

## Standard Terms & Conditions of Sale

Effective July 23, 2015

### 1. GENERAL: SCOPE AND INTERPRETATION

#### 1.1 Scope

- (a) These terms and conditions, together with such further terms and conditions that may from time to time be published on the Company's website [www.sefar.co.za](http://www.sefar.co.za) shall apply to the supply of all goods and or services ordered from the Company, (and in particular the goods and/or services as referred to in the schedule ("The Schedule") appearing on each invoice issued by the Company), as well as any specific variation recorded in the schedule. In the event of any conflict between the provisions of the Schedule and/or the terms and conditions as set out in the aforesaid website, and/or the terms and conditions as herein recorded, then the provisions as stipulated in the schedule shall prevail.
- (b) Subject to sub-paragraph 1.1 (a) above no variation of these terms and conditions shall apply, either at the time the Purchaser's order is accepted or at any time afterwards, unless the variation in question is expressly agreed to in writing and signed by an authorized representative of the Company.
- (c) If the goods are required by the Purchaser for the purpose of another contract between the Purchaser and anyone else, none of the provisions of that contract shall apply to or be incorporated in the contract between the Company and the Purchaser unless expressly confirmed in writing by the Company.

#### 1.2 Interpretation

- (a) In these terms and conditions, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate expressions shall have a corresponding meaning, namely:
  - i) **"Agreement"** means the agreement concluded between the Parties, as recorded in the Schedule, and as read in conjunction with the terms and conditions as herein recorded;
  - ii) **"Contract Price"** means the contract price as stipulated in the Schedule;
  - iii) **"Goods"** means the goods as described in the Schedule;
  - iv) **"Parties"** means the Company and the Purchaser, and **"Party"** means any one of them;
  - v) **"Schedule"** means the schedule setting out the particulars of the specific transaction, concluded between the Parties, and which transaction shall be governed by the terms and conditions as herein recorded.

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### 2. SPECIFICATIONS

The goods shall be manufactured by the Company in accordance with:

- (a) The specifications and design furnished to the Company by the Purchaser; or
- (b) Should the Purchaser not furnish the Company with any specifications and design, then in accordance with the Company's standard specifications and design as also provided for in the Company's aforementioned website. Provided that in each case the goods will be manufactured strictly in accordance with the dimensions detailed in the Schedule and it is the responsibility of the Purchaser and not the Company to ensure that those dimensions are correct and suitable for the purpose for which they are intended.

### 3. PAYMENTS

- (a) The contract price specified in this quotation shall be paid by the Purchaser;
  - (i) Free of exchange and other charges at Johannesburg;
  - (ii) In South Africa;
  - (iii) Without any deduction or set-off within 30 (thirty) days after the goods are dispatched from the Company's premises, unless otherwise stated in the Schedule.
- (b) Any amount not paid by the Purchaser on due date shall bear interest at the current prime bank overdraft rate, as certified from time to time by the Company's Bankers, from the date it falls due until it is paid.

### 4. PRICE INCREASE

- (a) The contract price is based on all the Company's costs, ruling or applying at the date of quotation, issued for purposes of obtaining the materials for, and manufacturing of the goods ordered, including (but without being limited to) the following items, where applicable:
  - (i) The costs of labour and materials, including packaging;
  - (ii) Value Added Tax, customs and excise duties and other fiscal levies or charges;
  - (iii) Shipping, freight, railage and other transportation charges, including insurances;
  - (iv) Landing and clearing charges;
  - (v) Foreign exchange.

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- (b) If the aggregate cost actually incurred by the Company in obtaining the materials for and manufacturing the goods exceeds the aggregate cost on which the contract price is based in terms of (a) then the contract price shall be increased by the excess. It is recorded that whilst the Company can control the costs of labour, it is unfortunately not in control of the costs of material, and packaging, nor for the matters as referred to in paragraph 4(a) (ii) to (v), hence the provisions as provided for in this sub-paragraph (b).
- (c) Should the Company, at the Purchaser's request take any measurements or render any other services on the site, apart from any erection and installation referred to in paragraph 12, the contract price shall be increased by an amount calculated on the basis of the Company's usual charges then in force for travelling and for time spent in rendering those services.
- (d) If the Purchaser disputes any increase in the contract price in terms of (b) and (c), that increase shall be determined by the Company's auditors (acting as valuers and not as arbitrators) for the time being and their decision shall be final and binding on the Company and the Purchaser.

### 5. DISCOUNTS

The contract price is strictly nett and not subject to any discounts.

