



**the Company (Proprietary) Limited, having registration number:**

**("THE COMPANY")**

**CUSTOMER'S CONTACT DETAILS**

**Customer name:**

<b>Physical</b> address		<b>Registered</b> address	
<b>Postal</b> address		<b>Invoicing</b> address	
<b>Delivery</b> address		<b>E-mail</b> address	
<b>Telephone:</b> <i>Area code</i>	<i>Number</i>	<b>Fax:</b> <i>Area code</i>	<i>Number</i>

(herein referred to as the "**Customer**")

- The signatory warrants that, as at the date of signature hereof, all the information supplied is complete, true and correct and further confirms that the Customer's turnover/net asset value is above the thresholds set out in the Consumer Protection Act 68 of 2008 (as amended) ("**Consumer Protection Act**") and National Credit Act 34 of 2005 (as amended).
- The signatory hereby acknowledges that he/it has read the Company's standard terms and conditions of sale attached hereto ("**Terms**") and that he/it fully understands the meaning of each and every term contained therein.
- The signatory consents to the Company obtaining credit references ("**Credit Reference Data**") from the Customer's nominated trade references for the purpose of determining the Customer's credit rating.
- The Customer's signatory hereby binds himself/herself as surety for and co-principal debtor with the Customer for the due and punctual performance by the Customer of all its obligations and all payments arising from these Terms, the signatory renouncing the benefits of excussion and division.
- The signatory warrants that he/she has the necessary authority to enter into these Terms.

The above are acknowledgements of fact by the signatory. The signatory must read the statements above carefully and ensure that the statements recorded above are true and correct, because the signatory and/or the Customer will not be able to later claim that any information recorded above was untrue or incorrect.

This above is also an assumption of risk, liability, or both by the signatory and/or the Customer. If the Company relies on the statements above and suffers loss as a result, the Company may have claims and other rights and remedies against the signatory and/or Customer or both.

**SIGNED**

FOR AND ON BEHALF OF THE CUSTOMER

FULL NAME OF SIGNATORY

DATE

PLACE

## STANDARD TERMS AND CONDITIONS OF SALE

### 1 Application

The Customer (as defined above) acknowledges and agrees that these standard terms and conditions of sale ("**Terms**") shall apply to the sale by the Company of all Goods and materials ("**Goods**") to the Customer, to the exclusion of all other terms and conditions.

### 2 Duration

- 2.1 Irrespective of signature by the Customer hereof, these Terms only become final and binding on signature by or delivery of Goods by the Company, whichever is the sooner.
- 2.2 Either party may at any time, on two month's written notice to the other party terminate its arrangement as regulated by these Terms. In the event of such termination, the parties shall be obliged to discharge their respective obligations outstanding at the date of termination.

### 3 Orders

- 3.1 An order submitted by the Customer to the Company to purchase any Goods ("**Order**") shall be in writing, and shall not be binding on the Company until a duly authorised Company representative has, in its sole and absolute discretion, accepted such order in writing ("**Order Acceptance**").
- 3.2 Upon the issuing of an Order Acceptance, each Order shall constitute a separate contract between the Company and the Customer, governed by these Terms.
- 3.3 The Company reserves the right, at its sole discretion, to provide alternative Goods of the same quality and quantity at the prevailing prices to those ordered by the Customer should such Goods, as ordered by the Customer, be superseded, replaced or their manufacture terminated.

### 4 Tests

- 4.1 Special tests required by the Customer following the introduction of alternate Goods, as referenced above, other than those specified by the Company, will be charged and invoiced to the Customer by the Company. If the Customer does not attend the tests following notification that the tests are ready to be performed, the tests will be performed in the Customer's absence and shall be deemed to have been done in the Customer's presence.

### 5 Prices

- 5.1 The Company shall from time to time issue price lists in respect of the Goods which may be revised by the Company on written notice to the Customer. The Company shall provide the prevailing price list to the Customer on request.
- 5.2 All quotations issued by the Company:
  - 1.1.1. shall remain valid until the earlier of: (i) the expiry of a period of 30 days; or

(ii) the effective date of a new price list;

- 1.1.2. are subject to the availability of the Goods at the time of Order; and
- 1.1.3. are based on the prevailing exchange rate (of the country of residence of the Company and that of the Customer) on the day on which the quotation is issued.

