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SPEC CORROSION PROTECTION (PTY) LTD

TERMS AND CONDITIONS OF SALE **INCORPORATING A DEED OF SURETYSHIP AND CESSION OF CLAIMS**

1. CREDIT FACILITIES

- 1.1 The Customer understands that the Company's decision to grant credit facilities to the Customer is at the sole discretion of the Company.
- 1.2 The Company reserves the right to suspend or withdraw the Customer's credit facilities at any time If the Customer is in default under these terms and conditions of sale by giving written notice to the Customer at least ten (10) business days before the credit facilities will be suspended or withdrawn. In such circumstances the provisions of these Terms and Conditions of Sale will still apply to those amounts that are owed by the Customer under the credit facilities before the date on which the Company suspended or withdrew the credit facilities.
- 1.3 The Company reserves the right, by written notice to the customer, to reduce the credit limit under the credit facilities granted to the Customer, which reduction will take effect on delivery of a written notice to the Customer.
- 1.4 The Company will increase the credit limit under the credit facilities with written consent of the Customer, provided that the Company is satisfied that the Customer will be able to meet its obligations under the increased credit limit.
- 1.5 The credit limit granted by the Company to the Customer shall not be deemed to be limit of the Customer's indebtedness to the Company.

2. PRICE

- 2.1 Unless the Company provides the Customer with a written quotation, which the Customer accepts within the period for which the quotation is valid, the price of the Company's goods will be the price ruling at the date of dispatch of the goods.
- 2.2 The Company reserves the right to vary any quote price by adding thereto the increased costs to it of any goods.

3. PAYMENT

- 3.1 Payment is to be made within thirty (30) days from date of the Company's invoice. No discounts may be taken unless the Company's manager or director has agreed to such discounts in writing and the Customer has affected payment within the payment period allowed for such discounts.
- 3.2 The Customer shall not be entitled to withhold, deduct from or defer any amount due by it to the Company and shall pay such amounts free of any deductions, charges and set off.
- 3.3 The Company, at its sole discretion, shall be entitled, but not obliged to set-off against any amounts owed by the Customer to it in any amounts that it owes to the Customer.
- 3.4 The Company can appropriate payments from the Customer to any such outstanding amounts as it deems fit.
- 3.5 The Customer carries any risk associated with or arising from the method elected to effect payment to the Company.
- 3.6 Except for Customers who are sole proprietors or whose net asset value or annual turnover at the date on which the credit application was submitted to the Company was less than R1 million, interest at the rate of 2% above the prime overdraft rate charged by the Company's bankers from time to time shall be levied on all overdue amounts.

4. ORDERS

- 4.1 The terms of orders placed upon the Company by the Customer will be reflected in the Company's invoice.
- 4.2 All orders subject to these Terms and Conditions of Sale and not by any provisions that the Customer may attempt to impose by way of its documents.
- 4.3 Orders cannot be withdrawn once accepted, either expressly or impliedly, by the Customer.

5. DELIVERY

- 5.1 Time shall not be of the essence in respect of any orders. The Customer accepts that delivery of goods will be subject to the availability of the goods ordered and timeous receipt by the Company of any drawings, designs and specifications that the Company may require for the Customer (provided that such drawings, designs and specifications shall be deemed to have been given to the Company for the purpose of description only and shall not form part of these Terms and Conditions of Sale). The Company will not be liable, under any circumstances, for any direct, indirect or consequential damages of any nature, whether in the contemplation of the parties or not, which the Customer may suffer as a result of a delay in delivery of the goods ordered.
- 5.2 Risk in and to the goods will pass to the Customer upon delivery. Delivery will be deemed to have taken place when the goods are off loaded at the Customer's nominated delivery address or, where the Customer has arranged to collect the goods from the Company, when the Company notifies the Customer that the goods are available for collection. The signature of any person on behalf of the Customer on a Company delivery note or invoice will be *prima facie* proof of the proper delivery of the goods to the Customer.
- 5.3 If the Customer fails to take delivery of the goods on time, the company will recover a storage fee in respect of the good from the Customer.

6. OWNERSHIP

- 6.1 Notwithstanding that risk passes from the Company to the Customer upon delivery of the goods, ownership in the goods shall remain vested in the company until payment for such goods have been made in full.
- 6.2 The Company shall have the right to recover goods from the Customer in the event of non-payment.

