

## STANDARD CONDITIONS OF ORDER

- 1. Definitions** In any order placed on the Contractor, unless the content otherwise requires the following words, expressions and phrases set out have the meanings hereunto assigned to them.
- 1.1 "the Contractor": The party on whom an order is placed by the Purchaser.
- 1.2 "the Purchaser": TFM Industries (Pty) Ltd with registration number M1966/005974/07, its nominees, orders and/or assigns.
- 1.3 "the Goods": The Goods or services, which are the subject matter of orders placed by the Purchaser on the Contractor.
- 1.4 "the Price": The Price in respect of the Goods or services recorded on such order.
- 2. Binding Contracts**
- 2.1 **All orders placed by the Purchaser shall be in terms of the conditions set out herein.** Acceptance of any order by the Contractor orally, in writing or by conduct or delivery of the Goods or any part thereof by the Contractor to the Purchaser shall be deemed to constitute acceptance by the Contractor of the order upon all of the terms and conditions recorded on the order. Without limiting or derogating from the generality of the foregoing, delivery by the Contractor to the Purchaser of invoices, statements, quotations, or other documents containing terms and conditions at variance with the terms and conditions herein, shall be of no force or effect insofar as they contradict the provisions hereof.
- 2.2 These conditions read together with the particulars on the order constitute a binding contract which supersedes and takes precedence over any other agreement concluded between the parties or sought to be imposed by the Contractor prior or subsequent to or simultaneously with the conclusion hereof, such other contracts, if any being, hereby terminated, unless otherwise agreed in writing.
- 2.3 An order shall not be binding on the Purchaser unless it is in writing and signed by a duly authorized representative of the Purchaser.
- 3. Price**
- 3.1 The Price quoted on the order is not subject to increase for any reason whatsoever save with the Purchaser's written agreement signed by a director of the Purchaser.
- 3.2 Unless otherwise stated on the order, the Price quoted shall be deemed to include:
- 3.2.1 *Value added tax (VAT)*
- 3.2.2 *Such other rates, taxes, currency fluctuations or duties payable in respect of the sale of the good or the provision of the service ;*
- 3.2.3 *The cost of delivery of the Goods to the Purchaser's premises or such other place as may be stipulated on the order for delivery of the Goods;*
- 3.2.4 *Costs of packaging and insurance, if applicable.*
- 3.3 In so far as the Price recorded on the order does not take account of discounts to which the Purchaser is entitled by virtue of prompt payment of the Price, such omission shall not in any way disentitle the Purchaser to claim such discount in such percentages as may be agreed between the Purchaser and the Contractor from time to time.
- 3.4 The Contractor shall render invoices to the Purchaser in respect of each order which invoices shall contain full details of the date of the order, the Purchaser's order number, a complete description of the Goods and the Price payable in respect of each item of the Goods.
- 3.5 Invoices from the Contractor to the Purchaser which are received after the tenth (10<sup>th</sup>) day of the month, following month of delivery of the Goods, will be processed in the following month and any discount to which the Purchaser is entitled on such purchases shall not be affected by any consequential late payment by the Purchaser of the amount expressed as payable in terms of such invoice.
- 4. Delivery**
- 4.1 Delivery of the Goods shall be deemed to have been effected to the Purchaser only upon signature by a duly authorized representative of the Purchaser recording acceptance of such delivery.
- 4.2 Delivery of the Goods shall be effected at the Purchaser's premises or at such other address as may be stipulated on the order.
- 4.3 All deliveries must be accompanied by a copy of the original purchase order (where practical) and a delivery note reflecting the purchase order number, stock number where applicable, description and quantity.
- 4.4 Delivery of the Goods shall be effected by the Contractor to the Purchaser on the delivery date expressed on the order or as otherwise agreed upon in writing or if no date is recorded, then within a reasonable period of time from the date of such order. Insofar as a date for the delivery of the Goods is recorded on the order or subsequent agreement, time is recorded to be of the essence of this contract.
- 4.5 Should the Contractor fail to deliver the Goods on the delivery date recorded on the order, then by a date demanded by the Purchaser after the expiry of a reasonable period of time from the date of such order, the Purchaser shall be entitled, without prejudice to its other rights in terms hereof or a law, to:
- 4.5.1 *claim payment from the Contractor of such damages, consequential or otherwise including loss or profits and loss of good name and*
- 4.5.2 *without limiting or derogating from the Purchaser's aforesaid rights terminate this contract, or*
- 4.5.2 *without limiting or derogating from the Purchaser's aforesaid rights enforce performance of this contract by the Contractor; provided that the Purchaser shall not be entitled to cancel any order without first having afforded the Contractor a reasonable opportunity in the circumstances to effect such delivery and the Contractor persists in such failure to deliver Goods.*

