



Terms and Conditions of Sale

1. Payment terms are strictly Cash with Order, save where the Customer is a credit approved customer in which event payment will be due within 30 calendar days of month end statement or such shorter period as stipulated on the invoice.
2. If the Customer orders goods and then fails to collect or accept delivery of the goods so ordered from the Seller, then payment by the Customer to the Seller shall automatically become due no later than 14 (fourteen) calendar days after the Seller has provided written notification to the Customer that goods are available for delivery or collection.
3. The Customer agrees to pay into the bank account by electronic transfer, as indicated by the Seller from time to time, the amount reflected on the Seller's invoice in the currency specified and shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to the Seller for goods supplied or services rendered.
4. In the case of payments made to the Seller from outside of South Africa, the Customer shall carry all bank charges relating the payment transaction, ensuring that the Seller receives the amount indicated on the Seller's invoice after deduction of all such costs.
5. If the Customer fails to provide payment allocation information within 30 days of payment, then the Seller may appropriate and/or allocate all payments made by the Customer to such accounts and such transactions as the Seller, in its sole and absolute discretion, decides.
6. The Customer agrees that if any amount owed by it is not settled in full within the period agreed the Seller will, without prejudice to any of the Seller's other rights, be entitled to:
 - a. immediately institute action against the Customer; and/or
 - b. cancel the sale and take possession of any goods delivered to the Customer, including goods sold, disposed of or installed by the Customer, which have not been paid for in full, and claim damages.
7. Should any amount not be paid by the Customer on or before the due date, then the full outstanding amount in respect of all purchases by the Customer shall immediately become 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 at the Seller's banker's prime lending rate plus 2% as prescribed for credit agreements in compliance with the National Credit Act (Act 34 of 2005) or equivalent legislation, as amended. Interest shall be calculated from the due date of such payment to the date of final settlement.
8. The Seller reserves the right to withdraw any credit facility at any time, and the nature and extent of such facility shall be at the Seller's sole discretion.
9. Even though the Seller may provide the Customer with a credit limit, the credit limit shall not be the limit of a Customer's indebtedness to the Seller.
10. If the Customer provides a deposit with the order, then such a deposit is only refundable if the Seller cannot deliver goods ordered within a reasonable period and is not refundable under any other circumstances.
11. Any deposit forfeited shall be forfeited as a pre-estimation of the damages suffered by the Seller, without prejudice to any other rights that the Seller may have, including, without limitation, the right to cancel the contract, reclaim if it so wishes any goods already delivered to the Customer, claim the balance from the Customer or to claim further damages from the Customer.
12. Should the Customer purport to attach any conditions to an order which vary, amend or conflict with a term or condition set out herein, then notwithstanding anything to the contrary stipulated by the Customer, the unamended terms and conditions set out herein shall prevail and be of full force and effect.
13. Any term contained in the purchase order issued by the Customer which seeks to provide for cancellation in the event of the Seller's failure to deliver within a specified period shall be of no force and effect.
14. The acceptance by the Customer of a Seller's quote, either online via the Sellers' portal or via the submission by a Customer representative to the Seller of a signed quote, shall be deemed equivalent to the issuing by the Customer of a Purchase order and Purchase orders shall constitute irrevocable offers to purchase the specified goods at the price stipulated in the order.
15. Purchase orders issued to the Seller may not be cancelled. The Seller may at their sole and absolute discretion agree to the cancellation of an order received from the Customer. Such a decision will be based on whether the Seller is able to cancel its order with its Supplier for the supply of those goods and if the item is a regularly stocked item. Any relaxation of this "no cancellation policy" in any one instance should not be construed as a change to the standard terms and conditions.
16. Delivery occurs when the Customer and/or its authorised representative and/or its nominated agent:
 - a. Signs the Seller's delivery note; or
 - b. Collects the goods directly from the Seller's supplier or agent; or
 - c. The Seller or its nominated agent demonstrably performs in terms of the incoterms agreed for the particular transaction.
17. Any delivery note (copy or original) in the possession of the Seller and purportedly signed by the Customer and/or its authorised representative and/or its nominated agent, or third-party documentation proving delivery shall be *prima facie* (legitimate) proof for the purposes of any litigation on its mere production in evidence



