

TERMS AND CONDITIONS OF SALE
including deed of suretyship and cession of
book debts

1. PRELIMINARY

- 1.1 All contracts for the supply of goods by the Company to the Customer shall incorporate and be governed by these terms and conditions, as amended from time to time by the Company and notified to the Customer in writing. References herein to 'contract' shall be references to a contract concluded between the Company and the Customer upon these terms and conditions for the supply of goods pursuant to the acceptance by the Company of any order placed on it by the Customer.
- 1.2 In these conditions "goods" means the goods indicated on any Company forms, price lists, quotations, delivery notes, orders, or invoices.
- 1.3 All goods are sold in accordance with these terms and conditions. No variation from these conditions stipulated by the Customer and no contrary stipulation by the Customer shall be valid unless specifically accepted by a duly authorised representative of the Company in writing.
- 1.4 These terms and conditions apply to the sales by the Company to the Customer of all goods whether or not such sales are pursuant to orders placed by the Customer with the Company by telefax, telephonically or otherwise, or orders placed with representatives or agents on behalf of the Company.

2. PRICE

- 2.1 The price of the goods shall be the Company's list price current at the time of acceptance of the order less any deals formally agreed with the Company's principals.
- 2.2 Subject to Clause 5.2 of these terms and conditions, the Company shall have the right, from time to time, for any reason and without notice to the Customer, to change the prices of its goods.

3. PAYMENT

- 3.1 Payment is to be made 15 (fifteen) days from date of the Company's monthly statement unless otherwise agreed in writing between a duly authorised representative of the Company and the Customer. Such payment must be received in sufficient time to be banked on due date and should be accompanied or followed up with a remittance advice.
- 3.2 In all cases where the Customer uses a postal, banking, electronic or similar such service to effect payment, such services shall be deemed to be the agent of the Customer.
- 3.3 Should any amount not be paid by the Customer on due date then the whole amount in respect of all purchases by the Customer (whether or not then due and payable) shall become immediately due, owing and payable irrespective of the dates when the goods were purchased and the Customer shall be liable to pay interest in respect of amounts unpaid as at the due date at the compound rate of 2% above the annual prime overdraft lending rate of the Company's Bankers from due date until date of payment, calculated and payable monthly in advance and should the said interest not be paid in full as aforesaid, the same shall be added to the principal sum, and the total shall form the principal debt which shall then bear interest in the manner as set out above.
- 3.4 The Customer shall not be entitled to claim set-off or deduction in respect of any payment due by the Customer to the Company for goods supplied.
- 3.5 The Company may appropriate all payments made by the Customer to such accounts or debts as it will in its sole and absolute discretion decide.
- 3.6 The Company shall have the right to suspend deliveries and, at its discretion, to exercise its rights in terms of paragraph 7.1 if any amount due by the Customer is unpaid.
- 3.7 The Customer undertakes to keep a comprehensive set of books at all material times from which it will be able to ascertain its liability to the Company without the need to claim / counterclaim any debatement of account from the Company.
- 3.8 **The Company's preferred form of receiving payment from the Customer for the latter's purchases is by way of Electronic Funds Transfer into the Company's nominated bank account. In the event of the Customer effecting a cash payment either by way of direct deposit into the Company's nominated bank account or by handing the cash payment to the Company's authorised representative (whether on delivery of the goods or at any other time), the Customer agrees to pay a handling fee of 1 % (one per centum) on the transaction to cover the Company's costs in handling hard cash and to reduce the risk to its employees.**

4. CREDIT FACILITIES

- 4.1 The Customer agrees that the Company's decision to grant credit facilities to the Customer is at the sole discretion of the Company.
- 4.2 The Company shall have the right from time to time to reassess the Customer's creditworthiness. The Customer agrees on demand, to furnish the Company with such financial and other information as may be required by the Company.



