



TERMS AND CONDITIONS OF SALE : SUPPLY OF GOODS [V03-2021]

1. DEFINITIONS

In these *Terms and Conditions of Quotations*, the following words and expressions shall have the meanings hereby assigned to them unless expressly stated otherwise :-

"*Buyer*" shall mean the company or entity requesting a quotation / issuing the purchase order / buying goods from the *Seller*.

"CPA" shall mean the Consumer Protection Act 68 of 2008.

"*excluded transaction*" shall mean any accepted purchase orders to which the CPA does not apply by virtue of section 5 of the CPA or anything done in terms of that section.

"Goods" shall mean the products to be supplied to the *Buyer* in terms of the purchase order

"HAS" shall mean the Hazardous Substances Act 15 of 1993.

"month" shall mean a calendar month.

"NCA" shall mean the National Credit Act 34 of 2005.

"Party" shall mean either the *Seller* or the *Buyer* and collectively referred to as the parties.

"POPI Act" shall mean the Protection of Personal Information Act 4 of 2013

"Principal Supplier" shall mean the manufacturer of the goods.

"RFQ" shall mean a written Request for Quotation.

"Seller" shall mean the seller of the goods to whom the *Buyer* applies for credit facilities.

"Stock Goods" shall mean all goods held in stock by the *Seller*.

2. QUOTATIONS

- 2.1. Quotations shall only be issued upon receipt of a written RFQ from the *Buyer* which clearly specifies the exact nature, specifications and volumes of the relevant goods as well as the required date of delivery; provided that no RFQ is required where goods are ordered from a pre-set list of goods as agreed to between the *Seller* and the *Buyer* in which instance the *Buyer* shall only issue a purchase order in terms of paragraph 3 below.
- 2.2. Quotations shall be valid for a period of thirty [30] days from date of submission to the *Buyer* unless specifically stated otherwise therein.
- 2.3. All quotations are subject to and issued in terms of the *Seller's Terms and Conditions of Sale* as applied in context which the *Buyer* agrees to by acceptance of the quotation or part thereof or by submitting a RFQ.
- 2.4. Delivery dates stated on quotations shall be as stated in terms of paragraph 4.1 below.
- 2.5. Quotations shall specify a description of each required product as well as the volumes, price per unit, VAT payable, total price and where applicable product certificates and costs for packaging and shipment/airfreight costs.
- 2.6. Quotations shall be submitted to the *Buyer* within 48 hours, provided that where pricing of goods involves or includes ad hoc pricing by an international *Principal Supplier*, quotations shall be submitted to the *Buyer* within 72 hours; and provided further that where pricing of goods requires manufacturing of goods whether manufacturing is done international or not or based on special designs or drawings, quotations shall state an estimated time of delivery only.

3. PURCHASE ORDERS

- 3.1. Goods shall only be supplied upon receipt of a written Purchase Order from the *Buyer* clearly stating the exact nature and specifications of the goods [or product code where ordered from a set list of goods as defined in paragraph 2.1 above], volumes of the relevant goods, the point of delivery and the *Seller's* quotation number [where applicable].
- 3.2. Purchase Orders or part thereof may not be cancelled without a written agreement between the *Buyer* and *Seller*, which agreement shall be subject to and dependent on all of the following:

- 3.2.1 that the *Seller* shall attempt and succeed to cancel the order or part thereof with the *Principal Supplier* [if so applicable];
- 3.2.2 that the *Seller* shall attempt to mitigate the *Buyer's* costs where possible;
- 3.2.3 that the *Buyer* shall pay the *Seller* for all costs attributable to the order already and reasonably incurred by the *Seller* for the order or part thereof which cannot reasonably have been avoided;
- 3.2.4 that no order for custom manufactured goods will be cancelled unless sanctioned by the *Principal Supplier* and the *Buyer* then accepts liability for all costs the *Principal Supplier* holds the *Seller* liable for;
- 3.2.5 that the *Buyer* shall pay the *Seller* an additional 10% handling fee on cancellation of an order on *Stock Goods* and in addition any further handling fees as might be charged by the *Principal Supplier* on imported goods [if so applicable]; and
- 3.2.6 where the CPA applies and the Supplier has accepted it in writing, the cancellation shall be subject to a cancellation charge calculated by the Supplier and payable on demand, and no settlement discount will apply to the cancellation charge.

