

## TERMS AND CONDITIONS OF ELECTRONIC INVOICING AND STATEMENTS

### INTRODUCTION

These terms and conditions, as amended from time to time, apply when we e-mail invoices and statements to you as an existing client and an account holder. These terms and conditions constitute the agreement between us.

You acknowledge that you have been given an adequate opportunity to read and understand all of these terms and conditions and that you are aware of all the terms and conditions.

### ELECTRONIC STATEMENTS AND TAX INVOICES ARE ORIGINALS

The statements and invoices delivered electronically to you will be regarded as the original and will state "Computer Generated Tax Invoice". We confirm that you should be able to print and save all electronic statements. All statements and invoices are SARS compliant.

### LIMITATIONS OF LIABILITY

It is your responsibility to print your electronic statements. We will not be liable if you receive statements electronically but are unable to access or print the statements.

It is your responsibility to make sure that no unauthorised person or third party has access to your e-mail or your secret password. If any unauthorised person or third party gains access to your e-mail or your secret password, we shall under no circumstances whatsoever be liable for any loss or damage which you suffer or incur (whether such loss or damage arises as a result of your confidential information being disclosed or otherwise).

We may from time to time be unable to deliver electronic statements to you due to circumstances beyond our control. These circumstances may include power outages or failures and delays and malfunctions caused by supporting networks or service providers. We give you notice of these unavoidable delays in the performance of our services. You agree that we will not be liable for any loss or damage which you suffer or incur as a result of, or in connection with the fact that you do not receive your electronic statements, or that delivery of your electronic statements are delayed in these circumstances. It is your duty to contact us if you have not received your electronic statements when you should, or if you cannot access or print these statements.

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. SALE/RENDERING OF SERVICES/EXECUTING CONTRACTS

Unless specifically amended or excluded in writing by the Company:

1.1 These terms and conditions shall apply to all sales by the Company ("the Company") which includes:

- 1.1.1 The supply of goods and services by the Company.
- 1.1.2 The execution by the Company of any contract.

1.2 "Customer" means the purchaser of the Products.

1.3 "Products" means all goods sold to the Customer, as indicated on the Company's forms, price lists, quotations, delivery notes, orders or invoices.

### 2. OFFER AND ACCEPTANCE

#### 2.1 ORDERS PLACED ON THE COMPANY

Orders placed on the Company shall not be binding until accepted by the Company in writing. Price lists and other Company publications are for information only and do not constitute offers.

#### 2.2 OFFERS/QUOTATIONS BY THE COMPANY

Offers/Quotations by the Company shall only be valid if made or confirmed in writing and all such offers shall be subject to these terms and conditions. All offers/quotations are subject to the availability of the necessary materials and the Company being able to obtain any necessary authorisation and/or licences and the same remaining valid. Unless otherwise agreed, all offers/quotations including quoted prices by the Company shall be valid for thirty (30) days from date of the written advice by the Company.

### 3. PRICES

Unless specifically agreed to in writing, orders are accepted on condition that the prices shall be those ruling on the date of despatch and within the quotation validity period. Price fluctuations may occur due to an increase or decrease in the prices of materials, fuel, labour or transport costs.

### 4. TERMS OF PAYMENT

#### 4.1 PAYMENT TERMS (SUPPLY OF GOODS AND SERVICES)

The terms of payment unless specified otherwise in writing, for all goods and services supplied by the Company shall be payable in full within thirty (30) days of date of statement.

4.2 Payment shall only be deemed to have been effected upon a physically cleared receipt of the relevant amount into the bank account of the supplier.

4.3 A certificate by one of the Company's Directors showing the amount due and owing by the Customer to the supplier at any given time shall be sufficient *prima facie* proof of the facts therein stated for the purpose of all legal proceedings against the Customer for recovery of the said amount. The certificate shall be deemed to be of sufficient

proof particularly for the purpose of pleading and in any action instituted by the Company against the Customer under and in terms of this application or for purposes enforcing any rights hereunder and shall be valid as a liquid document against the Customer in any competent Court for purpose of obtaining provisional sentence or summary judgement against the Customer.