- 4.3 The Company reserves the right to withdraw or vary any credit facilities granted to the Customer at any time without prior notice and the nature and extent of such facilities shall at all times be in the Company's sole discretion,
- 4.4 Despite the fact that the Company may grant the Customer a credit limit or a credit facility up to a certain amount, the Company reserves the right to increase if so, requested by the customer) or decrease this amount at its sole discretion. The credit limit shall not be deemed to be the limit of a Customer's indebtedness to the Company.

5. ORDERS

- 5.1 Orders by the Customer for goods shall be made in writing or submitted through the agreed electronic media. Physical written orders must be delivered to such address as may be nominated by the customer from time to time.
- 5.2 Orders shall constitute irrevocable offers to purchase goods from the Company at the list price of the Company, less any deals formally agreed with the Company's principals, as at the date of acceptance of the order and shall be capable of acceptance by the Company by the delivery of the goods or by the written acceptance or confirmation of the order.
- 5.3 Oral orders shall similarly be capable of acceptance by the Company, but the Company will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to place orders in writing or electronically.
- 5.4 The Customer shall provide the Company with an order number when placing any order with the Company.
- 5.5 Orders accepted by the Company shall not be varied or cancelled by the Customer, except with the written consent of the Company.
- 5.6 In the event that the Customer is a Franchisee in terms of a Franchise Agreement with a Franchisor of which the Company is a nominated supplier of the Franchisor's approved products, the Customer agrees that the Company's supply of the Franchisor's approved products to the Customer shall be subject to the terms and conditions of the Franchise Agreement between the Franchisor and the Customer which shall include the Franchisor's right to instruct the Company to limit, suspend or terminate orders/ deliveries of the Franchisor's approved products from / to the Customer. In the event that the Customer disputes the Franchisor's aforesaid right, the Customer agrees and accepts that the Company shall have the right, unless otherwise ordered by a court of law, to suspend the customer's orders/ deliveries of the Franchisor's approved products from / to the Customer pending resolution of such dispute. The Customer agrees that it shall have no claim against the Company for damages suffered by reason of such limitation / suspension / termination of orders / deliveries of the Franchisor's approved products.

6. DELIVERY AND RISK

- 6.1 If the Company itself transports the goods to the Customer, delivery and passing of the risk in the goods, shall be deemed to have taken place when the goods are off-loaded at the Customer's premises. The signature of any employee of the Customer on a Company delivery note or invoice shall be prima facie proof of the proper delivery of the goods.
- 6.2 If the Customer collects the goods at the Company's premises, the risk shall transfer to the Customer on collection of the goods by the Customer.
- 6.3 Should the Company, at the Customer's request, agree to engage a carrier to transport goods to the Customer, such carrier shall be the Customer's agent and the Company shall engage the carrier on such terms and conditions as it deems fit. The Customer indemnifies the Company against all demands and claims that may be made against it by the carrier as engaged and all liability that the Company may incur to the carrier arising out of the transportation of the goods. Delivery of the goods and risk therein shall be made and pass to the Customer on loading the goods onto such carrier's transport
- 6.4 Delivery of goods to any delivery address stipulated by the Customer, shall constitute proper delivery of the goods, despite the fact that such address may not be the address or premises of the Customer.
- 6.5 Whilst every effort will be made to deliver the goods as per the relevant order, the Company does not guarantee delivery on any specific date and shall not be liable for any damages or failure to effect delivery timeously for any reason beyond the Company's reasonable control, including but not limited to, inability to secure transport, labour, power, materials, equipment or supplies or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout or other labour disputes, fire, flood, drought or legislation. The Customer shall not be entitled to cancel any order by reason of such delay.
- 6.6 In the event that the Company makes delivery to the Customer in instalments each instalment shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery of any instalment shall not affect the contracts in respect of the other instalments or entitle the Customer to cancel the contract or any of the other contracts relating to such instalments.
- 6.7 If the Customer fails to take delivery of the goods ordered, or in any way delays the delivery of goods ordered, then the risk in the goods shall pass to the Customer upon them being tendered for delivery by the Company and the Customer shall, without prejudice to such other rights which the Company may have at law, be liable to



