

TERMS AND CONDITIONS OF TRADE

1. The Customer agrees that (a) this Agreement represents the entire Agreement between the Customer and the Supplier and that any alterations or additions to this Agreement may not be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorized representative of the Supplier; (b) this Agreement will govern all future contractual relationships between the parties, notwithstanding receipt or acknowledgement of the Customers own order form or conditions; (c) this Agreement is applicable to all existing debts between the parties; (d) this Agreement is final and binding and is not subject to any suspensive or resolutive conditions; (e) any conflicting terms, conditions or agreements without prejudice to any securities or guarantees held by the Supplier and (g) this Agreement applies to all employees and subcontractors of the Supplier.
2. This Agreement, and any offers, orders or contracts of sale pursuant thereto, become binding only when accepted by the Supplier at its business address.
3. The signatory hereby binds himself in his personal capacity as Shareholder (in the case of a company), Member (in the case of a close corporation) or Owner, Partner, or Proprietor, as co-principal debtor jointly and severally for the full amount due to the Supplier and agrees that this Agreement will apply in the same way to him.
4. The Customer acknowledges that it does not rely on any representations made by the Supplier in regard to its products and services, or qualities thereof, leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by the Supplier in respect of its products or services, whether orally or in writing will not form part of this Agreement in any way unless agreed to in writing by the Supplier.
5. The Customer agrees that neither the Supplier nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer.
6. All quotations will remain valid for a period of 15 days from the date of the quotation, or until the date of issue of any new price list, whichever occurs first, or unless specified in writing by the Supplier.
7. Delivery and performance times quoted are estimates and are not binding on the Supplier.
8. All quotations are subject to the availability of input goods or services and subject to correction of good faith errors by the Supplier, and the prices quoted are subject to any increase in the cost price, including currency fluctuations, to the Supplier before acceptance of the order.
9. In the event of the Customer disputing the amount of the cost increase in Clause 8 above, the said amount may be certified by an independent auditor and such certificate shall be final and binding on the Customer.
10. Notwithstanding the provisions of Clause 1 above, all orders or contracts of sale, or agreed variations thereto, whether oral or in writing, shall be binding and subject to this agreement and may not be cancelled by the Customer.
11. It is the responsibility of the Customer to determine that the products or services ordered by it are suitable for the purposes of intended use. The Supplier gives no warranty, express or implied, concerning the suitability of the products supplied for any purpose whatsoever.
12. The supplier reserves the right, at its sole discretion, to provide alternative products at the prevailing prices to those ordered by the Customer, should those products have been superseded, replaced or otherwise become unavailable.
13. Products are sold voetstoets with no warranty against latent defects. All other guarantees, including common law guarantees, are hereby specifically excluded.
14. Liability under clause 23 is restricted to the repair or replacement of faulty products or services, or granting of a discount, at the sole discretion of the Supplier.
15. The Supplier shall not be required to work to tolerances closer than those applicable to the materials obtained by it in the ordinary course of trade, or supplied to it by the Customer. The supplier shall not be held liable for any variations in the standard, quality and performance of such materials.
16. The Supplier shall not be liable for any defects resulting from it being required to expedite delivery ahead of the time needed for the proper production of the order.
17. The Supplier shall not be held responsible for imperfections in the work due to defects in or the unsuitability of material or equipment not supplied by the Supplier. Extra costs incurred through the use of defective materials or equipment supplied shall be for the Customer's account.
18. The customer agrees to pay all costs resulting from any acts, omissions or requests of the Customer including disbursements, suspension of work, modifications of requirements, failure or delay in giving particular requisite to enable work to proceed on schedule, or requirements that work be completed earlier than previously agreed.
19. Customer's property and property supplied to the Supplier will be retained at the Customers risk.
20. The Supplier shall not be liable for any damage arising from any misuse, abuse or neglect of products or services under any circumstances whatsoever.
21. Any order is subject to cancellation by the Supplier due to Acts of God, or from any cause beyond the control of the Supplier, including (without restricting this clause to these instances): inability to secure labour, power, materials 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.
22. The completed product will be dispatched or must be collected by the Customer when ready and the Customer shall not refuse or delay to take delivery.
