

**STANDARD/GENERAL TERMS AND CONDITIONS OF TENDER, CONTRACT OF SALE, INCLUDING SURETYSHIP**

1. **DEFINITIONS**
  - 1.1 "the Goods" means the goods indicated on any company forms, price lists, quotations, delivery notes, orders or invoices.
  - 1.2 "TFM" means TFM Industries (Pty) Ltd with registration number M1966/005974/07.
  - 1.3 "Current Quotation" means a quotation not older than 30 days as at the date of order received, or as specified on the quotation or tender.
  - 1.4 "the Customer" means the legal entity whose name appears on this document, or any relevant sales transaction documentation such as on an order, invoice, or credit application.
  - 1.5 "Manufacturer's Warranty" means TFM's standard manufacturer's warranty agreement.
2. **QUOTATIONS**
  - 2.1 Quotations are not offers but are invitations to the Customer to do business and TFM may revoke these at any time or accept or reject in whole or in part any order placed upon it pursuant to the quotation.
  - 2.2 A contract shall only come into force if after receipt of the Customer's order or acceptance of the quotation, TFM confirms that such a contract has been concluded or if TFM supplies, or tenders to supply the Goods in question to the Customer.
  - 2.3 The quotation is based on rates of exchange, freight charges, insurance, railage, costs of labour and material and other charges ruling at the date of the quotation. Any variation subsequent to the date of quotation shall entitle TFM to vary the amount of the quotation accordingly.
3. **ORDERS**
  - 3.1 Orders by the Customer for TFM's goods or services shall be made in writing and submitted through the agreed electronic media or in physical form to such address as may be nominated by TFM from time to time.
  - 3.2 Orders shall constitute irrevocable offers to obtain TFM's services at TFM's usual fees and/or to purchase the goods in question at TFM's usual prices and shall be capable of acceptance by TFM by the delivery of the goods and/or provision of the services or by the written acceptance or confirmation of the order.
  - 3.3 Oral orders shall similarly be capable of acceptance by TFM, but TFM will not be responsible for any errors or misunderstanding occasioned by the Customer's failure to issue orders in writing. However, delivery of goods may be delayed by TFM until the oral order has been confirmed in writing.
  - 3.4 Orders accepted by TFM shall not be varied or cancelled by the Customer, except with the written consent of TFM.
  - 3.5 **All orders placed on TFM by the Customer shall be in terms of the conditions set out herein, except for specific variations, additions and/or deletions agreed to in writing by both parties. Placement of an order or the acceptance by the Customer of the goods and/or services supplied by TFM (whatever occurs first) shall be prima facie proof of the Customer's acceptance of these Terms and Conditions of Sale.**
4. **PRICE**
  - 4.1 The price of the goods shall be the usual price current at the time of the dispatch of the goods or as otherwise specified by TFM in writing in a Current Quotation or in TFM's order confirmation.
  - 4.2 Company price lists shall be considered as guidelines only and are subject to change or alteration without prior notification.
  - 4.3 TFM reserves the right to adjust the price of its goods from time to time. TFM will use its best endeavours to notify the Customer of price changes but bears no liability in this regard.
  - 4.4 Prices exclude VAT and statutory charges or duties and are determined ex-works our factories unless otherwise expressly stated in a prior written confirmation by a TFM Director.
  - 4.5 The amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force after the date on which any price charged is determined shall be for the Customer's account as an additional charge.
  - 4.6 Unless otherwise agreed upon in writing, any price variations resulting from factors beyond the control of TFM such as, but not limited to delays in delivery, changes in the exchange rate, steel prices, labour, freight or transport charges, customs and excise duties, handling and shipping charges, electricity, modifications or alterations to the order at the instance of the Customer shall be for the Customer's account as an additional charge.