Page 1 of 3

CORROSION PROTECTION SPECIALIST

REGISTERED APPLICATOR FOR  **CHESTERTON** PRODUCTS

Directors: A.P Avenant

7. RETURNED GOODS

- 7.1 Goods sold by the Company are sold *voestoots* and are not returnable save with the consent of the Company. Should the Company in its absolute discretion elect to accept the return of any goods, it will furnish the Customer with written notification and the goods must be made available immediately for collection by the Company from the Customer's premises. Furthermore, the goods must be complete, clean, saleable and undamaged and the risk in the goods shall remain with the Customer until the Company receives the goods. The Company reserves the right to levy a handling fee of 10% (ten percent) upon receipt of any such returned goods.
- 7.2 The Company will only be obliged to accept return of goods in circumstances where such goods are defective or damaged or not in compliance with the Customer's order. In this regard, unless the Customer notifies the Company in writing within seven (7) days of delivery of the goods that such goods are defective, short delivered, not in accordance with the order, damaged, or that any other discrepancy exists in regard thereto, the Company will not be liable for any of the aforesaid discrepancies; provided that such notification shall have no other probative value. The Company, in its absolute discretion and once it has satisfied itself of the validity of the Customer's complaint, will be entitled to repair or replace defective or damaged goods, or rectify the discrepancy, or credit the Customer's account or refund the whole or part of the price paid to it by the Customer in respect of such goods.

8. WARRANTIES

- 8.1 Save for what is expressly set out in the Terms and Conditions of Sale, the goods are sold without any warranties, whether express or implied, and without any representations, including that the goods are suitable for the purpose of which they have been ordered.
- 8.2 When the Company is required to manufacture or supply goods according to the Customer's specifications, drawings and/or instructions, or those of its nominees, the Company accepts no responsibility for the efficiency or workability of the goods so manufactured or the work carried out.
- 8.3 The Company will not be liable for any loss or damage of any nature and however arising which may be suffered by the Customer as a result of or in connection with any transaction contemplated herein, whether direct, consequential delictual or otherwise and whether caused by the negligent act or omission of the Company or otherwise. The Customer hereby indemnifies the Company for and holds it harmless against any claim made against the Customer by a third party arising from the goods supplied by the Company. Any direct liability of the Company for breach of contract will not exceed in the aggregate of damages, costs, fees and expenses capable of being awarded of the Customer, the total price paid or due to be paid or due to be paid by the Customer for the goods.

9. CONTINUING COVERING SURETYSHIP

- 9.1 I, by my signature below, hereby bind myself in my private and individual capacity as surety for and co-principal debtor with the Customer in favour of the Company for the due performance of any obligations of the Customer and for the due payment to the Company by the Customer of any amounts which my now or at any time be or become owing to the Company by the Customer.
- 9.2 I Understand that my liability for amounts owing by the Customer to the Company, is not limited to any credit limit granted by the Company to the Customer. I agree and declare that this suretyship shall remain in full force and effect as a continuing covering suretyship for so long as any amounts remain owing by the Customer to the Company and notwithstanding the temporary extinction of the Customer's indebtedness of the Company.
- 9.3 I Acknowledge and understand that as surety and co-principal debtor, I waive and renounce the benefits to which I may be entitled to arising from the legal expectations including, but not limited to:
- 9.3.1 Excussion – the right to require the Company to proceed first against the Customer for payment of any debt owing to the Company before proceeding against me;
- 9.3.2 Cession of action – the right to require the Company to give cession of the action for payment of debts to me before any action against me may be taken;
- 9.3.3 The benefit of simultaneous citation and division of debts – right of a co-surety to be liable only for his pro rata share of the principal debt;
- 9.3.4 The right to an accounting from the Company.
- 9.4 A certificate issued by any manager of the Company will constitute *prima facie* proof of the amount of the Company's claim against me.
- 9.5 I hereby choose my *domicillium citandi et executandi* for all purposes under this deed of suretyship as the Customer's physical address set out in the application section of this application for credit.
- 9.6 I shall be liable for the Company's legal fees in the event of the Company instituting action against me on an attorney and own client scale including counsel's fees on brief, tracing agents, fees and collection charges.
- 9.7 I undertake to furnish the Company with a declaration of my assets within seven (7) days of being requested to do so and I undertake to notify the Company in writing of any additions, reductions or changes to my assets within seven (7) days from such addition, reduction or change occurring.
- 9.8 In the event of the Company ceding its rights under this deed of suretyship the cessionary shall be able to recover from me in terms of this deed of suretyship all amounts owed by the Customer to the Company and the cessionary.