- pay the Company the reasonable costs of storing, insuring and handling the goods, until delivery takes place.
- 6.8 Goods shall be deemed to have been received in good order and condition unless the Customer has specified on the delivery note at the time of delivery the nature of any defect. In such event the goods shall remain in the Customer's possession until the Company's merchandiser has had the opportunity to inspect the goods, In the event that the Company's merchandiser ascertains that the goods were defective, he/she shall log a call with the Company's call centre to generate an "uplift advice note". Upon collection of the defective goods from the Customer, the Customer shall sign the "uplift advice note" as proof that the said goods have been uplifted. The value of credit given for goods returned will be calculated at the invoice value when the goods were purchased.

7. OWNERSHIP

- 7.1 Ownership in all goods sold and delivered shall remain vested in the Company until the full purchase price in respect thereof and interest (if any) accrued thereon has been paid. In the event of a breach of these terms and conditions by the Customer, or if the Customer is sequestrated or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgment granted against the Customer within 7 (seven) days of the date of judgment or the structure of the ownership of the Customer changes, the Company shall be entitled, in its own discretion, to take possession of the goods without prejudice to any further rights vested In the Company.
- 7.2 The Customer shall have no claim against the Company for damages suffered, whether due to loss of profits or otherwise, occasioned by the removal of goods from the Customer's premises as aforesaid.
- 7.3 Goods in the possession of the Customer bearing the name, trademarks and labels of the Company's principals shall be deemed to be those for which payment has not yet been made and should any breach of these terms and conditions occur, may be repossessed by the Company in terms of paragraph 7.1.
- 7.4 The Customer shall fully insure the goods purchased from the Company against loss or damage for an amount equal to the amount owing by the Customer to the Company in respect of such goods, until the Customer has paid the full purchase price for such goods. Pending payment to the Company for goods purchased, all benefits in terms of the insurance policy relating to such goods are ceded to the Company.
- 7.5 It shall not be necessary for the Company to prove either to the Customer or the Customer's liquidator or trustee which goods in the possession of the Customer have actually been paid for and which have not been paid for.
- 7.6 The Company shall be entitled to identify goods sold to the Customer merely by way of packaging and other distinguishing marks. The Company shall not be obliged to identify its goods by way of serial numbers or any other form of identification.
- 7.7 Specifically, the Company shall be entitled to remove all goods of whatsoever nature owned by it from the Customer's premises notwithstanding that certain of such goods removed may have been paid for. The rationale for permitting the Company to act in this manner is due to the fact that the Customer's account is in debit and after a reconciliation thereof, should it emerge that with the recovery of all goods on the premises of the Company, the Customer is due a credit, such credit shall be passed.

8. LEGAL PROCEEDINGS

- 8.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, these terms and conditions and all modifications and amendments hereof and the sale and purchase of goods in terms hereof, shall be governed by and decided upon and construed under and in accordance with the laws of the Republic of South Africa.
- 8.2 The Company shall, at its option and notwithstanding that the amount of its claim exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action arising out of any contract, out of such court and the Customer hereby consents and submits thereto. Similarly, in the event of the Customer having a claim against the Company, it shall, at its option and notwithstanding that the amount Its claim exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such Court and the Company consents and submits thereto.
- 8.3 A certificate issued and signed by any director or Credit Manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Customer to the Company or in respect of any other fact, including the fact that such goods were sold and delivered, shall be prima facie evidence of the Customer's indebtedness to the Company and prima facie evidence of such other fact and prima facie evidence of the delivery of the goods,
- 8.4 **The Customer's physical address as given on the front page at this document at Section A Clause 4, shall be the address which the Customer and the Surety have chosen for all purposes in terms of any contract with the Company, whether in respect of the serving of any court process, notices, documents, forms or communications of whatever nature on the Customer and Surety (i.e. the Customer's and Surety's chosen domicilium citandi et executandi).**
- 8.5 The Company's address at 15E Riley Road Office Park, Riley Road, Bedfordview is the address that the Company has chosen for all purposes in terms of any contract, whether in respect of the serving of any court



process, notices, the payment of any amount or communications of whatever nature (i.e., the Company's chosen domicilium citandi et executandi)

- 8.6 The Customer agrees to pay all legal costs, including attorney and client costs, tracing agent's fees and collection charges which the Company may incur in taking any steps pursuant to any breach or enforcement of these terms and conditions by the Customer whether or not legal proceedings are Instituted.