- 4.7 Prices quoted on products or services that are imported or that contain imported content (i.e. materials, components, or sub-assemblies) shall be subject to fluctuations in relevant foreign exchange currencies until such time as TFM is in a position to secure prices and exchange rates with its suppliers or by means of a forward exchange contract. Any fluctuations in these rates and the effect thereof on for instance shipping, clearing, surcharge and transport between the date of quote and the securing of the price will be for the Customer's account.
- 4.8 Any adjustment/variation in price as per clauses 4.5 to 4.7 aforesaid shall, failing agreement between the Parties, be determined by the then auditors of TFM, or any other auditor nominated by TFM, who in such determination shall act as experts not as arbitrators and whose decision shall be final and binding on the Parties.
5. **PAYMENT AND DEFAULT**
  - 5.1 Payment shall be cash on collection of the equipment or products ex-works our factory or as otherwise specified by TFM in writing. No rebates or discounts may be claimed or taken unless specifically agreed upon in writing by TFM.
  - 5.2 Deliveries in instalments shall be deemed to be independent transactions if invoiced separately, payable upon each delivery, in which case payment shall not be postponed until such time as all the goods ordered have been delivered, unless otherwise agreed upon in writing.
  - 5.3 In all cases where the Customer uses a postal, banking, electronic or similar such service to effect payment, such services shall be deemed to be the agent of the Customer.
  - 5.4 In the event of non-payment by the Customer on due date or defaulting on any other term of this Agreement, all of which are deemed to be material:
    - 5.4.1 The whole amount in respect of all purchases by the Customer (whether or not then due and payable) shall become due, owing and payable; and
    - 5.4.2 The Customer shall be liable to pay interest in respect of amounts unpaid at the compound rate of 2 % per annum above the prime overdraft lending rate of TFM's bank from due date until date of payment, calculated daily and payable monthly in arrear and should the said interest not be paid in full as aforesaid, the same shall be added to the principal sum, and the total shall form the principal debt which shall then bear interest in the manner as set out above; and
  - 5.4.3 TFM shall have the right to suspend credit and/or deliveries and to exercise its rights in terms of this agreement.
  - 5.5 The Customer shall not be entitled to claim set-off or deduction in respect of any payment due by the Customer to TFM for goods or services supplied.
  - 5.6 TFM may appropriate all payments made by the Customer to such accounts of the Customer as it will in its sole and absolute discretion decide, in reduction of the Customer's indebtedness towards TFM.
  - 5.7 The Customer shall not be entitled to counter claim against TFM for a debitment of account to frustrate making payment to TFM. Furthermore, the Customer undertakes to keep a comprehensive set of books at all material times from which it will be able to ascertain its liability to TFM without the need for any debate.
  - 5.8 Acceptance of a negotiable instrument by TFM shall not be deemed to be a waiver of TFM's rights under this agreement. In relation to cheques furnished by the Customer to TFM, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonoured.
6. **CREDIT FACILITIES**
  - 6.1 The Customer agrees that the decision to grant credit facilities to the Customer is at the sole discretion of TFM.
  - 6.2 TFM reserves the right to withdraw any credit facility at any time without prior notice and the nature and extent of said facility shall at all times be in TFM's sole discretion.
  - 6.3 Despite the fact that TFM may grant the Customer a credit limit or a credit facility up to a certain amount, TFM reserves the right to increase or decrease this amount at its sole discretion. The credit limit shall not be deemed to be the limit of a Customer's indebtedness to TFM.