4.4 Account facilities may be withdrawn by the Company at any time without prior notice to the Customer and the extent and nature of such facilities shall at all times be at the Company's sole discretion and reviewed annually.

### 5. DELIVERY

5.1 The Company undertakes to deliver at the public road kerbline at the entrance to the Customer's site, on condition that adequate space is available. The Company's responsibility and risk shall cease at this point and the Company only leaves the public road and enters the Customer's site on the clear understanding that it does so entirely at the risk of the Customer.

5.2 The delivery note signed by the Customer, his employee, agent or representative shall constitute proof, on its mere production, that the materials delivered have accorded with the quantity and specifications reflected thereon. It is agreed that full delivery in accordance with the Company's records will be deemed to have been made unless any discrepancy and/or shortfall is specifically recorded on the delivery note or reported by the Customer within forty-eight (48) hours after delivery.

5.3 The Company shall provide the dates and times of delivery of Products in good faith and shall not be liable to the Customer for any subsequent variations.

5.4 The Company shall be entitled, in its sole discretion, to split the delivery of Products in quantities, on the dates and at the times it decides, and to invoice separately each delivery actually made.

5.5 Any delivery of Product by the Company to the Customer shall be deemed to be completed when the Products are off-loaded at the delivery address of the Customer, failing which, the premises of the Customer, or when the Products are handed over to the third party engaged to transport the Products on behalf of the Customer in terms of clause 5.8.

5.6 The Customer shall provide suitable access roads to and level ground at the point of off-loading at the delivery address or premises of the Customer.

5.7 Delivery will be in full economical loads and at one point only. The Company will under no circumstances string Products on site or at the point of delivery.

5.8 If the Company agrees to engage a third party to transport the Products, the Company is hereby authorised

to engage, at the cost of the Customer, such third party on the Customer's behalf and on the terms deemed fit by the Company. The Customer indemnifies the Company and holds it harmless against any claims that may arise from such agreement.

#### 6. RETURN OF GOODS

6.1 If the Customer inspects the Products and finds all or any of them do not comply with the standards set by the South African Bureau of Standards where applicable, or any other standards, then the Customer may return the Products within three (3) days of date of delivery, in the original packaging with the Delivery Note endorsed with details of the complaint.

6.2 The Company shall have the right, in its sole discretion, to accept or refuse to grant credit for or to repair or replace the Product(s).

6.3 Subject to clause 6.1, the Customer shall not return any Products except at the sole discretion of the Company and in accordance with the written agreement of the Company.

#### 7. OWNERSHIP AND RISK

7.1 Ownership in the Product shall not pass to the Customer until they have been paid in full.

7.2 The risk of damage to, destruction or theft of the Product shall pass to the Customer on completion of delivery as referred to in clause 5.

7.3 The Customer shall insure the Products against loss and damage, to the satisfaction of the Company, until the Products have been paid in full.

7.4 Until the Products have been paid for in full, the Customer shall not encumber the Products or purport to transfer ownership in the Product to any third party and shall advise third parties of the Company's rights in the Product.

7.5 The Customer authorises the Company to enter its premises to repossess any Products delivered and indemnifies the Company and holds it harmless against any damage whatsoever relating to the removal of such Products.

#### 8. COPYRIGHTS

8.1 The Customer acknowledges all copyrights, trademarks, intellectual property and shall not duplicate copyrighted material.

8.2 The Customer indemnifies the Company and holds it harmless against any claims, costs and expenses arising out of the infringement of copyright, patent, trademark, or design supplied by the Company.

#### 9. SET-OFF PROHIBITION

The Customer shall, under no circumstances, be entitled to deduct any amount from amounts due to the Company as indicated in the Company's statements, without prior written authority of the Company.

#### 10. DAMAGES

All goods sold and delivered by the Company are done so on the condition that the Company shall not be liable for any loss or damage, whether direct, indirect or consequential, however caused or incurred, including such loss for damage attributable to the Company's negligence or the negligence of its servants, employees or sub-contractors, or due to any act(s), default or failure to fulfil its contract.