5.3 All prices quoted by the Company are exclusive of value-added tax levied in terms of the Value-added Tax Act, 89 of 1991, as amended, duties and/or import levies, each of which shall be borne by the Customer.

5.4 Notwithstanding the prices set out in the quote or the prevailing price list, the purchase prices payable in respect of particular Goods shall be set by the Company in the relevant Order Acceptance. In the event that the prices set in the relevant Order Acceptance exceed those set out in the related quote or the prevailing price list, the Company shall inform the Customer thereof and the Customer shall have the right to cancel that Order

### 6 Payment

- 6.1 Unless the related Order is cancelled, payment for Goods shall be due and payable upon the issue by the Company of the Order Acceptance in cash.
- 6.2 In the event that the Company has, in writing, extended credit to the Customer, the credit limit granted by the Company may from time to time be revised, or revoked, by the Company in its discretion. Payment for Goods on credit shall be due and payable within 30 days from the date of statement.
- 6.3 The Customer agrees to pay the amount in cash free of set-off, deduction or withholding of any nature into the following bank account First National Bank, Bank Account number: 50490104441, Branch Code: 255005, Swift Code: FIRNZAJJ.
- 6.4 The Customer agrees that if the National Credit Act applies to these Terms, interest shall be levied at the maximum legal rate prescribed in terms of the National Credit Act on all overdue payments (at date of signature, 2% per month), calculated daily and compounded monthly in arrears, from the date on which payment was due to the date of actual payment.
- 6.5 The Customer agrees to pay all additional costs incurred by the Company resulting from any acts or omissions by the Customer including (without limitation) suspension of work, modification of requirements, failure or delay in giving particulars required, and/or failure to grant required access.

### 7 Delivery

- 7.1 Delivery date(s) for Goods quoted in an Order Acceptance are estimates and are not binding on the Company. Time shall not be of the essence to any sale by the Company of Goods. The Company shall be entitled, in its sole discretion, to split the delivery of the Goods ordered in the quantities and on the dates it decides.
- 7.2 If the Company agrees to engage a third party to transport the Goods, the Company is hereby authorised to engage a third party on the Customer's behalf and on the terms deemed fit by the Company. The Customer indemnifies the Company against any

claims against the Company that may arise from such agreement.

- 7.3 Any delivery note or waybill (copy or original) signed by the Customer (or any of its representatives) shall constitute prima facie proof of delivery to the Customer of the Goods reflected therein. In addition, the Customer, by its signature on any delivery note or waybill (copy or original), acknowledges that it has received adequate instructions and/or warnings pertaining to any hazard arising from or associated with the usage of the Goods.
- 7.4 On receipt of the Goods, the Customer shall make all necessary comments and/or reservations as regards any reasonably detectable problems or non-conformities relating to the Goods, including but not limited to non-conformities in terms of quantity deviation, documents and identification of the Goods. The Customer shall inform the Company thereof within twenty-four hours following receipt of the said Goods. Failing that, the Goods shall be considered to have been received without any reasonably detectable problem or non-conformity and the Customer shall waive any claim in respect thereof.
- 7.5 It is the sole responsibility of the Customer to determine that the Goods ordered are suitable for the purposes of intended use.
- 7.6 The Company will not be responsible for any loss of mass or volume of Goods while in transit occasioned through drying or evaporation.
- 7.7 The Customer agrees to accept any quantity that does not exceed or fall short of the quantity ordered by no more than 1% as good and complete performance and may request to pay the Company only the proportionate contract price for the actual quantity dispatched which request will not be unreasonably refused. Conversely, the Company may request that the Customer pay the increased proportionate contract price which shall become due and payable by the Customer upon the Company's request therefor.