- 7. LIEN**  
All goods, products or equipment of the Customer as well as refunds, repayments, claims and recoveries shall be subject to a special and general lien and pledge for monies due in respect of such goods, products or equipment, or for services provided in respect thereof, or for other monies due to TFM by the Customer. If monies due to TFM are not paid within 14 days after notice has been given, these may be sold by auction or otherwise or in some other way be disposed of for value at the sole discretion of TFM and at the expense of the Customer, and the nett proceeds applied towards satisfaction of the Customer's indebtedness to TFM.
- 8. DELIVERY AND RISK**
- 8.1 The risk in and to the goods purchased shall pass to the Customer upon collection or upon delivery thereof to the Customer's premises, or to an address nominated by the Customer, or to the carrier service transporting the goods for the Customer. Once the risk has been transferred, the Customer will retain this risk when the goods are returned to TFM's premises or placed under its control for service, maintenance or repairs and TFM shall not be held liable for loss of and/or damage to the goods.
- 8.2 Delivery is deemed to take place upon notification that the product or equipment is ready for dispatch or collection. If the Customer fails to collect the goods ordered within a reasonable time period, or in any way delays the delivery of goods ordered, then the risk in the goods shall immediately pass to the Customer and the Customer shall be liable to pay TFM the reasonable costs of storing, insuring, and handling the goods, until delivery takes place.
- 8.3 The signature of an employee, agent or representative of the Customer or of the carrier service on a delivery note or invoice shall be prima facie proof that the goods indicated on the document have been properly delivered to and/or received by the Customer, in good order and condition and quantity.
- 8.4 The Customer shall be barred from lodging any claim in respect of the condition of the goods received, shortages in delivery or failure of the goods to comply with the Customer's specifications unless any defect or discrepancy is so indicated on the delivery note or invoice.
- 8.5 Where delivery to the Customer occurs by carrier the carrier shall be the Customer's agent and delivery to the carrier service is deemed to be a delivery to the Customer. TFM may engage the carrier on such terms and conditions as it deems fit, unless otherwise agreed upon in writing and the Customer shall be liable for payment of all fees, charges, expenses and the like due to the said carrier in respect of the transport of the goods and indemnifies TFM against all demands and claims which may be made against it by the carrier so engaged and all liability which TFM may incur towards the carrier arising out of the transportation of the goods.
- 8.6 Delivery of goods to any delivery address selected by the Customer shall constitute proper delivery of the goods, despite the fact that such address may not have been the address or premises of the Customer.
- 8.7 Whilst every effort will be made to dispatch goods as advised, TFM does not guarantee dispatch on any specific date and shall, notwithstanding any contrary provision in the agreement, not be liable for any damages or penalties for failure to effect delivery/despatch timeously for any reason beyond TFM's reasonable control, including but not limited to inability to secure transport, factory workload, labour, power, materials, equipment or supplies or by reason of an act of God, disease or illness, war, civil disturbance, riot state or emergency, strike, lockout or other labour disputes, fire, flood, drought, legislation, international shipping schedules and Port or Custom delays. The Customer shall not be entitled to cancel any order by reason of such delay.
- 8.8 If delivery is effected in instalments each instalment shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery of any instalment shall not affect the contracts in respect of the other instalments or entitle the Customer to cancel the other contracts relating to such instalments.
- 9. OWNERSHIP**
- 9.1 Notwithstanding that all risk in and to all goods sold by TFM to the Customer shall pass on delivery, ownership in all goods sold and delivered shall remain vested in TFM until the full purchase price in respect thereof and interest (if any) accrued thereon have been paid. 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 judgement granted against it within 7 days of the date of judgement or changes the structure of its ownership, TFM shall be entitled to take possession of the goods without prejudice to any further rights vested in TFM and is hereby irrevocably authorised to enter upon the Customer's premises to take possession of such goods without court order.
- 9.2 If the Customer obstructs TFM in the process of removing its goods, necessitating the obtaining of a Court order, TFM shall be entitled to obtain an award of costs against the Customer on an attorney and own client scale.
- 9.3 Furthermore, the Customer shall have no claim against TFM for damages caused due to loss of profits or otherwise occasioned by the removal of goods from the Customer's premises as aforesaid notwithstanding that such removal was effected without court order.
- 9.4 Goods in the possession of the Customer bearing the TFM name, trademark and/or label shall be deemed to be those for which payment has not yet been made and may be repossessed by TFM in terms of paragraph 9.1. TFM shall be entitled to identify its goods merely by way of packaging and other distinguishing marks and shall not be obliged to identify it by way of serial numbers or any other form of intricate identification. It shall not be necessary for TFM to prove either to the Customer or the Customer's liquidator or trustees which goods in the possession of TFM have actually been paid for and which have not been paid for.
- 9.5 If, after reconciliation, the Customer is due a credit, such credit shall be passed on the goods equal to the value of the credit due shall be returned, at TFM's discretion.
- 9.6 The Customer shall fully insure the goods purchased from TFM against loss or damage, until the full purchase price therefor has been paid to TFM, which insurance policy will be exhibited to TFM upon request. Pending payment to TFM, all benefits in terms of the insurance policy relating to such goods are ceded to TFM.
- 10. LEGAL PROCEEDINGS AND ARBITRATION**
- 10.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, 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.
- 10.2 TFM has the sole option to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall bind both TFM and Customer. The arbitrator shall be a person agreed upon by the parties or, failing agreement, shall be appointed by the Arbitration Foundation of Southern Africa and shall finally resolve the dispute in accordance with the Rules of the Arbitration Foundation of SA.
- 10.3 TFM shall, at its option and notwithstanding that the amount of its claim exceeds the jurisdiction of the Lower/Magistrate's Court, be entitled to institute action out of such court.
- 10.4 A certificate issued and signed by any director or manager of TFM, whose status and authority need not be proven, shall be prima facie proof of the amount of the Customer's indebtedness to TFM or in respect of any other fact, including the fact that such goods were sold and delivered, for purposes of obtaining judgement, provisional sentence, summary judgement or any other relief against the Customer.
- 10.5 The Customer's address as reflected on its letterhead or as indicated in any TFM application form shall be recognised as the Customer's domicilium citandi et executandi (domicilium) for all purposes in terms of this agreement, whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature.
- 10.6 The Customer shall pay all legal costs, including attorney/own client costs, tracing agent's fees and collection charges which TFM may incur in taking any steps pursuant to any breach or enforcement of these terms and conditions by the Customer.
- 11. RETURNED GOODS**
- Goods sold by TFM are not returnable save at the option of TFM, or if subject to a valid warranty claim or as otherwise required by law. Should TFM in its discretion elect to accept the return of any goods, the following shall apply: -
- 11.1 All goods returned must be complete, clean, saleable and undamaged and, where applicable, in their original packaging.
- 11.2 The value of credit for goods returned will be calculated at the invoice value when the goods were purchased, less 15 % handling and re-stocking fee.
- 11.3 The relevant TFM sales department must be notified of the invoice, packing slip and batch numbers before any claim will be considered.