#### 11. DEFECTIVE GOODS/WORKMANSHIP

The Company shall, at its own option, either repair or replace Products and/or materials sold or delivered or workmanship proven to be defective, the fact and extent of which the Company shall be the sole judge, provided that notice of such defect is received in writing by the Company within three (3) days of delivery or fourteen (14) days of execution of any contract. After expiration of the relevant period, no claim shall be entertained and the Company shall have no liability whatsoever.

#### 12. SUBSIDENCE, ACCESS, INJURY, DAMAGE AND DESIGN

12.1 Unless agreed in writing the Company shall not be liable for the design of the works. The Company shall not be responsible for any subsidence or other defects in the

works due to faulty preparation of the subsoil or incorrect subsoil conditions prepared by third parties.

12.2 The Customer shall provide adequate access, storage and other facilities at the work site for the equipment, materials and employees of the Company and/or its subcontractors.

12.3 Every care is taken to avoid injury to persons or damage to property, but the Company shall not be held liable for any injury to anyone whomsoever and/or damage to any property whatsoever, unless it can be specifically proved that such damage was caused by the gross negligence of the Company or any of its officers.

#### 13. PASSING OF OWNERSHIP

Ownership of goods shall pass to the Customer only when full payment for the goods plus any other costs incurred have been recovered by the Company.

#### 14. WARRANTIES

All warranties or representations not expressly stated in these conditions are excluded, whether express or implied, including any warranty that the Products are fit for a particular purpose, including the purpose for which they were ordered, are hereby specifically excluded.

#### 15. EXCLUSION OF LIABILITY

15.1 The Company shall not be liable to the Customer for any loss or damage arising out of the improper or negligent use of Products, and the Customer indemnifies the Company against any claims arising from the use of the Products by third parties.

15.2 The Company shall not be liable to the Customer for any loss resulting from the delay in or cancellation of the Customer's order arising from a cause beyond the Company's control, including but not limited to, inability to secure labour, power, Products or supplies, computer services, act of God, war, civil disturbance, riot, state of emergency, strike, lockout, other labour disputes, fire, flood, drought or legislation.

15.3 The Company shall not be liable for any negligent or innocent misrepresentation made by it or its employees.

15.4 The Company shall not be liable under any circumstances for any special, indirect or consequential damages, including but not limited to, loss of profit.

#### 16. OVERRIDING EFFECT

These terms and conditions shall override all terms and conditions stipulated, incorporated or referred to by the customer in any order or negotiations and shall be the only terms and conditions binding on the parties.

#### 17. GOVERNING LAW

The rights and obligations of the Company and its Customers shall be governed by the law of the Republic of South Africa and the Customer agrees to submit to the jurisdiction of the Courts of the Republic of South Africa for determination of all disputes.

#### 18. LEGAL COSTS

The expression "costs" herein shall include, without limiting the generality of the foregoing, all costs relating to legal expenses incurred in enforcing the Company's rights and recovering any amounts due. These costs will include attorneys' fees, collection commission and tracing agents' fees.

#### 19. VARIATION

No amendment or variation of these conditions of sale shall be of any force or effect unless recorded in writing and signed on behalf of the Company by an authorised signatory.

#### 20. RELAXATION NOT WAIVER

No relaxation or indulgence of these conditions by the Company in favour of the customer shall be construed as a waiver of the Company's rights.

#### 21. CANCELLATION

All orders placed with the Company will be regarded as firm and irrevocable and may not be cancelled without the prior written consent of the Company. The Company reserves the right to charge for all goods manufactured for the order.

**22. SECURITY**

Without affecting any of the above terms and conditions, the Company shall be entitled to call for a bank guarantee, suretyship or suitable form of security to be provided by the Customer at any time and the Customer shall be obliged to do so, failing which the Company shall be entitled to cancel the account and call for the immediate payment of all outstanding balances due.