4. DELIVERY

- 4.1. Subject to the CPA and as a general rule, delivery of *Stock Goods* shall be within five [5] working days after receipt of the *Buyer's* purchase order whereas delivery of goods to be imported from the *Primary Supplier* will be four [4] to six [6] weeks after receipt of the *Buyer's* Purchase Order, provided that in the case of hazardous goods or substances, these times shall be estimates only and although the *Seller* shall make all reasonable efforts to meet the delivery dates stated, the *Seller* shall not be liable in any way whatsoever for any delays in shipping or in the time in which shipments reach the *Buyer*, and provided further that the *Seller* shall notify the *Buyer* as soon as it becomes aware of any such delays.
- 4.2. Deliveries shall be made at the point of delivery reflected in the *Buyer's* purchase order at a time during which the *Buyer* accepts goods being delivered; provided that the *Buyer* shall be responsible for the offloading of the goods.
- 4.3. The *Seller* or party delivering the goods on the *Seller's* behalf shall furnish the *Buyer* with a delivery note and tax invoice reflecting the delivery address, particulars of the goods delivered and the *Buyer's* purchase order number; provided that if the goods or part thereof are of any hazardous nature, the packaging shall so be labelled and documentation so stated as to reflect the nature, risks involved and safety precautions in terms of HAS.
- 4.4. Subject to the applicable warranty on the goods, liability of the goods shall transfer to the *Buyer* upon signature for receipt thereof and the *Seller* will have the right to recover goods from the *Buyer* in the event of non-payment. Ownership of the goods shall remain vested in the *Seller* until payment for the goods have been made in full.

5. WARRANTIES

- 5.1. Subject to par. 5.3 to 5.5 below, the *Seller* warrants for a period of twelve [12] months from date of delivery that all goods are free from defects in design, material and workmanship.
- 5.2. Notwithstanding the aforementioned warranty or anything contained herein stating or implying the contrary, the following shall apply to Chesterton/Ceramic Polymer products only -,
 - 5.2.1 Mechanical Sealing Devices and EPS Products are, subject to paragraph 5.1.4 below warranted for a period of twelve [12] months from date of installation/first use or eighteen months from the original date of shipment, whichever occurs first;
 - 5.2.2 ARC, Ceramic Polymer and IL/MRO products have a shelf life of two [2] years from date of manufacture, unless otherwise stated in the product-specific technical data sheet and are subject to paragraph 5.1.4 below warranted during its shelf life free of defect in design, material and workmanship;
 - 5.2.3 Mechanical Packing, Gasketing & Live Loading Products, but excluding the products listed below are warranted for a period of twelve [12] months from date of installation/first use or eighteen months from the original date of shipment, whichever occurs first. The products excluded and listed below carries product-specific warranties which can be obtained from the Seller –
 - 1622 Low E Valve Packing
 - 1724 Low E Valve Packing
 - 5300 Steam Valve Packing
 - 1600 Steam Valve Packing
 - 1601 Steam Valve Packing
 - 5800 Low E Packing
 - 5.2.4 The warranty on the products mentioned in paragraphs 5.1.1, 5.1.2 and 5.1.3 does not apply to any custom solution products and is exclusive and in lieu of all other warranties by the *Principal Supplier* express or implied and all implied warranties including but not limited to warranties of merchantability and fitness for a particular purpose are hereby expressly excluded.
- 5.3. Latent damaged goods not reasonably noted at time of delivery should be reported within three [3] working days of time of delivery, provided that, subject to paragraph 5.4 below, the warranty remedy for damaged goods is at the *Seller's* discretion to either repair or replace the product or to refund the purchase price of that product.

- 5.4. Defective products or potentially defective products should be reported to the Seller within the warranty period and should the *Principal Supplier* determine such product to be defective, the Seller in liaison with the *Principal Supplier* will at its option either repair, replace or refund the purchase price of that product, provided that, subject to paragraph 5.4 below, the warranty remedy for a defective product is at the *Seller's* discretion to either repair or replace the product or to refund the purchase price of that product.
- 5.5. Where a *Buyer* wishes to enter into a transaction, other than an *excluded transaction*, with the *Seller* for the supply of goods, if the *Buyer* wishes to rely in relation to the supply of those goods on any representations, conditions or warranties in addition to those applicable in terms of the *CPA*, then the *Seller* will only be bound by them if they are agreed in writing between the *Seller* and the *Buyer* before or at the time of conclusion of the transaction to such goods to be supplied. Any other representation, condition or warranty as to quality or freedom of defect of the goods supplied or their fitness for any particular purpose is hereby excluded, but only to the extent that its exclusion is not prohibited by the *CPA* or any other public regulation.
- 5.6. Where the *Seller* enters into a transaction that is not an excluded transaction for the supply of goods, the *Seller*, subject to any contrary provision of the *CPA*, shall only be liable for consequential losses or damages in relation to the supply of such goods which arise out of the gross negligence, recklessness or deliberate unlawful conduct of the *Seller* or of any person acting for or controlled by the *Seller*.

