the Supplier hereunder, on an attorney and client scale, including any tracing agents fees and collection commission;

7.2 In the event of the Customer failing to make payment on due date of payment of any amounts, interest shall be charged on all such overdue amounts at the rate of 2% per month, from the due date of payment of any such amount until the actual date of payment thereof.

8. THE SUPPLIER'S LIABILITY FOR DAMAGE OR LOSS

8.1 Notwithstanding anything to the contrary contained herein, whether express or implied, the Supplier shall not be liable for any losses (including a loss of profit) and/or damages (direct or indirect, consequential, or otherwise) suffered by the Customer (even if such damage is caused by the gross negligence of the Supplier or the gross negligence or willful misconduct of the Supplier's servants, employees, contractors or agents) and the Customer hereby indemnifies the Supplier against any such claim for damages which may be made against the Supplier by any other persons whomsoever.

8.2 Notwithstanding anything to the contrary herein contained, whether express or implied, the Supplier shall not be liable (to the extent, if any, and to which liability would otherwise be attracted) to meet any claim of the Customer in respect of goods found to be defective after delivery unless the Customer lodges a written claim with the Supplier within five (5) days from the date of delivery of such defective goods, and in the further event of such a written claim being received by the Supplier within the five (5) day period, the Supplier shall only be liable to the Customer insofar as either repairing such defects found, or replacing such defective goods with alternative goods if the same cannot be repaired, once the Supplier is satisfied that the goods are indeed defective, or refunding the contract price paid in respect of the defective goods delivered, at its sole election, once the defective goods delivered have been returned to the Supplier. The Supplier shall not be liable under such circumstances for any losses or damages (direct, indirect, or consequential, including loss of profits) suffered by the Customer or any third party whomsoever by reason of such goods being found defective.

9. RETURN OF GOODS

Returns, if accepted by the Supplier at its sole discretion, and upon such terms as it may prescribe, will be credited in full, less a minimum of 20% (twenty percent) of the invoiced price of the goods so returned, as a handling charge, provided that such goods are in a marketable condition and are not customised goods specific for the Customer's requirements, and that the Customer shall be liable for all costs of delivery to the Supplier's designated delivery address.

10. CREDIT INFORMATION

The Customer consents to the Supplier making enquiries about the Customer's credit record with any credit bureau or other third party. The Supplier may provide any credit bureau with regular updates regarding the manner in which the Customer conducts its account, including any failure to comply with these standard terms and conditions of trade. The Customer further consents to such credit bureaus making the Customer's credit record and details available to other credit grantors.

11. DATA PRIVACY

11.1 The Customer acknowledges and agrees that the personal information supplied by the Customer (referred to as the "data") is necessary and required for the successful conclusion of the business transactions entered into, or to be entered into between the parties, and enforcement of rights, and performance of obligations arising therefrom, as well as the rendering of services in terms thereof, and that the data will not be disclosed to any unauthorised parties.

11.2 Accordingly, the Customer consents to the processing of the data by the Supplier or any entity duly authorised thereto by the Supplier, in accordance with the prevailing data privacy and consumer protection legislation. Such processing shall include but not be limited to, the collection, handling, management, storage, safeguarding and sharing of the data with any credit bureaus, other suppliers and financial institutions, if necessary.

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12. NO VARIATION

No amendment or consensual cancellation of any of these terms and conditions of trade (including an amendment or cancellation of this clause) shall be valid and binding on the parties hereto unless recorded in a written document signed, executed and duly authorised by both Supplier and Customer.

13. JURISDICTION

Any proceedings instituted by the Supplier against the Customer arising out of any transactions may be instituted out of the Magistrate's Court for any district having jurisdiction in respect of the Customer by virtue of Section 28 (1) of Act 32 of 1944, for which purpose this clause shall constitute a consent by the Customer in terms of Section 45 of the said Act, provided however that the Supplier shall be entitled, should it so elect, to institute any such action in any High Court which has jurisdiction with regard to both the Customer, and the subject matter of the dispute.

14. CESSION

The Customer shall not be entitled to cede or assign any of its rights or obligations under any contract concluded with the Supplier without the express written consent of the Supplier.

15. NO WAIVER

No relaxation or indulgence granted by the Supplier to the Customer shall be deemed to be a waiver of the Supplier's rights in terms of this Agreement, and any such relaxation or indulgence shall not be deemed as a novation of this agreement, or create any estoppel against the Supplier.

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