10. CESSION OF CLAIMS

- 10.1 The Customer hereby irrevocably and in *rem suam cedes*, pledges, assigns, transfers and makes over unto and in favour of the Company all its rights, title, and interest in and all claims of whatsoever nature and description and howsoever arising which the Company may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal persons ("the Debtors") without exception as continuing covering security for the due payments of all amounts which may now or at any time hereafter be or become owing by the Customer to the Company from whatsoever cause.
- 10.2 Should it transpire that the Customer at any time entered into prior deed of cession or otherwise disposed of any of the rights, title and interest in and to any of the claims, which will from time to time be subject to this cession, and then this cession, shall operate as a cession of all the Customer's reversionary rights.
- 10.3 Notwithstanding the terms of the aforesaid cession, the Customer shall be entitled to institute action against any of the Debtors provided that all sums of the money which the Customer collects from the Debtors shall be collected on the Company's behalf and provided further that the Company shall at any time be entitled to terminate the Customer's right to collect such moneys.
- 10.4 The customer shall be obliged to deliver all relevant information in documentary form or otherwise to the Company upon demand to enable the Company to claim moneys owed to the Customer by the Debtors.

11 BREACH

- 11.1 In the event of the Customer breaching any provision of these Terms and Conditions of Sale, or failing to pay any amount on its due date, or suffering any civil judgement being taken or entered against it or committing an act of insolvency, 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, or dying, the Company shall without prejudice to any other remedies that it has available to it, be entitled to summarily cancel the sale of the goods to the Customer, and/or repossess any goods which have not been paid for, and/or claim specific performance of all the Customer's obligations whether or not such obligations have fallen due for performance, in all events, without prejudice to the Company's right to claim damages.

12 LEGAL PROCEEDINGS

- 12.1 The laws of the Republic of South Africa will be applied in the resolution of any dispute arising from these Terms and Conditions of Sale between the Company and the Customer.
- 12.2 The Company shall in its option, be entitled to institute actions= in the Magistrates court, notwithstanding that the amounts of its claim exceeds the jurisdiction of such court.
- 12.3 A certificate issued by any manager of the Company, whose authority, appointment and signature it shall not be necessary to prove, that purports to certify any indebtedness of the Customer to the Company, delivery of the goods to the Customer not that payment in respect of the goods has not been made, shall constitute *prima facie* proof of such indebtedness or delivery or non-payment, as the case may be.
- 12.4 The customer's physical address as set out in the application section of this application for credit will constitute the Customer's chosen *domicilium citandi et executandi* for all purposes of these Terms and Conditions of Sale.
- 12.5 The Customer shall be liable for the Company'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 agents fees and collection charges.

13 GENERAL

- 13.1 These Terms and Conditions of Sale represent the entire agreement between the Company and the Customer and will govern all future contractual relationships between the Company and the Customer and will also be applicable to all debts, which the Customer may owe to the Company prior to the Customer's signature hereto.
- 13.2 No amendments and/or cancellation of these Terms and Conditions of Sale shall be of any force or effect unless reduced to writing and signed by duly authorised representatives of the Company and the Customer.
- 13.3 No Relaxation or indulgence which the Company may give at any time in regard to carrying out of the Customer's obligations in accordance with these Terms and Conditions of Sale shall prejudice or be deemed to be waiver of any of the Company'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 of these Terms and Conditions of Sale shall be interpreted against the party responsible for drafting this document, shall not apply.
- 13.6 The Customer shall not be entitled to cede its rights or assign its obligations under these Terms and Conditions of Sale. The Company shall be entitled to cede its rights or assign its obligations under these Terms and Conditions of Sale and the cessionary shall be entitled to enforce its rights hereunder in respect of goods that it supplies to the Customer.

14 DISCLOSURE INFORMATION

- 14.1 The Customer understands that the information given in this credit application is to be used by the Company for the purposes of assessing the creditworthiness. The Customer confirms that the information given by it in this credit application form is accurate and complete. The Customer further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the above information, failing which the Company will not be liable for any inaccuracies or lack of completeness of information.
- 14.2 The Customer hereby authorises the Company at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned in the credit application and to obtain any information relevant to the Customer's credit assessment.
- 14.3 If the Customer fails to meet his obligations under these Terms and Conditions of Sale, it authorises the Company to record its non-performance with any credit bureau, which information will be available to third parties. The Customer further authorises the Company to perform a credit information search on it at any credit bureau, monitor the Customer's payment behaviour by researching its records at a credit bureau, use new information and data obtained from the credit bureau in respect of the details of how the Customer has performed in terms of these Terms of Conditions of Sale.
- 14.4 The Customer hereby authorises the Company at all times to furnish information concerning the Customer's dealings with the Company, including without being limited to, the Customer's credit worthiness, defaulting payments to the Company and details how the Customer has conducted its account with the Company to any third party.

SIGNED at _____ on this _____ day of _____ 20 ____ by the signatories below who confirm their authority to sign this Terms and Conditions of sale on behalf of the applicant and suretyship.

Name in blockletters : 1 _____

Signature : 1 _____

2 _____

2 _____