## 8 Title, Risk

- 8.1 The risk of damage to, destruction or theft of Goods shall pass to the Customer on despatch of the Goods from the Company's premises, irrespective of whether the Goods have been received by the Customer [**Drafting note: this presupposes goods are supplied Ex works, please confirm**]. The Customer undertakes to comprehensively insure the Goods during transit until paid for in full upon which time ownership in and to the Goods shall pass to the Customer. The Company may from time to time request of proof of such insurance and may, in the event that the Customer has no such insurance and/or inadequate insurance, insure the Goods and recover insurance premiums from the Customer for such ordered and uninsured Goods.
- 8.2 All Goods supplied by the Company remain the property of the Company until such Goods have been fully paid for whether such Goods are attached to other property or not.

## 9 Intellectual Property

- 9.1 The Customer acknowledges that the Company is the proprietor, or licensee, of all intellectual property rights in and to the Goods including, but not limited to, any patents, designs, copyright and trade marks ("**Intellectual Property**"). The Customer further acknowledges that it has no claim of ownership in and to the Intellectual Property. The Customer shall not, at any time, during or after termination or cancellation of these Terms, dispute the validity or enforceability of the Intellectual Property or cause to be done any act or thing contesting or in any way impairing or intending to impair any part of those rights, and shall not counsel or assist any other person to do so.
- 9.2 The Customer shall not remove or tamper with the trademarks, including the logos and slogans, of the Company as applied to the Goods and/or packaging.
- 9.3 The Customer shall not in any way represent that it has any right of any nature in the Intellectual Property. The Customer may only use the Intellectual Property as authorised by the Company and any such use will inure to the benefit of the Company.
- 9.4 The Customer shall indemnify the Company against any claims, costs and expenses arising out of the infringement of Intellectual Property.

## 10 Confidential information

- 10.1 The Customer hereby consents to the Company continuing to retain its Credit Reference Data beyond it being necessary for performance under its arrangement with the Customer as regulated by these Terms, and after the termination of such arrangement as regulated by these Terms. The Customer hereby consents to the disclosure of its Credit Reference Data to credit reference agencies, and that no further specific consent needs to be obtained for the disclosure of such data to credit reference agencies. The Customer agrees that the Company will not be liable for the good faith disclosure of its Credit Reference Data to credit reference agencies.
- 10.2 The Customer also hereby consents to his consumer credit information being forwarded to the National Register of credit agreements, any credit bureau or other third party as permitted or required in terms of applicable legislation, including any third party to whom the Company has ceded and assigned its rights and obligations in terms of this agreement. Consumer credit information includes, but is not limited to, information about this application, information regarding these Terms including the Customer's personal information, as well as information on non-compliance with these Terms.
- 10.3 The Customer shall keep confidential any information of or relating to the Company or its operations or affairs which it has acquired or may acquire, save for any information:
  - 1.1.4. which becomes publicly available through no act or default of the Customer; or
  - 1.1.5. which was in the possession of the Customer prior to its disclosure otherwise than as a result of any breach by the Customer of any obligation of confidentiality owed to the Company pursuant to these Terms; or

- 1.1.6. which is disclosed to the Customer by a person which person did not acquire the information under an obligation of confidentiality; or
- 1.1.7. which is independently acquired by the Customer as a result of work carried out by a person to whom no disclosure of such information has been made, and the Customer shall not use or disclose such information except with the prior written consent of the Company or in accordance with an order of a court of competent jurisdiction, or in order to comply with any law or governmental regulations by which either party concerned is bound, or as may be lawfully requested in writing by any governmental authority.

## 11 Prohibition on reselling

- 11.1 The Customer is prohibited from reselling any Goods in respect of which ownership has not yet passed to the Customer under any circumstances to any third party without the Company's prior written consent.

## 12 Compliance with laws

- 12.1 The Customer must, at all times:
  - 1.1.8. comply with all relevant laws, regulations and standards relating to the Goods, including but not limited to the loading, storage, stacking, handling and use thereof;
  - 1.1.9. comply with the instructions provided by the Company in relation to the Goods and the handling and use thereof;
  - 1.1.10. take proper notice of the warnings provided by the Company in relation to any hazards associated with the Goods or the handling or use thereof;
  - 1.1.11. communicate the items listed in 1.1.8 to 1.1.10 above to all persons to whom the Customer supplies the Goods; and
  - 1.1.12. ensure that the persons referred to in 1.1.11 above undertake to communicate the items listed in 1.1.8 to 1.1.10 above to all persons to whom they supply the Goods, and so on down the supply chain until the Goods reach the end user.

