

TERMS AND CONDITIONS OF SALE

1. Any order resulting herefrom shall be subject to the conditions herein unless varied by the Supplier in writing, and these conditions will take precedence over any terms, conditions or stipulations contained in any of the Buyer's documentation which may be in conflict herewith. Should the Buyer in any way purport to attach any conditions which vary, amend or are in conflict with the conditions set forth herein, then, notwithstanding anything to the contrary stipulated by the Buyer, the conditions set forth herein shall prevail and be of full force and effect unless specifically varied by the Supplier in writing with specific reference to the Buyer's contrary documentation. In the event of the Supplier receiving an official order from the Buyer, should there be any delays on site preventing delivery, the Supplier reserves the right to invoice the Buyer in terms of the order and in addition, charge and invoice the buyer for any associated storage costs.

2. Should the Buyer have previously made application to the Supplier for credit facilities, which said application would have embodied terms and conditions and should the Buyer have furnished any security to the Supplier for the due obligations of the Buyer to the Supplier on any previous occasion, the customer records and acknowledges that the signature by it on this document shall not be regarded as a novation of any such previous agreement or any prior security given by it to the Supplier. The Buyer furthermore records and acknowledges that, in so far as any provision contained herein may be inconsistent with any provisions contained in any document previously executed by it, the provisions of this document shall prevail.

3. Prices and discounts are those ruling at the date of dispatch of the goods and the Supplier reserves the right to adjust or change any prices and/or discounts at any time on reasonable notice to the Buyer.

4. The Buyer acknowledges that payment is due within (30) thirty days from date of statement, which date will be the last day of each succeeding month during which a particular delivery was made. Should the Buyer be entitled to any settlement, this is to be agreed in writing by the Supplier. To qualify for any settlement discount the payment needs to be reflected in the bank account of the Supplier on or before the last day of the month within the agreed terms.

4.1 In the event that the account becomes overdue, the Supplier shall be entitled to charge interest on the overdue balance at PRIME +5%.

5. The Supplier has the discretion at all times whether or not to sell to the Buyer. The Supplier may withdraw any limit or withdraw the account facility or may vary the extent, nature and duration of such facilities at any time without prior notice and without giving reason therefore.

6. The Supplier's discretion to sell in terms hereof may be guided by inter alia the following:

6.1 The availability of stock.

6.2 Timeous receipt by the Supplier of any drawings, designs and specifications that may be required by the Supplier from the Buyer provided that such drawings, designs and specifications shall be deemed to have been given to the Supplier for the purpose of description only and shall not form part of the contract.

7. Time shall not be of the essence of the contract and delivery dates shall be treated as approximate only. Under no circumstances shall the Buyer be entitled to withdraw from or terminate the contract on account of any delay in delivery or have any claim of any nature whatsoever against the Supplier arising from late delivery

8. Ownership in the goods sold and delivered to the Buyer on account shall pass to the Buyer only when all amounts due by the Buyer to the Supplier has been paid, notwithstanding delivery of the goods to the Buyer. Risk in and to the goods shall however pass to the Buyer on delivery.

9. A signed Delivery Note shall constitute prima facie (at face value) proof that the goods have been delivered to and received by the Buyer in good condition, whether signed by the Buyer, an employee, an agent or a representative of the Buyer.

10. Set off shall operate automatically as a matter of law at the moment reciprocal debts between the Supplier and the Buyer come into existence and independently of the will of the parties and it shall not be necessary for either the Supplier or the Buyer to specifically raise set off. Upon the operation of an automatic set off aforementioned, the debt shall be mutually extinguished to the extent of the lesser debt with retrospective effect.

11. The Buyer agrees and acknowledges that in the event of -

11.1 the Buyer breaching any condition contained in these conditions;

11.2 the Buyer failing to pay any amount due and payable on due date;

11.3 the Buyer suffering any civil judgment to be taken or entered against it;

11.4 the Buyer causing a notice of surrender of it's estate to be published in terms of the Insolvency Act No. 24 of 1936, as amended;

11.5 the Buyer passing away;

11.6 the Buyer's estate being placed under any order of provisional or final sequestration, provisional or final winding up, or provisional or final judicial management or business rescue, as the case may be;

then the Supplier shall, without detracting from any other remedies which may be available to it, be entitled to cancel the sale of the goods to the Buyer on reasonable notice to repossess those goods sold and delivered by the Supplier to the Buyer, or to claim specific performance of all of the Buyer's obligations, whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to the Supplier's right to claim damages.

12 Should the Buyer have any complaint of whatsoever nature concerning any of the goods which are not manufactured by the Supplier, it shall be entitled to require the Supplier to cede to it any rights, which the Supplier may have against the original Supplier of those goods but shall have no other claim against the Supplier in respect of the matter complained of. The Buyer shall not be entitled to withhold payment from the Supplier in respect of such goods for any reason whatsoever.