9. ARBITRATION

- 9.1 The Company has the sole option to refer any dispute arising from or in connection with any contract, to arbitration, which arbitration shall bind both the Company and the Customer.
- 9.2 The arbitrator shall be a person agreed upon by the Company and the Customer or failing agreement, an arbitrator appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of South Africa.

10. NEGOTIABLE INSTRUMENTS

Acceptance of a negotiable instrument by the Company shall not be deemed to be a waiver of the Company's rights under any contract concluded between the Company and the Customer on these terms and conditions.

11. RETURNED GOODS

Goods sold by the Company to the Customer are not returnable save at the option of the Company. Should the Company in its absolute discretion elect to accept the return of any goods, the following shall apply: -

- 11.1 All goods returned must be complete, clean, saleable, undamaged and in their original packaging.
- 11.2 The value of credit given for goods returned will be calculated at the invoice value when the goods were purchased.
- 11.3 The Credit Control Department of the Company must be notified of the relevant invoice, packing slip and batch numbers before any claim for the return of goods will be considered,
- 11.4 All goods are to be returned at the Customer's expense and the risk in the goods remains with the Customer until the Company receives the goods.

12. WARRANTIES & INDEMNITY

- 12.1 Warranty on the goods is limited to the manufacturer's warranty. All other warranties either express or implied, including any warranty that the goods are fit for a particular purpose are expressly excluded. The Company's liability for any breach of warranty shall be limited to and fully discharged by the Company when it supplies, free of charge, goods replacing those found to be defective, having regard to the use already or previously obtained from them. The Company's decision as to whether goods are defective or not shall be binding on the Customer and any end -user or purchaser thereon.
- 12.2 The Company disclaims all liability to the Customer in connection with the Customer's use of the goods supplied and in no event will the Company be liable to the Customer for special, indirect or consequential damages or loss, including but not limited to, loss of profits.
- 12.3 Any liability of the Company for breach of any contract will not exceed the aggregate of damages, costs, fees, and expenses capable of being awarded to the Customer and the total price paid by the Customer for the goods supplied.
- 12.4 The Company gives no warranty and makes no representation, express or implied, written, or oral, that the goods sold by the Company are suitable for the purposes for which they have been ordered.
- 12.5 The correctness or validity of any advice or opinion given by the Company's employees is not warranted and any such advice or opinion is given to the Customer only and the Company accepts no responsibility for any damages that the Customer or any other party may incur as a result of the Customer or such other party relying upon such advice or opinion.

13. CONTINUING COVERING SURETYSHIP

- 13.1 I, the signatory of this application for credit ("signatory") by my signature hereof (which appears below) do hereby bind myself in my personal and individual capacity as surety for and co-principal debtor with the Customer in favour of the Company for the due and proper performance of any obligation of the Customer under any contract and for the payment to the Company by the customer of any amounts which may now or at any time be or become owing to the Company by the Customer from whatsoever cause and howsoever arising, including but not limited to damages.
- 13.2 The signatory understands that his/her liability for amounts owing by the Customer to the Company is not limited by any credit limit granted by the Company to the Customer.
- 13.3 The signatory waives and renounces the benefits of the legal exceptions including, but not limited, to: -
- 13.3.1 Excussion - the right to require the Company to proceed first against the Customer for payment of any debt owing to the Company before proceeding against the surety;
- 13.3.2 Cession of action - the right to require the Company to give cession of the action for payment of debts to



the surety before any action against the surety may be taken;

13.3.3 The benefit of simultaneous citation and division of debt - the right of a co-surety to be liable only for his pro rata share of the principal debt; with the full meaning of which the signatory acknowledges that he/she is aware.

