

**Your declaration**

Below are acknowledgements of fact by you and your authorised representative. You and your authorised representative must read the statements carefully and ensure that they are true and correct. You and your authorised representative will not be able to later claim that any information recorded was untrue or incorrect.

You and your authorised representative take on the risk and responsibility when you sign this Agreement. If we rely on your statements and suffer Damages as a result, we might have claims against you or your authorised representative or both.

1. You promise that when you sign this *Agreement*, all the information supplied in this Credit Application is complete, true and correct. This promise means that we may rely on the information being complete, true and correct.
2. You confirm that your turnover/net asset value is below the thresholds set out in the Consumer Protection Act 68 of 2008 (as amended) and National Credit Act 34 of 2005 (as amended).
3. You confirm that you have read all the documents that form part of your Credit Application, including:
  - a) these standard terms and conditions; and
  - b) the contract of suretyship (if applicable); and
  - c) the cession and pledge agreement (if applicable).
4. You confirm that you understand the meaning of each and every term contained in the documents that apply to your Credit Application.
5. You agree that we may obtain credit references ("**Credit reference information**") from your chosen trade references to decide your credit rating.
6. The authorised representative named above promises that he or she has the necessary authority to bind you to this *Agreement*.

SIGNED

\_\_\_\_\_   
 For and on behalf of the applicant (you)

FULL NAME OF AUTHORISED REPRESENTATIVE

Address: \_\_\_\_\_

DATE

PLACE \_\_\_\_\_

**Standard terms and conditions**

This part of the Agreement contains the terms and conditions that apply to the sale of Goods or supply of Services to you. When you sign the Agreement, you agree to comply with these terms and conditions. Please make sure you understand them and take special note of the terms and conditions **in blocks** as they have important legal consequences for you.

No other terms and conditions apply to our relationship, including any standard terms and conditions of your own.

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## 1 Definitions and interpretation

In this document:

You and your	refers to the customer named on the Credit application form attached to this document that buys the Goods or uses our Services.
We, us and our	refers to the supplier named on the Credit application form attached that sells the Goods and provides the Services.
Agreement	means these terms and conditions, any Order Acceptances, the contract of suretyship and the cession and pledge agreement, if applicable.
Credit Reference Information	means information about your credit worthiness that we receive from trade references you give us as more fully defined in clause 8.4.
Damages	means the sum of money that a person is entitled to receive as compensation for a loss or injury they suffer.
Goods	means the items listed on the price list that are available for sale.
Services	means the services we offer listed on the price list.
Order Acceptance	means the document we sign confirming we have accepted your order.
Breach	means a failure to comply with the Agreement.

- 1.1 Apart from you and we, defined terms start with a capital letter in this Agreement.
- 1.2 The word 'may' is used throughout this Agreement to mean 'is entitled to' or 'are entitled to' depending on the context.
- 1.3 This Agreement shall start and come into operation upon our acceptance of an Order Acceptance regardless of the date of signature of this Agreement.

## 2 Prices for Goods and Services

- 2.1 We publish price lists for the Goods and Services that we offer. We may change the price list or any prices on the price list at any time. We will send you written notice of any changes in our prices. You may also ask us to send you a current price list at any time.
- 2.2 We send you a quote for the Goods and Services that you wish to order from us. All quotes are valid for 30 days from the date of the quote or until the effective date of a new price list, whichever is earlier. Quotes exclude VAT.
- 2.3 If you and we are based in different countries, the quote will reflect the then current exchange rate between the currency of the country we are based in and the country you are based in. The effective date of the exchange rate is the date of the quote.

- 2.4 We do not guarantee that Goods or Services quoted for will be available at the time of your order.
- 2.5 We do not guarantee that the actual price will be the same as the quote. The actual price will be set out on the Order Acceptance. We will let you know if the price is higher on the Order Acceptance. You have the right to either accept or cancel the order if you are not satisfied with the higher price.

## 3 Placing orders for Goods and Services

- 3.1 You must place orders for Goods or Services in writing. Your order is valid only when we give you an Order Acceptance in writing.
- 3.2 We alone may decide whether to accept your order.
- 3.3 Each Order Acceptance is a separate agreement between you and us. These terms and conditions apply to each Order Acceptance and shall prevail should there be any difference between the content of these terms and conditions and any Order Acceptance.