The above constitutes an assumption of risk, liability or both by the Customer because the Customer's rights and remedies against the Company may be limited or excluded if it does not fulfil the obligations set out above. This means that the Customer may bear its own losses in these circumstances.

## 13 Liability and Indemnity

- 13.1 New Goods are guaranteed solely according to the company or the Manufacturer's specifications, the guarantee on all chemicals supplied is dependent upon the proper use and application thereof in accordance with the instructions (whether verbal or in writing) received by the Customer, the Customer indemnifies and holds the Company harmless in respect of any claim arising as a result of the Customer's non-compliance with instructions provided by the Company in respect of the Goods. All other

guarantees including common law guarantees are hereby specifically excluded.

- 13.2 If the Goods are not in conformance with the specifications and if such non-conformity could not have been reasonably detected on receipt of the Goods, the Customer shall inform the Company thereof in writing within 30 days following receipt of the Goods. If no written notice is received by the Company within the said period of time, then the Goods received shall be considered to be finally accepted by the Customer, and the Customer shall waive any claim in respect thereof.
- 13.3 Should the Goods not comply with the specifications and the Customer notify the Company in the time periods stipulated, the Customer's exclusive remedies for such non-conformance is limited, at the Company's discretion to, either replace those Goods with Goods which meet the specifications at its sole cost; or to pay a refund of the invoiced amount.
- 13.4 The Customer shall return any defective Goods to the Company's premises at the Customer's cost and packed in the original or suitable packaging and all risks for the duration of finalisation of the alleged breach remain with the Customer.
- 13.5 Guarantees given pursuant to the provisions of this Agreement are immediately null and void should any Goods be tampered with, or should the Goods have exceeded their six month shelf-life, or should the seals on Goods be broken by anyone other than the Company or should the Goods be used or stored outside the specifications.
- 13.6 Liability under clause 13 is restricted in accordance with the provisions of the Consumer Protection Act to (i) death of or injury to any natural person, (ii) illness of any natural person, (iii) loss of, or physical damage to, any property, (iv) economic loss contemplated in (i), (ii) or (iii).
- 13.7 Save as specified above, under no circumstances shall the Company be liable to the Customer for any indirect or consequential damages including loss of profits or for any delictual liability of any nature whatsoever whether caused negligently or innocently.
- 13.8 Under no circumstances shall the Company be liable for any damage arising from any misuse, abuse or neglect of the Goods.

## 14 Force Majeure

- 14.1 Neither party shall be liable for the non-performance of any of his/its obligations to the extent such performance is prevented due to an impediment beyond his/its control, including without limitation inability to secure labour, power, materials or supplies, machinery breakdown, war, civil disturbance, riot, acts of sabotage, states of emergency, strikes, lockouts, go-slows and other labour disputes, natural disasters, explosions, fires, floods, droughts and acts of authority (whether lawful or unlawful).
- 14.2 Such an impediment shall relieve the affected party from damages, penalties and other contractual sanctions, and postpone the time for performance, as long as and to the extent that the impediment subsists.
- 14.3 If the impediment subsists for more than 30 days, either party shall be entitled to terminate this agreement on written notice.

## 15 Business Rescue

- 15.1 If the Customer is a company, it shall notify the Company in writing within 2 days of the occurrence of the following events:
- 1.1.13. when the board of the Customer becomes aware that the Customer is Financially Distressed;
  - 1.1.14. when the board of the Customer contemplates, considers, discusses or agrees to any Business Rescue of the Customer;
  - 1.1.15. when the Customer becomes aware of any person proposing to take, or taking, any step to apply to court for the Business Rescue of the Customer.
- 15.2 The written notice shall set out the full details of the Financial Distress or the actual or proposed activity contemplated in clause 1.1.14 and/or 1.1.15 above, as the case may be.
- 15.3 For the purposes of these Terms, "Business Rescue" shall bear the meaning assigned to it in section 128(1)(b) of the Companies Act, 71 of 2008, and "Financially Distressed" shall bear the meaning assigned to it in section 128(1)(f) of that Act.