13.4 The suretyship contained in this paragraph 13 is given as a continuing covering suretyship for the present and future obligations of the Customer to the Company.

14. CESSION OF BOOK DEBTS

14.1 The Customer does hereby irrevocably cede, pledge, assign, transfer and make over unto and In favour of the Company all of its right, title, interest, claim and demand in and to all book debts of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies, firms, partnerships, associations, syndicates and other legal personae whomsoever ("the Customer's debtors"), without exception, as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter be or become owing by the Customer to the Company.

14.2 Should it transpire that the Customer at any time entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customer's reversionary rights in respect of such debts. Notwithstanding the terms of the foregoing cession, the Customer shall be entitled to institute action against any of its debtors provided that all sums of money which the Customer collects from Its debtors shall be collected on the Company's behalf and provided further that the Company shall at any time be entitled to terminate the Customer's right to collect such monies/debts.

14.3 The Customer shall be obliged to deliver all relevant information in documentary form or otherwise to the Company upon demand to enable the Company to claim monies owed to the Customer from third parties pursuant to such cession.

15. DISCLOSURE OF INFORMATION

15.1 The Customer understands that the information given in this document is to be used by the Company for the purposes of assessing his/its creditworthiness. The Customer confirms that the information given in this document is accurate and complete. The Customer further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the information contained herein is maintained.

15.2 The Company has the Customer's consent at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned in the credit application form and to obtain any information relevant to the Company's credit assessment of the Customer, including but not limited to, Information regarding the amounts purchased from suppliers per month, length of time Customer has dealt with such supplier, type of goods purchased and manner and time of payment.

15.3 The Customer agrees and understands that information given in confidence to the Company by a third party in respect of the customer will not be disclosed to the customer.

15.4 The Customer hereby consents to and authorises the Company at all times to furnish credit information concerning the Customer's dealings with the Company to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Company.

16. GENERAL

16.1 The Company reserves the right in its sole discretion to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the Customer from the time that the Customer is notified thereof in writing. Any dealings subsequent to such notification shall be on the Company's amended terms and conditions.

16.2 These terms and conditions represents the entire agreement between the Company and the Customer in relation to the subject matter thereof.

16.3 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual, unilateral, or bilateral shall be of any force and effect unless reduced to writing and signed by the duly authorised representative of the Company. No agreement, whether consensual, unilateral, or bilateral, purporting to obligate the Company to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to in writing and signed by the duly authorised representative of the Company.

16.4 No warranties, representations or guarantees have been made by the Company or on its behalf which may have induced the Customer to sign this document.

16.5 No relaxation or indulgence which the Company may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of the Company's rights in terms of such contract.

16.6 The Customer shall not cede its rights nor assign its obligations in terms of any contract.



- 16.7 The Company shall at any time in its sole discretion be entitled to cede and assign all or any of its rights or obligations in terms of any contract to any third party without prior notice to the Customer.
- 16.8 The Customer undertakes to notify the Company within a period of 7 (seven) days of any change of address or any changes in the information as set out in this document. In the event at the Customer being a corporate entity, it undertakes to ensure that it maintains its CIPC registration and that, to the extent that it fails to do so (which affects the existence of the entity) or fails to advise the Company of any change thereof (which would affect the type of entity) within the said period, the Company will be entitled to withhold deliveries to the Customer.
- 16.9 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting these terms and conditions.
- 16.10 Each of the terms contained in this document, shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.

The Customer hereby;

- 1 warrants that all the information recorded in this document is true and correct;
- 2 agrees that all transactions concluded with the Company shall be subject to the terms and conditions specified herein or on such amended terms and conditions as may be notified to the Customer by the Company in writing from time to time; and
- 3 agrees to be bound by all such terms and conditions, and without limiting the generality thereof, especially the SURETYSHIP clause, insofar as the latter relates to the PERSONAL LIABILITY OF THE SIGNATORY.