- 4.6 In any of the events referred to in paragraph 4.5 above the Purchaser shall be entitled to set off against the Price, any amounts due and payable to it by the Contractor in respect of damages suffered as a result late or non-delivery of the Goods by the Contractor.
- 4.7 Delivery of the Goods shall be effected to the Purchaser during normal business hours only unless agreements to the contrary have been made between the parties and recorded in writing.
- 4.8 Acceptance of delivery of the Goods shall not constitute a waiver, abandonment variation of any of the Purchaser's rights in terms here of nor an acknowledgement that the Goods have been received in good order or otherwise in compliance with the Contractor's obligations in terms hereof.
- 5. Warranties**
- 5.1 The Contractor hereby warrants that the Goods:
- 5.1.1 *shall be fit for the purpose of which they are intended and*
- 5.1.2 *shall in all respects be free of latent or patent defects from whatsoever cause arising, and*
- 5.1.3 *are new (unless otherwise agreed upon), of good quality, in good working order, and*
- 5.1.4 *are usable and durable for a reasonable period of time, having regard to the use to which they would normally be put;*
- 5.1.5 *comply with any applicable standard set out under the Standards Act, Act No. 29 of 1993 and/or any other regulatory requirements.*
- 5.2 The Contractor warrants that it carries and will maintain liability insurance cover relative to its warranties above and the Goods supplied and services performed to the Purchaser.
- 5.3 The Contractor warrants that it has the ability, skill and experience properly to render the Goods and to perform all related functions and that it shall provide the Goods in a proper, professional and workmanlike manner commensurate with best practice in the applicable industry.
- 5.4 The Contractor hereby indemnifies the Purchaser against any claims made against the Purchaser by third parties in respect of any damages, consequential or otherwise, suffered as a result of any defects in the Goods which existed at the time of delivery or as a result of the Contractor's breach of any term of this Agreement, or the Contractor's negligence or omission in the execution of its duties under this agreement.
- 5.5 If the Goods delivered by the Contractor to the Purchaser pursuant to any order are in any way defective then the Purchaser shall call upon the Contractor to remedy such defect within a reasonable period of time, failing which the Purchaser shall be entitled, without prejudice to its other rights in terms hereof or at law to employ a third party of its choice to effect such repairs or improvements to the Goods as it may from the Contractor by set-off or other wise payment of all reasonable costs and expenses incurred by the Purchaser in connection with such repairs or improvements.
- 6. Risk**
- All risk in the Goods shall remain with the Contractor until such time as the Goods have been delivered to the Purchaser in accordance with the provisions hereof. Without limiting or derogating from the rights of the Purchaser in terms hereof, the risk in the Goods shall not be deemed to have passed to the Purchaser by virtue of the delivery of the Goods by the Contractor to the Purchaser's agent for the purpose or delivery.
- 7. Breach and Termination**
- If the Contractor commits any breach of this agreement, or is placed in liquidation, whether provisionally or finally, then in such event the Purchaser shall have the right, in addition to any other rights which it may have in law, to terminate this agreement and any order, without prejudice to any claim for damages which it may have suffered by reason of the Contractor's breach.
- 8. Disputes and legal proceedings**
- 8.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Contractor these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and construed under and in accordance with the laws of the Republic of South Africa.
- 8.2 For the purpose of all or any proceedings herein, the Contractor hereby consents to the jurisdiction of the Magistrate's Court otherwise having jurisdiction in terms of Section 28 of the Magistrate's Court Act to 1944, as amended notwithstanding that the amount in dispute exceeds the jurisdiction court in which event this clause shall be deemed to constitute the required written consent conferring jurisdiction upon that court pursuant to Section 45 of the Magistrate's Court Act of 1944 as amended.
- 8.3 Notwithstanding the foregoing the Purchaser shall have the right at its sole option and discretion to either:
- 8.3.1 *institute proceedings in any other competent court which might otherwise have jurisdiction or;*
- 8.3.2 *at its sole and absolute discretion submit the matter to arbitration by giving the Contractor ten days written notice of its election to do so, in which event the matter shall be determined before an arbitrator appointed by the chairman of the Johannesburg Bar Council for the time being whose decision shall be final and binding upon the parties and who shall be authorized and directed to conduct such arbitration as expeditiously and economically as possible to which end he may dispense with such rules of procedures as he may in his discretion determine.*
- 8.4 Where any party incurs costs in taking any steps pursuant to any breach by the other party or enforcement of these terms and conditions, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable legal costs recoverable under common law, as well as attorney/own client costs, tracing agent fees and collection charges. The prevailing party shall be the party who recovers the greater relief in any action brought to enforce the party's rights under this agreement. In the event an opposing party prevails on certain counterclaims or defenses, the recoverable legal costs shall be reduced in proportion to the amount recovered on this agreement less the amount received on the counterclaim.

- 9. Assignment** The Contractor shall not assign any of its rights or duties under this agreement, or delegate the performance of any of its duties hereunder, without the prior written consent of the Purchaser.
- 10 General**
- 10.1 No representative or warranties other than those contained herein shall be binding on the Purchaser.
  - 10.2 No amendment, variation or consensual termination of these terms and conditions hereof, shall be binding upon the Purchaser unless reduced to writing and signed by a director of the Purchaser.
  - 10.3 No relaxation or indulgence granted to the Contractor by the Purchaser shall be deemed to be a waiver of any of the Purchaser's rights or a novation of these terms and conditions not shall such relaxation indulgence stop the Purchaser from exercising any of its rights in terms hereof or at law.
  - 10.4 These terms and conditions do not constitute a waiver by the Purchaser of any of its rights under the common law.
  - 10.5 Any amendment or variation of these terms and conditions which is binding on the Purchaser shall be subject to these terms and conditions, mutatis mutandis.
  - 10.6 Nothing in this agreement shall constitute, or be deemed to constitute, a partnership between the parties hereto, or be deemed to constitute the Purchaser as agent of the Contractor or *vice versa*, for any purpose whatsoever, and the parties shall have no authority to bind each other or to contract in the name of each other, or create a liability against each other in any way or for any purpose.