23. The Supplier shall be entitled to invoice each delivery or performance separately when executed.
24. The Customer agrees to establish, immediately upon delivery, that the products and services appearing on the Supplier's delivery note, Tax Invoice or other documentation, correctly represents the products, or services, and prices agreed to and are free of defects.
25. Where products or services are delivered prior to the issue of a Tax Invoice, the Customer agrees to immediately upon receipt of the Tax Invoice, establish that it correctly represents the delivered products or services and prices agreed to.
26. The Customer hereby confirms that the goods or services detailed on the Tax Invoice issued duly represents the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery / performance has already taken place that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
27. Any delivery note, invoice or waybill (copy or original) signed by the Customer or a third party engaged to transport the products, and held by the Supplier shall be conclusive proof that delivery was made to the Customer.
28. The Customer shall return any defective moveable products to the premises of the Supplier at the Customers cost and packed in the original or suitable packaging.
29. Claims under this agreement shall only be valid if the Customer has within 3 days of the alleged breach or defect occurring, given the Supplier 30 days written notice by prepaid registered post to rectify any defect or breach of Agreement.
30. To be valid, claims must be supported by the original Tax Invoice.
31. If the Supplier agrees to engage a third party to transport products on the Customer's behalf, it does so on terms deemed fit by the Supplier. The Customer indemnifies the Supplier against any claims arising from such agreement.

32. The risk of damage to, or destruction or theft of its products shall pass to the Customer on delivery of any order placed in terms of this Agreement and the Customer undertakes to comprehensively insure the products until paid for in full. The Supplier may recover insurance premiums from the Customer for products insured on the Customer's behalf.
33. All products supplied by the Supplier remain the property of the Supplier until such products have been fully paid for whether such products are attached to other property or not.
34. The Customer agrees that the amount contained in a Tax Invoice issued by the Supplier shall be due unconditionally (a) cash on order, or (b) if the Customer is a Credit Approved Customer, then within the granted credit period as specified on the Credit Application, or not later than the end of the month in which a Tax Invoice has been issued by the Supplier.
35. The Customer agrees to pay the full amount on the Tax Invoice at the Business Address of the Supplier or at such other place that the Supplier may designate in writing.
36. The risk of payment by cheque through the post or by electronic funds transfer rests with the Customer.
37. The Customer has no right to withhold payment for any reason whatsoever and agrees that any extension of time given for payment shall be valid only if reduced to writing and signed by the Customer and a duly authorized representative of the Supplier.
38. The Customer is not entitled to set off any amounts due to the Customer by the Supplier against its indebtedness to the Supplier.
39. All discounts shall be forfeited if payment in full is not made on the due date.
40. The Customer agrees that the amount due and payable to the Supplier may be determined and proven by a certificate issued and signed by an independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
41. Any printout of computer evidence tendered by any party shall be admissible evidence and the parties shall not object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Computer Evidence Act have not been met.
42. The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 34 above in the case of a Credit Approved Customer, the Supplier is entitled to (i) forward a letter of demand using a third party demanding full and final payment.
43. The Customer hereby gives his/ her consent for a credit check.
44. Outstanding accounts are subject to default listing on a national credit bureau database.
45. On payment of the outstanding debt the default listing will be adjusted to read "Paid Default" until legislation demands complete removal
46. The Supplier reserves the right to provide a national credit bureau with updated personal information.
47. The Customer also consents that the Supplier may use a national credit bureau database for tracing, should the Customer abscond.
48. The Supplier hereby agrees that should they default on payment, the Supplier can make this information available to the industry and affiliated businesses.
49. A Credit approved Customer will forthwith lose this approval when payment is not made in accordance with the conditions of clause 34 and all amounts then outstanding shall immediately become due and payable.
50. The Customer agrees that interest shall be payable to the Supplier at the maximum legal interest rate prescribed in terms of the Usury Act on any amounts in arrears, and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.
51. The Customer shall be liable to the Supplier for all legal expenses incurred by the Supplier on the attorney-and-own client scale in the event of (a) any default by the Customer or (b) any litigation in regard to the breach, validity or enforceability of this agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs including stamp duties, for any form of security that the Supplier may demand.
52. The Customer shall pay five thousand Rand into court or furnish sufficient security in lieu of costs in any action instituted by or against the Customer.
53. The Customer agrees that the Supplier will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Court or in terms of Rule 47 of the Supreme Court Act 59 of 1959 as amended.