## 16 Breach

- 16.1 Should:
- 1.1.16. the Customer take any steps to be deregistered;
  - 1.1.17. the Customer be, or take any steps to be, wound-up or liquidated, whether provisionally or finally and whether compulsorily or voluntarily;
  - 1.1.18. a judgment be recorded against the Customer or any of its principals;
  - 1.1.19. the Customer enter into a compromise with its creditors generally, or offer to do so;
  - 1.1.20. a written notice referred to in clause 15.1 be received by the Company; and/or
  - 1.1.21. the Company become aware that the Customer is Financially Distressed or of any actual or proposed activity contemplated in clauses 1.1.14 or 1.1.15 above,
- the Company shall be entitled, without prejudice to its rights, to cancel any Order, withdraw any Order Acceptance, refuse to accept further Orders and/or take such steps permitted by law to recover the amount owing from the Customer.
- 16.2 The Customer undertakes to inform the Company in writing within 7 days of any change of ownership and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, the Company reserves the right, at its sole discretion, to cancel this agreement immediately upon written notice to the Customer.
- 16.3 If a party commits a breach of any provision of these Terms and fails to remedy such breach to the reasonable satisfaction of the other party within 7 days of receipt of notice in writing from the other party requiring it to do so, the other party may,

without prejudice to its rights and remedies at law:

- 1.1.22. claim specific performance of any of the defaulting party's obligations under these terms; or
  - 1.1.23. suspend or terminate the arrangement between the parties under these terms; and in either event
  - 1.1.24. claim such damages as he/it may have suffered.
- 16.4 In addition to the Company's rights under 16.2, where the Customer is the defaulting party, the Company may cancel any Order, suspend any Order, withdraw any Order Acceptance, refuse to accept further Orders and/or take such steps by law permitted by law to recover the amount owing from the Customer.

## 17 Governing law and dispute resolution

- 17.1 These Terms are to be governed, interpreted and implemented in accordance with South African law.
- 17.2 The Company shall have the right, at its election, to institute proceedings in the Magistrate's Court having jurisdiction, notwithstanding that the amount claimed by the Company might exceed the jurisdiction of the Magistrate's Court.

## 18 General

- 18.1 No extension or indulgence granted by either party will constitute a waiver by that party in respect of any of his/its rights herein, or prevent or adversely affect the exercise by that party of any of his/its existing or future rights.
- 18.2 The Customer agrees that these Terms represent the entire agreement between the Customer and the Company in respect of the subject matter hereof and supersede and novate in their entirety any previous understandings between the parties in respect thereof. No contract varying, adding to, deleting from or cancelling these Terms may be effected unless reduced to writing and signed by a duly authorised representative of both the Customer and the Company. The Customer acknowledges that it does not rely on any representations made by the Company in regard to the Goods or any of its qualities leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by the Company in respect of the Goods orally or in writing will not form part of the Agreement in any way unless agreed to in writing by the Company.
- 18.3 Neither party may cede all or any of his/its rights or delegate all or any of his/its obligation in terms of these Terms to any party without the prior written consent of the other party.
- 18.4 If there is any conflict between these Terms and the terms and conditions of any offer, Order or other communication received from the Customer, these Terms shall prevail.
- 18.5 If the Company institutes legal proceedings against the Customer pursuant to these

Terms, and succeeds in such legal proceedings, the Customer shall pay all costs incurred by the Company in doing so, including but not limited to collection costs, tracing fees, and legal fees.

- 18.6 The Customer chooses the addresses as set out on the covering page to these Terms.
- 18.7 A notice shall be deemed to have been duly given 7 days after posting, if posted by prepaid registered post to the party's nominated postal address, unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee. A party may change that party's address(es) for this purpose by 7 days' notice in writing to the other party. Notwithstanding any provision to the contrary, a written notice or communication actually received by a party shall be an adequate written notice or communication notwithstanding that it was not sent to or delivered at that party's chosen address.
- 18.8 If any provision of these Terms which is not material to its efficacy as a whole, 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.