## 4 Paying for the Goods and Services

- 4.1 Unless you or we cancel the order, you must pay for the Goods on the date that you receive the Order Acceptance. You must pay for Services that we provide when we complete the Services. We accept payment in cash only.
- 4.2 We alone may decide to give you credit. If we give you credit, you must pay for the Goods or Services within 30 days of the date of your credit statement. If we give you credit, we may change the credit limit from time to time or cancel your credit facility with us. We do not have to consult with you to take either of these steps.
- 4.3 You agree that if the National Credit Act applies to this Agreement, we may charge you interest on outstanding amounts at the maximum legal rate. The maximum legal interest rate is given in the National Credit Act. We will let you know what the maximum legal interest rate is on your monthly statement of account.
- 4.4 We calculate interest daily and at the end of every month, we add the total interest from that month to your outstanding amount. This gives you a new outstanding amount to pay us. In the next month, we calculate interest on the new outstanding amount. This is known as compound interest. We continue to do this from the date you should have paid us to the date that you pay.

## 5 Delivering the Goods and Services

- 5.1 We give estimated delivery dates for Goods and estimated completion dates for Services in the Order Acceptance. We do not guarantee that we will deliver Goods or Services on the estimated dates. Time is not of the essence to any transaction between us. You may not claim that we have committed a Breach of this Agreement if we do not deliver the Goods or Services by the estimated dates.
- 5.2 Unless we agree to an alternative arrangement with you in writing, we will deliver

the Goods to the address you give us in the Order Acceptance. You are responsible for the costs of transporting and insuring the Goods.

- 5.3 Any delivery note or waybill (copy or original) that you or anyone on your behalf signs is sufficient proof that the Goods have been delivered to you or that we have completed the Services. If you claim to the contrary, you will need to prove it.
- 5.4 It is your responsibility to inspect the Goods when we deliver them to you. You must ensure that the Goods comply with the Order Acceptance as to type, quality and quantity. You must let us know of any discrepancies within [five] days of the Goods being delivered to you and, if need be, return the relevant Goods to us immediately (ie not more than [two] days following the delivery thereof). We will pay for the return of the Goods. It will be our decision whether we will correct any such discrepancies or replace the incorrect Goods, such repair or replacement being at our own cost.

## **6 You only become owner of the Goods after you have paid for them**

- 6.1 We remain the owner of the Goods until we receive the full price for them. Full payment includes any interest we are entitled to charge.
- 6.2 The risk of damage to, destruction or theft of the Goods passes to you as set out in the Order Acceptance, which risk will, save as may otherwise be set out, pass to you upon the Goods being sent to you from our premises.

## **7 Intellectual property remains ours**

- 7.1 You acknowledge that:
- we are the owner, or licensee, of all intellectual property rights for the Goods and Services. This includes patents, designs, copyright and trademarks.
  - you have no claim of ownership to the intellectual property.
- 7.2 You may not, whether during or after the end of this Agreement:
- dispute whether the intellectual property is valid or enforceable
  - do anything to cause harm or damage any intellectual property rights
  - remove or tamper with our trademarks, including our logos and slogans, which appear on the Goods or packaging
  - represent that that you have any right of any nature in the intellectual property.
- 7.3 You may only use the intellectual property in the way that we authorise you to use it. Any use of the intellectual property will be to our benefit.

## **8 Confidential information**

- 8.1 You agree to allow us to keep your Credit Reference Information.
- 8.2 You agree we may use your Credit Reference Information for purposes other than for this Agreement, both during the period of this Agreement and after it has ended.

- 8.3 You agree that we may share your Credit Reference Information with credit reference agencies. We do not need to get your consent again to share your Credit Reference Information with credit reference agencies. You agree that we are not responsible for any loss or damage you suffer if we share your Credit Reference Information with credit reference agencies in good faith.
- 8.4 You agree that we may forward your Credit Reference Information to the National Register of credit agreements, any credit bureau or other third party as allowed or required by law. This includes any third party that we transfer our rights and obligations under this Agreement to. Credit Reference Information includes information about this application, information about these terms, your personal information, and information about when and how you do not comply with these terms.
- 8.5 You must keep confidential any information about us or our operations. This excludes information:
- a) that becomes known to the public somehow other than by your act or failure to act;
  - b) that you can prove was in your possession or you knew of before it was shared with you, except if you gained that information by not complying with your duty of confidentiality to us;
  - c) that is shared with you by a person who did not get that information under an obligation of confidentiality;
  - d) that you come to know of or have in your possession through the work of someone other than an employee, agent, contractor or associate of ours to whom no disclosure of confidential information has been made.
- 8.6 You may not use or share any confidential information unless we give you prior written consent to do so or the law requires you to do so. This requirement by law can be by legislation, regulation, governmental request or court of law.

## **9 You may not resell the Goods until you own them**

You only become owner of the Goods when you pay us the full price plus any interest which may have accrued for the Goods. You may not resell the Goods until you take ownership of them, unless we give you written permission to do so.