54. The Customer expressly agrees that any debt owed to the Supplier by the Customer shall become prescribed only after the passing of a period of ten years from the date the debt falls due.
55. The Customer irrevocably authorizes the Supplier to enter its premises to repossess any products delivered, without court order, and indemnifies the Supplier completely against any damage whatsoever, relating to the removal of repossessed products.
56. The Customer is not entitled to sell or dispose of any products unpaid for without the prior written consent of the Supplier. The Customer shall not allow the products to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of the Supplier in the products.
57. Any item delivered to the Supplier shall serve as a pledge in favour of the Supplier for present and past debts and the Supplier shall be entitled to retain or realize such pledges as it deems expedient at the value as determined in clause 67. The sworn or realized value of pledged products will be offset against the Customer's debts and any excess balance will be paid to the Customer.
58. The supplier is entitled to exercise a lien over any of the Customer's property in its possession until all outstanding debts have been paid.
59. The Customer hereby cedes and assigns unto and in favour of the Supplier all its rights, title, and interest in and to all debts which are now, or which may in the future, become owing to it by any third party or parties as security for the payment by it of all amounts which are now or may from time to time in the future, become owing by it to the Supplier from any cause of indebtedness however arising. The Customer agrees that on request by the Supplier, it shall be obliged to hand over to the Supplier all books of accounts, contracts, invoices and documents, and the like, which it may require for the purpose of ascertaining the amounts due to it and for the purposes of the recovery of payment.
60. If any products supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (confusio or commixtio), the Customer shall be obliged on notice of cancellation of the agreement to transfer the same quantity of products in ownership to the Supplier.
61. The Customer or any agent acting on its behalf, on whose behalf or at whose instance any services are rendered hereby indemnifies the Supplier and all of its employees against any liability which the Supplier may incur to any other person as a result of the production of any material produced.
62. The customer agrees to the Standard Rates of the Supplier for any products supplied or services rendered, which rates may be obtained on request.
63. Any document shall be deemed duly represented to and accepted by the Customer (i) within 3 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or (ii) within 24 hours of being faxed to any of the Customer's fax numbers, or any director, member's or owner's fax numbers; or (iii) within 24 hours of being e-mailed to any of the Customer's e-mail addresses, or any director, member's or owner's e-mail addresses; or (iv) on being delivered by hand to the Customer or any director, member or owner of the Customer; or (v) within 48 hours if sent by overnight courier, and (vi) within 7 days of being sent by surface mail.
64. Any order is subject to cancellation by the Supplier if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or if judgment is recorded against the Customer or any of its principals.
65. The Customer agrees that the Supplier will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 21 or 64 occur.

66. In the event of the Customer being in arrears with any payment or in breach of any term of this agreement, the Supplier is entitled to cancel all contracts with immediate effect.
67. In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the products at the time of repossession and (b) all other costs incurred in the repossession of the products. The value of repossessed or retained pledged products shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the products are not recovered for any reason whatsoever, the value shall be deemed to be nil.
68. The Customer agrees that any indulgence whatsoever by the Supplier will not affect the terms of this agreement or any of the rights of the Supplier and any such indulgence shall not constitute a waiver by the Supplier in respect of any of its rights herein. The Supplier will not be stopped from exercising its rights in terms of this Agreement under any circumstances whatsoever.
69. The Supplier shall not be liable for any consequential damages including loss of profit or for any delictual liability of any nature whatsoever.
70. The Customer chooses its address for legal execution as its physical or business address or the physical address of any Director (in the case of a company), Member (in the case of a close corporation) or of the Owner(s) or Partner(s).
71. The Customer undertakes to inform the Supplier in writing, within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address, or 14 days prior to selling or alienating the Customer's business. Failure to do so will constitute a material breach of this agreement. Upon receipt of such written notification, the Supplier reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.
72. The invalidity of any part of this Agreement shall not affect the validity of any other part.
73. In the agreement any reference to natural persons includes legal persons and vice versa and references to any gender includes references to the other gender and vice versa.
74. The Customer hereby consents that the Supplier shall have the right to institute any legal action in either the Magistrate's Court or the High Court at its sole discretion.
75. This Agreement and its interpretation is subject to South African law and the Customer consents to the exclusive jurisdiction of the South African Courts referred to in clause 74.