6. PAYMENTS

- 6.1. Payments are to be made within thirty (30) days from date of the *Seller's* statement unless stated differently on the tax invoice or unless specifically agreed to by the Director of the *Seller*.
- 6.2. The *Seller* reserves the right to hold orders when the *Buyer's* account is past due until such time as the account balance is within the agreed terms.
- 6.3. Unless agreed to in writing between the *Seller* and the *Buyer*, the pricing for all goods sold shall be as per the *Seller's* original quotation.
- 6.4. The *Buyer* carries any risk associated with or arising from the method elected to effect payment to the *Seller*.
- 6.5. Interest at a rate of 2% above the prime overdraft rate charged by the *Seller's* bankers from time to time shall be levied on all overdue amounts.

7. CREDIT FACILITIES

- 7.1. Notwithstanding the conditions of the *NCA* or a *Party's* exclusion or partial exclusion thereof or any condition herein stating or implying the contrary, the *Seller* requires sufficient information to determine the *Buyer's* creditworthiness, monthly credit limit etc. which shall be a precondition for the supply of any goods, hence will require the information as stated below by completion and submission of the BUYER INFORMATION document prior to any purchase order being submitted to the *Seller*. The information stated in A is compulsory and must be supplied once off when trading with the *Seller* commences for the first time or should the *Seller* request it later to be updated. The information required in B is to be supplied only upon the *Seller's* request:-

- [A] Compulsory :**
- (i) Particulars of Business and
 - (ii) Monthly Credit Limit required
 - (iii) Names and contact details of minimum 3 trade references
 - (iv) Valid Tax Clearance/Compliance Certificate and VAT registration number
 - (vi) Address chosen as it's *domicilium citandi et executandi*

- [B] Upon Request Only :**
- (i) Audited Financial Statements for the previous financial year
 - (ii) A signed Suretyship and/or Cession of Claims as per paragraph 8 below.

- 7.2. The information required above is for the sole purposes of assessing the *Buyer's* credit facilities and the *Seller* undertakes to ensure that it is treated, processed and stored as strictly confidential as in terms of the *POPI Act* as set out in par. 12 below and at all times not to divulge the information or the *Buyer's* operations or affairs to any third parties.
- 7.3. By submitting the information in terms of this paragraph, the *Buyer* confirms that the information supplied is accurate, up to date, complete and also undertakes to inform the *Seller* in writing within 48 hours should any content or part thereof changes in content or legal status.
- 7.4. Notwithstanding anything stated or implied herein to the contrary, the *NCA* and *CPA* shall apply to any supply of goods on credit to the extent that the aforementioned Acts are applicable to the respective *Parties*.
- 7.5. The credit terms or facilities are further subject to the following conditions:
 - (a) If personal guarantees or other security is not provided by the Directors, shareholders or Partners, as the case may be, of the *Buyer* is and when requested by the *Seller* at any time in relation to future transactions, or
 - (b) If the *Buyer* fails to make any payment due to the *Seller* on the due date for payment thereof,

the *Seller* has the right to withdraw or suspend the grant of credit facilities to the *Buyer* and to refuse to re-instate them or to attach further conditions to any reinstatement of them and also has the right to suspend deliveries pending payment and/or to cancel any undelivered portion of any order if acceptable arrangements are not made for payment of amounts owing by the *Buyer* that are overdue.

7.6 Notwithstanding anything in this Terms and Conditions of Sale stating the contrary, if credit facilities are approved, the *Seller* is entitled to register details about the conduct of the *Buyer's* account at the credit bureaus.

8. SURETYSHIP AND SESSION OF CLAIMS

Notwithstanding anything stated or implied herein to the contrary, the *Seller* reserves the right to require the *Buyer* to sign a suretyship and/or session of claims prior to providing a quotation or executing a purchase order; provided that the *Seller* shall notify the *Buyer* should this be required for purpose of supplying goods on credit.

9. BREACH AND TERMINATION

Notwithstanding anything herein stating or implying the contrary, the *Seller* reserves the right to refuse, cancel or terminate the execution of any purchase order for any reason it deems fit, including but not limited to the *Buyer* breaching or not adhering to any provision of these Terms and Conditions of Sale, or failing to pay any amount on its due date, or suffering any civil or criminal judgement being taken or entered against it or committing an act of insolvency or dishonesty, in terms of the Insolvency Act 24 of 1936, as amended or being placed under sequestration, liquidation or judicial management, whether provisional or final, or entering onto a compromise with its creditors and the *Seller* shall without prejudice to any other remedies that it has available to it in terms of law, repossess any goods which have not been paid for, and/or claim specific performance of all the *Buyer's* obligations whether or not such obligations have fallen due for performance or not without prejudice to the *Seller's* right to claim damages.