13. Should the Supplier agree to accept the return of any goods, the Buyer shall be liable to pay the Supplier a handling charge of not less than 10% on the invoiced price of the goods so returned.(subject to damages suffered, the purchase price will be repaid, where applicable by set off against other amounts due by the Buyer).

14. The Supplier shall be exempted from and shall not be liable under any circumstances whatsoever for any damages including indirect or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the Buyer may suffer as a result of any delay in delivery of the goods ordered.
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15. It is a condition of each sale that the goods are sold voetstoots and without any warranties or representations whatsoever. In addition the Buyer shall be precluded from raising any complaints or disputing liability to the Supplier in any way unless it shall have notified the Supplier of its complaints or grounds of dispute in writing within 7 days of receipt of the goods in question. Notwithstanding the timeous raising of a complaint or dispute of liability by the Buyer, the Buyer shall, under no circumstances, be entitled to withhold payment in respect of the goods from the Supplier pending the resolution of such dispute or complaint. Subject to the foregoing, the Supplier shall, in its discretion, be entitled to either remedy any failure by adjusting, repairing, replacing the goods in question, or refunding the whole or part (as the case may be) of the contract price paid to it by the Buyer in respect of such goods.

16. When the Supplier is required to manufacture or supply goods to the Buyers' specification and/or drawings, or carries out work according to the Buyer's instructions, or those of its nominees, the Supplier accepts no responsibility for the efficiency or workability of goods so manufactured or work so carried out.

17. Save as otherwise specifically provided for herein, the Supplier shall not be liable to the Buyer or to any other person for any damages including indirect or consequential damages of any nature whatsoever or any loss of profit, or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the Buyer may suffer as a result of any breach by the Supplier of any of its obligations under these conditions or out of any other court whatsoever. The Buyer hereby indemnifies the Supplier against any claim which may be made against the Supplier by any other person in respect of any matter for which the liability of the Supplier is excluded in terms of the foregoing.

18. In the event of the Supplier or its agents instructing attorneys to collect from the Buyer an amount owing to the Supplier, the Buyer agrees to pay all costs on the scale as between attorney and own client, including collection commission and tracing charges.

19. In the event of the Supplier or its agent instructing a Debt Collector to collect from the Buyer an amount owing to the Supplier, the Buyer agrees to pay collection commission in accordance with the Debt Collectors Act (Act. 114 of 1998).

20. The Buyer consents to the jurisdiction of the Magistrates' Court in terms of Section 45 of the Magistrates' Court Act, No. 32 of 1944, as amended, having jurisdiction under Section 28 of the said Act, notwithstanding that the claim may exceed the normal jurisdiction of the Magistrate' Court.

21. The Buyer nominates as its address for services for all notices or processes arising herefrom as the address reflected on the face hereof under the heading "Registered office/Physical address", and the surety nominates as his address for services for all notices or processes arising herefrom the address reflected on the face hereof alongside his name, for service upon the Buyer and the Surety respectively of all notices and processes in connection with any claim for any sum due to the Supplier or any ceded claim.

22. No relaxation or indulgence granted to the Buyer by the Supplier, at any time, shall be deemed to be a waiver of any of the Supplier's rights in terms hereof, and such relaxation or indulgence shall not be deemed as a novation of any of the terms and conditions set out herein, or create any estoppel against the Supplier.

23. The Buyer and Surety agree that in the event of the account becoming overdue and remaining unpaid for 30 days past original due date, that the Supplier and/or its agents may adverse list the Buyer and/or Surety with any credit bureau and that this clause serves as Notice of this due action.

24. The Buyer understands that the information given in relation to this agreement will assist the Supplier in determining whether or not to sell to the Buyer and will be used by the Supplier for the purposes of assessing its creditworthiness. The Buyer confirms that the information given by it is accurate and complete. The Buyer further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the above information.

24.1. The Buyer hereby authorises the Supplier or its agents at all times to contact and request information from any persons, credit bureaux or businesses, including those mentioned under trade references, and to obtain any information relevant to the Buyer's credit assessment. (to determine the Buyer's ability to pay for the goods)

24.2 If the Buyer fails to meet its obligations under these terms and conditions of sale, it authorises the Supplier or its agents to record its non-performance with any credit bureau, which information will be available to third parties. The Buyer further authorises researching its records at any credit bureaux, use new information and data obtained from any credit bureaux in respect of details of how the Buyer has performed in terms of these terms and conditions of sale.

24.3 The Buyer hereby authorises the Supplier or its agents at all times to furnish information concerning the Buyer's dealings with the Supplier, including without being limited to, the Buyer's credit worthiness and defaulting payments to the Supplier.

25. In these conditions, words importing one gender shall include the other gender, and words importing the singular, shall include the plural (and vice versa)