

## **STANDARD TERMS AND CONDITIONS OF CONTRACT AND SURETYSHIP**

### **1) INTERPRETATION**

- a) **"Customer"** means the person whose name appears on the credit application or any other person or persons at whose request or on whose behalf the supplier undertake to supply any goods, do any business, or provide any advice or service.
- b) **"Signatory"**, means the individual who signs this agreement and/or credit application on behalf of the customer.
- c) **"Supplier"**, means Malvern Engineering Works.
- d) **"Goods"**, means any items or services supplied to the customer in terms of this agreement.

### **2) THESE TERMS AND CONDITIONS TO PREVAIL**

The only basis upon which the supplier is prepared to do business with the customer is on the terms and conditions as contained herein which shall constitute the sole terms of the agreement and shall operate in respect of any or all business between the customer and the supplier.

### **3) NO VARIATIONS OR AMENDMENTS**

- a) This agreement constitute the whole agreement between the customer and the supplier and no amendment or consensual cancellation and no extension of time, waiver or relaxation of any of the provisions or terms of this agreement shall be binding unless recorded in writing and signed by an authorized representative of the supplier;
- b) No extension of time or waiver or relaxation of any of the provisions or terms of this agreement bill of exchange or other document shall operate as an estoppel against the supplier in respect of its rights under the agreement nor shall it preclude the supplier from exercising its rights strictly in accordance with this agreement;
- c) The supplier shall not be bound by an express or implied term, representation, warranty, promise or the like not recorded herein.

### **4) QUOTATIONS**

- a) Any quotation given shall not be an offer by the supplier to sell the goods, but constitutes an invitation by the supplier to the customer to do business with the supplier;
- b) A quotation may be revoked at any time by the supplier, and in the event of the supplier not accepting the customer's order within one month from the date thereof, the order shall be deemed to have been withdrawn;
- c) A contract will only come into force once the supplier accepts the customer's order of if the supplier supplies, or tenders to supply, the goods in question to the customer;
- d) The quotation is based on rates of exchange, freight charge, insurance, railage, costs of labour, material, import duty, taxes and other charges ruling at the date of the quotation. Any variations occurring subsequent to the data of the quotation in any of the aforesaid rates or charges, shall entitle the supplier to vary the amount of the quotation accordingly.
- e) Anytime for Safety related items, costs will be additional to the price quoted unless otherwise stated.

### **5) PURCHASE PRICE AND PAYMENT**

- a) Prices are exclusive of value added tax, which VAT the customer shall pay or reimburse to the supplier simultaneously with the purchase price. The purchase price shall be payable by the customer to the supplier at the supplier's head office in cash and in South African currency without deduction or set-off and free from any exchange within 30 days from date of statement relating thereto.
- b) The purchase price does not include charges for delivery or off-loading of the goods unless otherwise stated.
- c) The customer has no right to withhold payment for any reason whatsoever. The customer is not entitled to set-off any amount due to the customer by the supplier against any debt owed by the customer to the supplier nor shall any payment be withheld by virtue of any counterclaim against the supplier by the customer.
- d) When payment is overdue the company may suspend deliveries without notice and without prejudice to any other legal remedy until due payment has been made. Furthermore, all monies owing in respect of goods completed but not delivered shall thereupon forthwith become due and payable. Moreover after the expiration of FOURTEEN DAYS NOTICE the company may exercise a general lien on all the purchaser's goods and property in its hands and may dispose of such goods and property, as it seems fit and apply the proceeds towards such debts. The company may also elect to cancel and not to produce any unmade balance of such contract and recover from the purchaser any loss sustained by so doing. Payment may not be withheld by the purchaser pending the settlement of any dispute.

### **6) RISK**

The risk of any loss or damage to or destruction of any goods passes to the customer on delivery thereof by the supplier.

### **7) DELIVERY**

- a) Any repair times given by the supplier are merely estimates and the supplier shall not be bound thereby;
- b) Any delivery date indicated by the supplier shall not bind the supplier to effect delivery on such date. The customer shall accept delivery when it is tendered and shall not be entitled to release from the agreement, withhold or defer payment, reduce the price or be entitled to any other remedy against the supplier on account of delays in effecting delivery. No claims for missing or damaged goods shall be valid unless the delivery note has been endorsed as aforesaid and unless the customer notifies the supplier in writing within three days of the delivery of the claim in question.