## **10 You must comply with any laws**

- 10.1 You must:
- a) comply with all relevant laws, regulations and standards relating to the Goods. This includes laws relating to loading, storing, stacking, handling and using Goods;
  - b) comply with the instructions that we give you about how to handle and use the Goods;
  - c) take proper notice of warnings about any dangers associated with the Goods;

- d) advise your clients about the items set out in clauses 10.1(a) to 10.1(c) above;
- e) obtain an undertaking from your clients that they will advise people to whom they supply the Goods about the items listed in clauses 10.1(a) to 10.1(c) above.

This means that you take on the risk or responsibility or both for you and your clients complying with the relevant laws, instructions and warnings. Your rights and remedies against us may be limited or excluded if you do not fulfil the obligations set out above. This means that you might bear your own losses in the circumstances set out in this clause 10.1.

- 10.2 If you contract us to perform any Services, you must ensure that there are adequate and safe facilities available at your premises for us to perform the Services.

This means that you take on the financial or other risks or responsibilities or both because we, our employees, or our sub-contractors may have claims or other rights against you if you do not provide adequate and safe facilities at your premises.

## 11 Responsibility and limit of responsibility

- 11.1 We are responsible to you only for Damages we are not allowed by law to exclude.
- 11.2 Save for the damages specified in 11.1 above, we are not responsible to you for any Damages that relate to the Goods or Services or both, the transaction between us and you, and this Agreement. This is regardless of how the Damages are caused or arise. This includes Damages caused or arising from contract, delict, common law, Breach of duty or in any other way. (A delict is a wrongful act or failure to act that gives rise to a claim for compensation.)

This means that you carry the risk and responsibility and you bear the financial responsibility for any Damages you and anyone you supply to suffers.

## 12 Circumstances beyond reasonable control

- 12.1 Neither one of us are responsible to the other if we cannot carry out our obligations under this Agreement because of circumstances beyond reasonable control. This includes the inability to get labour, power, materials or supplies, if there is machinery breakdown, or war, civil disturbance, riot, acts of sabotage, states of emergency, strikes, lockouts, go-slows and other labour disputes, natural disasters, explosions, fires, floods, droughts and acts of authority (whether lawful or unlawful).
- 12.2 Any circumstances beyond reasonable control means the affected party may not claim for Damages, penalties and other contractual remedies. Until the circumstances end, the obligations under this Agreement are postponed for up to 30 days. If the circumstances continue for more than 30 days, either one of us may end this Agreement by giving the other written notice.

## 13 Business rescue

- 13.1 In this Agreement, business rescue has the meaning given to it in section 128(1)(b) of the Companies Act, 71 of 2008, and financially distressed has the meaning given

to it in section 128(1)(f) of that Act.

- 13.2 If you are a company, you must tell us in writing within 2 days if any of the following events occurs:
- a) when your board of directors becomes aware that your company is financially distressed;
  - b) when your board of directors contemplates, considers, discusses or agrees to any business rescue for your company;
  - c) when you become aware of any person proposing to take, or taking, any step to apply to court for your business rescue.
- 13.3 In the written notice, you must give us the full details of the financial distress or the actual or proposed activity contemplated by the board or any other person.

## 14 Cancelling the Agreement

- 14.1 Either one of us may cancel this Agreement provided that we give the other party to this Agreement [two] months' notice of our intention to do so.
- 14.2 Prior to cancellation, we must both complete any outstanding obligations due at the time of cancellation.
- 14.3 Cancelling the Agreement does not affect any of our rights under clause 15 of this Agreement.

## 15 We can terminate the Agreement if you are in default

- 15.1 We may cancel any order, withdraw any Order Acceptance, refuse to accept further orders or take any other steps allowed by law to recover any amounts you owe to us if any one or more of the following takes place:
- a) you take any steps to be deregistered as a company (if applicable);
  - b) you are, or take any steps to be, wound-up or liquidated, whether provisionally or finally and whether compulsorily or voluntarily;
  - c) a judgment is recorded against you or any of your principals;
  - d) you enter into a compromise with your creditors generally, or offer to do so;
  - e) we receive a written notice referred to in clause 14;
  - f) we become aware that you are financially distressed or that any actual or proposed activity contemplated in clause 13 happens.
- 15.2 If we take any steps referred to in 15.1, it does not affect any of our other rights under this Agreement.
- 15.3 If either party commits a Breach of any of part of the Agreement (the defaulting party), the other party (the aggrieved party) may give a written notice to the defaulting party to remedy the Breach. If the defaulting party does not remedy the Breach within seven days of receiving the written notice, the aggrieved party may do any one or more of the following:

- a) approach a court for an order that the defaulting party perform its obligations under this Agreement;
- b) suspend or terminate this Agreement immediately;
- c) claim any Damages suffered because of the Breach.