- 11.4 All goods are to be returned at the Customer's expense and the risk in the goods remains with the Customer until the goods are received by TFM.
- 12. WARRANTIES, INDEMNITY AND LIMITATION OF LIABILITY**
- 12.1 Warranty on the goods is limited to the Manufacturer's Warranty, a copy of which is available upon request and on TFM's website ([www.tfm.co.za/tfm-company-document](http://www.tfm.co.za/tfm-company-document)). **All other warranties, express or implied, are excluded.** TFM's liability for any breach of warranty shall be limited to and fully discharged by TFM when it supplies, free of charge, goods replacing those found to be defective. TFM's decision as to whether goods are defective or not shall be binding on the Customer and any end-user or purchaser thereof.
- 12.2 **TFM shall not be liable for any loss or damages of any nature whatsoever and howsoever arising whether direct, indirect, consequential and/or otherwise (including, without limitation, loss of profits and loss of use) suffered by the Customer or any third party as a result of any cause arising in connection with any dealings between TFM and the Customer (including, without limitation the execution of the order, the supply of the goods, the goods, the use of the goods, late completion and/or any cause arising from anything done or not done pursuant to the contract) whether such loss or damages results from breach of contract (whether fundamental/material or otherwise), delict, negligence or any other cause without limitation.**
- 12.3 If, despite the exclusions and limitations of liability contained herein or elsewhere, TFM is found liable for breach of contract or otherwise, such liabilities shall be limited to and will not exceed in the aggregate of actual damages, costs, fees and expenses capable of being awarded to the Customer the total price actually paid to TFM by the Customer in terms of the relevant transaction for the services rendered or goods supplied applicable to such claim.
- 12.4 TFM gives no warranty, express or implied, nor any representation that the goods sold by TFM are suitable for purposes and/or conditions for which they are not generally intended.
- 12.5 TFM shall not be liable for any harm caused to a third party if it is due to the Customer, its employees or agents providing inadequate instructions or warnings in respect of the goods to the third party.
- 12.6 Any advice or opinion given by TFM's employees is for the Customer's benefit only and TFM accepts no responsibility for any damages that the Customer may incur as a result of the Customer relying upon such advice.
- 13. SECURITY FOR OBLIGATIONS**
- TFM reserves the right to require satisfactory security from the Customer for the due performance of any of the Customer's obligations, including but not limited to the payment of the purchase price. TFM may require that the Customer shall deliver, at its own cost, confirmed irrevocable letters of credit or guarantees by financial institutions acceptable to TFM and upon terms acceptable to TFM. If such security or guarantees or letters of credit are not furnished within 7 days after any such demand, TFM shall be entitled to withdraw from the contract in whole or in part.
- 14. INTELLECTUAL PROPERTY**
- Ownership in and to all intellectual property in connection with the design, development, conversion and manufacture of the vehicles/goods or equipment shall at all times before, during and after the termination of this Agreement, remain vested in TFM and shall only be used by the Customer upon the express written instructions of TFM.
- 15. GENERAL**
- 15.1 TFM reserves the right to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the Customer from the time that the Customer's is notified thereof.
- 15.2 This contract represents the entire agreement between TFM and the Customer and shall govern all future contractual relationships between TFM and the Customer and shall also be applicable to all debts which the Customer may owe to TFM prior to the Customer's signature hereto.
- 15.3 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of TFM.
- 15.4 No agreement, whether consensual or unilateral or bilateral, purporting to obligate the Company to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of TFM.
- 15.5 No warranties, representations or guarantees have been made by TFM or on its behalf which may have induced the Customer to sign this document.
- 15.6 No relaxation or indulgence which TFM may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of TFM's rights in terms of any contract.
- 15.7 The Customer shall not cede its rights nor assign its obligations in respect of any of its contractual relationships with TFM.
- 15.8 TFM shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of any of its contractual relationships with the Customer to any third party without prior notice to the Customer.
- 15.9 The Customer undertakes to notify TFM within a period of 7 (seven) days of any change of address or any changes in the information as set out in this agreement.
- 15.10 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement.
- 15.11 Each of the terms herein shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 15.12 No term herein is intended to contravene any Act or law and this agreement will be deemed to be qualified to the extent required to ensure compliance with the applicable provisions of any Act or law.
- 15.13 Provided that they do not conflict with any of the terms and conditions contained herein, such general practices, term and conditions applicable to the industry or profession in which TFM conducts business shall be applicable to all dealings between TFM and the Customer.
- 16. DISCLOSURE OF PERSONAL INFORMATION**
- 16.1 The Customer understands that the information given in the application form or otherwise may include confidential and/or personal information and consents to its use for purposes of assessing the applicability of relevant legislation (e.g. the Credit Act), the Customer's credit worthiness and in the provision of the service to the Customer in fulfilling of the purpose of this transaction. The Customer confirms that the information in the application form is accurate and complete. The Customer further agrees to update the information, as and when necessary, in order to ensure the accuracy and completeness of the above information, failing which TFM will not be liable for any inaccuracies or lack of completeness of information.
- 16.2 TFM has the Customer's consent at all times to contact and request information from any person, credit bureau or business, including those mentioned in the application form and to obtain any information relevant to the Customer's credit assessment and the fulfilment of the purpose of this transaction, including but not limited to, information regarding the history and value of purchases from suppliers, type of goods or services purchased and manner and time of payment.
- 16.3 The Customer agrees and understands that information given in confidence to TFM by a third party regarding the Customer will not be disclosed to the Customer.
- 16.4 The Customer hereby consents to and authorises TFM to collect personal information and to furnish information to a credit bureau (concerning the Customer's history and transactions with TFM in order to perform credit and background checks) and to any third party seeking a trade reference, banks and financial institutions (to process transactions), collection and legal agencies (for the collection of outstanding debts and the enforcement of obligations) and sub-contractors and suppliers (in order to perform the services required to fulfil the purpose of the transaction).
- 17. ANTI CORRUPTION**
- The Customer agrees that it shall comply with laws pertaining to fair pricing, fair competition, consumer protection, anti-bribery and anti-corruption. Failure to comply will be deemed a material breach of the agreement. The Customer will indemnify TFM and its directors, officers, employees, agents, affiliates and subsidiaries against any and all claims, liabilities, losses and expenses, fines, any legal fees, costs and expenses incurred as a result of the Customer's (or its affiliates, subcontractors or agents) non-compliance with this clause.