**23. DOMICILIUM**

The customer chooses the address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as his *domicilium citandi et executandi* for all purposes, including the giving of all notices and serving of all Court processes. The Company chooses as its *domicilium citandi et executandi* for all purposes the following address:  
cnr. Main Reef/Houtkaper Road, Roodepoort, Johannesburg.

**24. BREACH**

If the Customer has not paid the Company in full by the due date or breaches any other term of these Terms, or if the Company receives information relating to any application for the liquidation or sequestration, any compromise with creditors or any execution against the assets of the Customer, then the Company shall have the right, in its sole discretion and without prejudice to any other right it may have in law:

- 24.1 to cancel this agreement forthwith and to retain all amounts paid as *rouwkoop* and/or liquidated damages; and
- 24.2 claim its right of ownership; and
- 24.3 claim payment of the full amount owing, including costs on overdue amounts to date, plus any damages which it may have suffered.  
The Company shall be entitled to apply any amount paid, in the reduction of overdue payment, or to any costs incurred.
- 24.4 No claim under these Terms shall arise unless:
  - 24.4.1 It is supported by the original tax invoice and delivery notes; and
  - 24.4.2 The Customer has, within three (3) days of the alleged breach occurring, given the Company thirty (30) days written notice by prepaid registered post to rectify any breach of these terms.
- 24.5 Should the Customer at any stage change the form of legal entity or the name or ownership under which the account and credit facilities are being used, the Customer undertakes to notify the Company accordingly in writing by registered post within seven (7) days as from the date when the change takes effect. The Customer furthermore indemnifies the Company against any loss or damage

which may result from such change or from any failure on my/our part to notify the Company of such change.

**25. FORCE MAJEURE**

Should the Company be delayed in or prevented from making a delivery and/or rendering a service and/or executing a contract owing to a force majeure, Act of God or any cause whatsoever beyond the Company's control, the Company shall not be liable for any loss or damage resulting therefrom.

**26. ARBITRATION**

- 26.1 Where any matter regarding the quality of Products remains unresolved after the expiry of fourteen (14) days as from the date of complaint, the Company or the Customer may refer the matter to the South African Bureau of Standards for resolution of the dispute and the decision of the South African Bureau of Standards shall be final and binding on the Company and the Customer. Such referral shall be done within fourteen (14) days of the expiry of the first period.
- 26.2 Where any other dispute between the Company and the Customer arising from or in connection with these Terms remains unresolved after the fourteen (14) days as from the date of dispute, the Company or the Customer may refer the matter to the Arbitration Foundation of South Africa for resolution in accordance with Rules for Arbitration Foundation of South Africa and the decision of the Arbitration Foundation of South Africa shall be final and binding on the Company and the Customer.

**27. EXPORT/IMPORT PERMITS**

In the case of export sales, the customer shall maintain in force all necessary permits:

- 27.1 to enable the goods to be exported by the Company into the Country of destination; and
- 27.2 to enable payment to be effected in accordance with these terms and conditions of sale.

28. The Company may perform a credit information search on the Customer at a credit information bureau of the Company's choice. The Company may monitor the Customer's payment behaviour by researching its record at one or more credit information bureaux. Use new information and data obtained from a credit information bureau in respect of the Customer's future account applications. Record the existence of the Customer's account with any credit information bureau. Record and transmit details of how the Customer has performed in terms of this agreement reflecting how the account has been conducted by the Customer in meeting its obligations in terms of this account.

**29. NATIONAL CREDIT ACT/CONSUMER PROTECTION ACT**

In the event that the National Credit Act 34 of 2005 and/or Consumer Protection Act 68 of 2008 applies to this agreement or to a specific transaction, any provision of the agreement or of the particular transaction concerned or in conflict with these acts shall be deemed to be deleted and shall not apply.

I/We, the undersigned, do hereby warrant that all the information recorded in this application is true and correct, that I/we sign of my/our own free will and with full knowledge and understanding of the contents hereof, and that I am/we are duly authorised in doing so.

SIGNED AT \_\_\_\_\_ THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

WITNESS

SIGNATURE/S OF APPLICANT OR ITS DULY AUTHORISED REPRESENTATIVES