15.4 If you are the defaulting party, we may cancel any order, or withdraw our Order Acceptance and refuse to accept any further orders that you place. We may also take any other steps to recover the amount that you owe us or the Goods that we have supplied to you. If we do any of the above, it does not affect any of our other rights under this Agreement.

## 16 Governing law and dispute resolution

- 16.1 South African law governs this Agreement.
- 16.2 You consent to the jurisdiction (the authority of a court to hear a matter) of the High Court of South Africa for any proceedings arising from this Agreement. This authority is not exclusive to the High Court of South Africa.
- 16.3 We reserve our right to choose to bring proceedings in a Magistrate's Court that has jurisdiction. This right exists even if our claim against you is higher than the maximum amount allowed in the Magistrate's Court.

## 17 Neither party loses its rights

Neither party loses any of its rights under this Agreement if it does not immediately and in every instance insist on them. Neither party may raise it as a defence if a right was not enforced at the relevant time. For example, if we allow you extra time to pay your monthly payments in one month, it does not mean we have allowed you extra time the next or any other month.

## 18 This is the whole Agreement between you and us

- 18.1 This Agreement is the whole Agreement between the parties. Neither party is legally obliged to comply with any term, condition, undertaking, representation, warranty, or promise not written in this Agreement.
- 18.2 This Agreement replaces any arrangement or understanding held by the parties before this Agreement was signed.
- 18.3 Any changes to this Agreement must be in writing and signed by both parties or the party's authorised representatives.

## 19 Transferring rights to another party

In this Agreement, the term transfer refers to all methods of transferring rights, including sale, lease, cession, delegation, assignment, and pledge.

- 19.1 We may not transfer our rights or obligations under this Agreement to any other party unless we inform you in writing that we intend to do so.

- 19.2 You may not transfer your rights or obligations under this Agreement to any other party without our written permission. We may ignore any attempts you make to transfer your rights if you do not have our written permission.

## 20 This Agreement applies

If there is a conflict between this Agreement and the terms and conditions of any offer, order or other communication between us, this Agreement applies.

## 21 You must pay our costs in any legal proceedings against you

If we bring legal proceedings against you and we are successful, you must pay all our costs. These costs include collection costs, tracing fees, legal fees and any other costs we may incur.

## 22 Your address for written notices or legal documents

- 22.1 You agree to accept any notice and legal processes under this Agreement at the physical address stated herein. (This address is known in law as your domicilium citandi et executandi.) This address may be different from your delivery address. The notices and processes include letters reminding you of payments you might have missed, letters of demand, a summons and other legal notices. A legal process includes the ways we can enforce any court judgment, for example, a summons, attaching your property and selling it to recover money you owe to us.
- 22.2 If you want to change the physical address at which you agree to accept notices and legal processes, then you must send us a notice in writing by registered post. The notice must:
  - a) tell us that you are changing your physical address; and
  - b) set out the new physical address at which you agree to accept notices.
- 22.3 Any new address must be a physical address in the Republic of South Africa.
- 22.4 If you change your physical address but do not send us this notice, you agree that we are allowed to send notices to you and serve legal processes at the physical address stated on the attached application form or any new physical address you have given us proper notice of.
- 22.5 If we send a notice to you:
  - a) by prepaid registered post at your address, we will treat it as if you have received it seven days after posting;
  - b) by hand, we will treat it as if you have received it on the date of delivery;
  - c) by fax at the fax number you gave to use, we will treat it as if you have received it at the time of the transmission;
  - d) by e-mail at the e-mail address you gave to us, we will treat it as if you have received it at the time we receive a delivery receipt.
- 22.6 When we treat a notice as if you have received it by a certain date, this means we

do not have to prove that you did receive it then. If you claim that you did not receive the notice by that date then you will have to prove it.

### **23 Each provision is separate**

- 23.1 You and we acknowledge that each provision of this Agreement is separate. If any provision of this Agreement is or becomes illegal, invalid or unenforceable for any reason, it will be treated as if it had not been written. This does not:
- a) make the rest of the Agreement illegal, invalid or unenforceable; or
  - b) affect the legality, validity or enforceability of the provision in any other place.

### **24 Compliance with the Consumer Protection Act**

To the extent that the Consumer Protection Act, 68 of 2008 ("CPA") applies to this Agreement, no term is intended to contravene the CPA. All terms of this Agreement must be treated as limiting our rights only as far as is necessary to ensure compliance with the CPA and this Agreement must be interpreted and applied accordingly.