## 8) WARRANTIES

- a) No warranties, guarantees, or representations, express or implied whether by law contract or otherwise, which are not set forth in this agreement shall be binding on the supplier. The goods are purchased "voetstoets". The supplier shall not be liable for any inaccuracies in any drawing, specifications or other information supplied by the customer.
- b) The supplier's equipment is warranted against malfunction or defect for a period of 18 months from date of sale or 12 months from commissioning, whichever shall occur first, fair wear and tear damage through misuse or faulty applications being excluded. During the said guarantee period the supplier will replace or repair the goods to eliminate any defect in workmanship or materials found to be due exclusively to any acts or omissions on the part of the supplier, in the supplier's sole opinion, of which defect the supplier shall have been notified in writing by the customer within ten days after the defect arise. A claim under the guarantee must be in writing, specifying the alleged defect, and supported by the original tax invoice.
- c) The parties agree that the supplier shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the goods and whether or not occasioned by the supplier's negligence (gross or otherwise) or any act or omission on his part.
- d) Customers who acquire goods for the purpose of on-selling those goods shall not advertise or issue any warranties, guarantees or representations as to the goods in any form whatsoever which could result in liability being imposed upon the supplier.
- e) Goods not manufactured or repaired by the supplier are subject to the guarantee provided by the supplier's supplier, if any.
- f) The parties agree that the supplier shall have no liability in respect of any loss or damage (direct, indirect or consequential) arising out of any patent or trade mark relating to any of the goods sold being infringed, cancelled, breached or otherwise set aside or declared invalid.

## 9) OWNERSHIP

Ownership of the goods shall not pass to the customer until the contract price (including interest if any) in respect of the goods in question has been paid. All goods, whether fixed to immovable property or not, shall be deemed to remain moveable property and be deemed to be severable, without injury to either property.

## 10) BREACH

- a) If the customer breaches any of the terms and conditions hereof or commits any act of insolvency or endeavour's to compromise generally with the creditors, or allows any judgement against it to remain unsatisfied for seven days or is placed under provisional or final liquidation or judicial management or its estate is voluntary surrendered, the supplier shall have the right, without prejudice to any of its other rights, to elect to:
  - i. Treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the expired period of the agreement.
  - ii. Cancel this agreement and retake possession of any of the goods sold.
- b) The supplier shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the customer is indebted to the supplier.
- c) No claim under this contract will arise against the supplier unless the customer has given the supplier thirty days written notice to rectify the defect or breach of contract.
- d) The customer agrees that the amount due and payable to the supplier shall be determined and proven by a certificate issued by the supplier and signed on its behalf by any person duly authorized, which authority need not be proven, such certificate being binding and prima-facie proof of the indebtedness of the customer.
- e) The customer hereby agrees that the supplier shall not be required to furnish security in terms of Rule 62 of the Rules of Court.

## 11) DOMICILIUM AND NOTICES

The parties choose *domicilium citandi executandi* for purposes of the giving of any notices, the payment of any sum, the serving of any process and for any other purpose, their addresses and telefax numbers set out in the application for credit form. Notice sent by pre-paid post, and if sent by telefax, on the first business day after the date of transmission, and if delivered by hand during normal business hours, to have been received by the addressee at the time of delivery.

## 12) COSTS

The customer shall be liable for all costs incurred by the supplier in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs of an attorney and own client scale and costs of council as on brief, whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.

## 13) SURETYSHIP AND WARRANTY OF AUTHORITY

- a) The signatory, by his signature hereto, binds himself in favour of the supplier, its successors-in-title and assigns as surety for and co-principle debtor in solidum with the customer for the due and punctual performance by the customer of all its obligations to the supplier in terms of this agreement;
- b) The signatory hereby renounces the benefits of the legal exceptions "non causa debiti", "errore calculi" "excussio", "divisio", "no value received" and "revision of accounts", with the meaning and effect of nil of which he declares himself to be fully acquainted.

## 14) INTEREST

The customer shall pay interest at the publicly quoted prime overdraft plus 2% per annum ruling from time to time at which FIRSTRAND BANK LIMITED lends on overdraft, which rate shall be proved by way of a certificate signed by an employee of such Bank, compounded monthly in arrears, on all amounts owing by the Customer to the supplier which have not been paid on the due date thereof. Such interest is payable on demand.