### 18. CONTINUING COVERING SURETYSHIP

**Customer's name:** .....

1. I, .....  
(Full name of individual who is to be bound as surety for the Customer)

ID Number: .....

Designation: .....  
(Position at/with Customer, e.g. Owner, Financial Manager, etc.)

Home Address (not being a postal box): .....

Telephone number: (w)..... (h) .....

by signature hereof (which appears below) do hereby bind myself in my private and individual capacity as surety for and co-principal debtor with the Customer in favour of TFM for the due performance of any obligation of the Customer and for the payment to TFM by the Customer of any amount which may now or at any time be or become owing to TFM by the Customer.

2. I understand that my liability for amounts owing by the Customer to TFM is not limited to any credit/account limit granted by TFM to the Customer.

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 exceptions including, but not limited, to:

- a) Excussion – the right to require TFM to proceed first against the Customer for payment of any debt owing to TFM before proceeding against the surety.
- b) Cession of action – the right to require TFM to give cession of the action for payment of debts to the surety before any action against the surety may be taken;
- c) The benefit of simultaneous citation and division of debt – the right of a co-surety to be liable only for his pro rata share of the principal debt;
- d) The right to an accounting from TFM;

4. This suretyship is given as a continuing covering suretyship for the present and future obligations of the Customer to TFM. **I, the undersigned, do hereby warrant that all the information recorded in this application is true and correct and I agree that all present and future transactions concluded with TFM shall be subject to the terms and conditions specified herein and agree to be bound by all such terms and conditions, and without limiting the generality thereof, especially clause 18 (the suretyship), insofar as the latter relates to the signatories.**

THUS DONE AND SIGNED BY THE CUSTOMER ON THIS THE ..... DAY OF ..... 20...

.....  
(Signature of a director, shareholder, member or owner on behalf of the Customer, who warrants that he/she is duly authorized thereto)

.....  
(Name in capital letters) (Capacity)

THUS DONE AND SIGNED BY THE SURETY ON THIS THE ..... DAY OF ..... 20...

.....  
(Signature of surety, in his/her personal capacity)

.....  
(Name in capital letters) (Capacity)

AS WITNESSES:

1. .... (Signature)	2. .... (Signature)
..... (Name in capital letters)	..... (Name in capital letters)