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18. The Seller shall be entitled to split the delivery of the goods ordered in the quantities and on the dates it decides, with the prior consent of the Customer, which consent shall not be unreasonably withheld.
19. Short delivery of and/or visible external damage to the goods must be notified in writing to the Seller's head office within 7 (seven) calendar days of delivery of the goods, failing which the Seller will not be liable to entertain any such claim.
20. All risk in and to all goods sold by the Seller to the Customer shall pass to the Customer on delivery, however, ownership in all goods sold and delivered shall remain vested in the Seller until the full purchase price has been paid, and 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 it within 3 (three) calendar days of the date of judgment or changes the structure of its ownership, the Seller shall be entitled to take possession of the goods irrespective of whether or not the goods have been installed, without prejudice to any further rights vested in the Seller. The Customer hereby indemnifies the Seller against all claims, losses, damages, liabilities, and expenses of whatsoever nature, including consequential claims, should the Seller remove goods as a result of non-payment on the part of the Customer. Nothing contained in this clause precludes the Seller from proceeding in terms of this clause with a Court order.
21. Goods in the possession of the Customer bearing either the Seller's name or trademark or labels 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 re-possessed by the Seller.
22. Pending payment to the Seller for goods purchased, all the benefits in terms of any insurance policy relating to the insurance of the goods supplied by the Seller are hereby ceded to the Seller. The Customer hereby indemnifies the Seller against all claims, losses, damages, liabilities, and expenses of whatsoever nature, including consequential claims, arising from or in connection with the Customer failing to comply with its obligations in terms of these terms and conditions.
23. The Seller is under no obligation to accept the return of goods. If, however, the goods are defined by the Seller as stocked items, and were purchased from the Seller, then the Customer may apply to the Seller for permission to return goods. If written permission is given by the Seller for such return, then it will be on the following basis:
 - a. Goods, save for the goods dealt with clause 8.1.4 below, will be accepted for credit, subject to a restocking charge of 15% (fifteen percent) of the invoice price of the goods so returned if the goods are delivered to the Seller's designated warehouse, attention Customer Services, within 21 (twenty one) calendar days of delivery, unused, with sealed disk packs, original contents and shrink wrapping intact.
 - b. Goods defined as non-stocked items or goods specifically ordered for the Customer (Back-to-Back orders) will not be accepted by the Seller for credit.
24. Subject to the provisions in previous clauses, in the event of a breach by the Customer of any of these terms and conditions, and should the Customer fail to remedy such breach within 72 (seventy two) hours after receipt of notice to that effect from the Seller, or should the Customer repeatedly breach any of these terms and conditions in such manner as to justify the Seller in holding that the Customer's conduct is inconsistent with the intention or ability of the Customer to carry out these terms and conditions, or if the Customer is sequestrated or placed under liquidation or enters judicial management or commits any act of insolvency or enters into a compromise with its creditors or fails to satisfy a judgment granted against it within 3 (three) calendar days of the date of judgement or changes the structure of its ownership, the Seller shall be entitled to cancel these terms and conditions forthwith and without prejudice to its right to claim specific performance and/or damages.
25. The Seller's rights detailed in these terms and conditions shall not be exhaustive and shall be in addition to its common law rights.
26. No claim against the Seller, pursuant to these terms and conditions, will arise unless the Customer has, within 7 (seven) calendar days of the alleged breach or defect occurring, given the Seller 30 (thirty) calendar days written notice to rectify any defect or breach of these terms and conditions.
27. The Seller makes no warranties to the Customer regarding the goods or services or their fitness for a particular purpose other than those contained in the manufacturer's product specific warranty as at the time of delivery or collection of the goods.
28. The Seller specifically disclaims the implied warranty of merchantability or fitness for a particular purpose. No representation or warranty, including but not limited to statements of capacity and suitability for use or performance, made by employees of the Seller shall be a warranty by or binding on the Seller. Any such statements shall not give rise to any liability of whatsoever nature on the part of the Seller.
29. The Seller shall not be held liable for any losses, injuries, deaths, damages, costs, expenses, loss of profits, or any other special or consequential damages arising from any cause whatsoever, suffered or incurred by the Customer, its employees, contractors, sub-contractors, agents, authorised representatives, or any third party. Consequently, the Customer indemnifies and holds the Seller harmless against any claims brought forth by the Customer, its employees, contractors, sub-contractors, agents, authorised representatives, or any third party.
30. In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount due to the Seller, the Customer agrees to pay, and shall be liable to pay, all legal costs incurred by the Seller in enforcing its rights in terms of these terms and conditions on the attorney/own client scale including collection charges, tracing agent's fees, air fares and expert's witness fees.



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31. The Seller shall have the right at its sole discretion to institute any action arising out of or in connection with these conditions and/or any business dealings with the Customer in any Magistrate's Court having jurisdiction notwithstanding that the cause of action may exceed the jurisdiction of that court and the Customer hereby consents to the jurisdiction of the Magistrate's Court for this purpose. Nothing herein contained, however, shall preclude the Seller from electing to institute action in the appropriate High Court having jurisdiction.
32. These terms and conditions shall be governed and construed according to the laws of the Republic of South Africa and shall be subject to the non-exclusive jurisdiction of the courts of the Republic of South Africa.
33. Any document will be deemed duly received by the Customer within:
 - a. 7 (seven) working days of pre-paid registered mail to any of the Customer's business or postal addresses or the domicilium address of the Customer, or to the personal address of any director, member or owner of the Customer; or
 - b. 24 (twenty-four) hours on being delivered by hand to the Customer or any director, member or owner of the Customer; or
 - c. 48 (forty-eight) hours if sent by overnight courier; or
 - d. 24 (twenty-four) hours of being e-mailed to the Customer's e-mail address.
34. The Customer hereby chooses its *domicilium citandi et executandi* (physical address for serving of court notices, other legal documentation or communications) for all purposes under these terms and conditions as the physical address as set out on in its reseller application form or, if applicable, its credit application form. The Seller hereby chooses its *domicilium citandi et executandi* (physical address for serving of court notices, other legal documentation or communications) for all purposes under this Agreement as 13 Le Reve, Spitfire Road, Sunninghill, Johannesburg, South Africa or as otherwise notified.
35. The Seller shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of these terms and conditions to any third party without prior notice to the Customer.
36. Each of the terms herein, shall be separate and divisible and if any provision of these terms and conditions, which is not material to its efficacy, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
37. The Customer represents and warrants that the Customer shall not use money or other consideration for any unlawful purpose including any purpose that would violate any applicable anti-bribery or anti-corruption laws. The Customer hereby agrees to indemnify, defend and hold Seller harmless from and against any claims, judgements, fines, penalties and related costs, including legal costs, arising from or related to its breach of this clause.