10. FORCE MAJEURE

- 10.1. Force majeure shall mean any circumstances beyond the reasonable control of the *party* concerned and shall include, but not limited to war, revolution, riots, epidemic, quarantine, strike or lockout, industrial action by workers or employees, earthquakes, flood, fire or other natural physical disaster and breakdown of machinery or facilities where such are not under the *Seller's* control.
- 10.2. If any of the parties are delayed or prevented from performing its obligations by a force majeure event, then such party shall notify the other party of the circumstances within 24 hours, provided that should the force majeure circumstances last for longer than one calendar month, either party may terminate future obligations, but provided further that the *Buyer* shall remain liable to the *Seller* for any amounts payable for goods already delivered.
- 10.3. Subject to the conditions of this clause, neither part shall have a claim of any nature against the other party for delayed performance as a result of a force majeure event.

11. LEGAL PROCEEDINGS

- 11.1. The laws of the Republic of South Africa will be applied in the resolution of any dispute or litigation arising from these Terms and Conditions of Sale between the *Seller* and the *Buyer*.
- 11.2. The *Seller's* physical address being 8 Makepeace Crescent, Perseverance, Port Elizabeth shall constitute it's chosen *domicilium citandi et executandi* for all purposes of these Terms and Conditions of Sale.
- 11.3. The *Buyer* shall be liable for the *Seller's* legal fees in the event of the Company enforcing its rights hereunder on an attorney and own client scale, including counsel's fees on brief, tracing agent fees and collection charges.
- 11.4. In any dispute between the *Seller* and the *Buyer* arising out of these Conditions of Sale with respect to a transaction other than an *excluded transaction*, the *Seller* shall, at its option, be entitled, but not obliged, to institute proceedings in any magistrate court which otherwise has jurisdiction notwithstanding that the amount in issue may exceed the limits of such jurisdiction. In those circumstances the *Buyer* hereby consents to such jurisdiction, but does not waive any right to rely on any of the dispute resolution or referral provisions of the CPA

12. DATA PRIVACY

- 12.1 The *Seller* is committed to the adherence of national and international legislation and regulations pertaining to the safeguarding of data privacy and the protection of personal and company information when processed by any person, whether natural or juristic in terms of the *POPI Act* and or similar legislation.
- 12.2 Information will only be collected for the intended purposes of ensuring compliance with the *Seller's* policies and to assess the *Buyer's* creditworthiness and the *Buyer* acknowledges and consents to the processing of such information for these purposes as well as to adhere to legal obligations.
- 12.3 The *Seller* undertakes not to disclose the *Buyer's* information unless it is legally or contractually required or for its legitimate business purposes. Similarly, the *Buyer* has the corresponding obligation to the *Seller* in this regard.
- 12.4 The *Buyer* acknowledges that the *Seller* will use all reasonable efforts to ensure that the *Buyer's* information in it s possession or being processed is kept confidential, safeguarded in a secure manner and processed in terms of the provisions of the *POPI Act* and for the purposes for which the *Seller* has been authorised.

13. GENERAL

- 13.1. No amendment, omission and/or cancellation of any of these Terms and Conditions of Sale shall be of any force or effect unless reduced to writing and signed by a Director of the *Seller*.
- 13.2. The *Buyer* shall notify the *Seller* in writing should any of its terms of sale changes
- 13.3. No relaxation or indulgence which the *Seller* may give at any time in regards to these Terms and Conditions of Sale or any past incidents shall prejudice or deemed to be a waiver of any of the *Seller's* rights hereunder.
- 13.4. Each clause in these Terms and Conditions of Sale is severable one from the other and if any clause is found by any competent court to be defective or unenforceable for whatsoever reason, the remaining clauses shall be and continue to be of full force and effect.
- 13.5. The Rule of Construction that these Terms and Conditions of Sale shall be interpreted against the party responsible for drafting it shall not apply.
- 13.6. The *Buyer* shall not be entitled to cede its rights or assign its obligations under these Terms and Conditions of Sale.

Note : Should credit facilities be required, the information as stated in clause 7 should be submitted to the Seller subject to the terms stated in that clause. The "BUYER INFORMATION" document should be completed for that purpose and submitted to the Seller together with the relevant documentation.

- END -

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