### 6. DELIVERY

- (a) The Company reserves the right to determine and arrange the means of and the route for transporting the goods from its premises to the Purchaser, but where practicable it will try to comply with any request of the Purchaser.
- (b) If, the delivery is made by any independent carrier(s) (including the South African Railways, or any of its affiliates and/or successors-in-title) then the carrier(s) shall be the Purchaser's agent(s) and delivery to the first carrier shall be delivery to the Purchaser, notwithstanding the provisions of paragraph 12.
- (c) After delivery to the Purchaser in terms of sub-paragraph 6 (b), the Company shall not be responsible for the arrival of any goods at their destination or for any loss or deterioration of any nature whatsoever or damage to any goods, while in transit from any cause whatsoever.
- (d) The Company undertakes to use its reasonable commercial endeavours to adhere to the agreed date, time and/or place for the delivery of goods or performance of services, but the Purchaser acknowledges and confirms that in every case the agreed delivery or performance date and time will only be approximate or indicative and time shall not be of the essence. The Company shall accordingly not be liable for any loss incurred or damages suffered howsoever arising from any delay in effecting delivery of goods or performance of services on the agreed date and at the agreed time.
- (e) If no such date(s) is/are agreed upon the Company will only deliver the goods when it can do so conveniently.

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- (f) Notwithstanding any other provision in the contract to the contrary, the Company's obligation to deliver the goods shall in all cases be subject to the following conditions precedent:
  - (i) the availability to the Company of the materials from which the goods are to be manufactured, having regard inter alia to the availability of supplies to the Company in relation to the demands on all its customers;
  - (ii) the timeous receipt by the Company of any additional instruction (including all drawings and specifications) required by the Company for the manufacture of goods.
- (g) Time shall not be the essence of the contract.
- (h) If the Purchaser delays in taking delivery of the goods, then;
  - (i) the risk shall immediately pass from the Company to the Purchaser;
  - (ii) the Purchaser shall refund to the Company on demand the reasonable cost (including storage and insurance) of keeping the goods during the period of that delay.

### 7. LIMITATION OF LIABILITY

- (a) The Company shall not be liable under any circumstances for any loss or damages sustained by the Purchaser as a result of any error or discrepancy in the specifications or any error or defect of any nature in the designs referred to in paragraph 2.
- (b) Any ideas or suggestions made by the Company, whether in writing or not, shall not form part of the contract and are not intended to be relied upon by the Purchaser, unless expressly recorded in the Schedule.
- (c) The Company shall not be liable for any error in any measurements taken by it in terms of paragraph 4 (c) after those measurements have been approved by the Purchaser.
- (d) In no event shall the Company, its directors, officers, employees or agents be liable for any incidental, consequential, indirect or special damages, including punitive damages or legal costs, whether foreseeable or unforeseeable, based on claims of the Purchaser or its clients, (including, but not limited to, claims for loss of business, goodwill, profits, use of money, or the use of products or impairment of other assets), arising out of a breach of any express or implied warranty, breach of contract, misrepresentation, negligence, strict delictual liability or otherwise in connection with or arising out of this contract, except in the case of deliberate wrongful conduct, or gross negligence on the part of the Company.

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To the extent that the Purchaser incorporates or causes others to incorporate the goods in its own product or the products of any third party, the Company shall not be liable for third party claims, including claims for infringement of letters patents, registered design, trademark or copyright resulting from such incorporation, and/or claims based upon the use of the goods, or the manufacture, use, sale or offer for sale of any product containing the goods, except in instances of deliberate wrongful conduct or gross negligence on the part of the Company. The Purchaser assumes responsibility for all personal injury and/or damages to property, resulting from the handling, possession, use, resale or disposal of the goods. Any action by the Purchaser based on an alleged breach of the contract by the Company, or any other causes of action of the Purchaser expressly allowed under this contract, must be commenced with, within one year after the cause of action has occurred.

- (e) It shall be a prior condition before any claim may be made by the Purchaser for any alleged shortage in delivery that:
  - (i) the shortage is endorsed by the Purchaser on the delivery of the consignment notes in question and;
  - (ii) written notice of the claim is received by the Company within 14 (fourteen) days after the receipt of the goods at their destination.
- (f) The Purchaser's exclusive remedy in respect of any alleged shortage of goods, or damaged or defective products (whether or not occurring as a result of the Company's alleged negligence) or any other cause of action arising out of the contract, including breach of warranty, is expressly limited to the supply of any shortage, or the replacement of nonconforming products, or payment of an amount not to exceed the purchase price of the goods in respect of which damages are claimed, at the Company's option. The Purchaser shall have no right to setoff, or to withhold payment or to claim a reduction in the contract price. The Purchaser's remedy for replacement or refund shall not be available if nonconformance was caused by the Purchaser or by accident, fire or other hazard, or any instances over which the Company did not reasonably have control.
- (g) The Purchaser shall not have any claim of any nature whatever against the Company for any failure by the Company to carry out any of its obligations under the contract as a result of vis major, including but without being limited to any strike, lock-out, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier of the Company, or any other cause whatever beyond the Company's control.

### 8. SUSPENSION OF COMPANY'S OBLIGATIONS

If any amount owed by the Purchaser is not paid on due date then, without prejudice to any other right the Company may have, it may immediately suspend the carrying out of any of its then uncompleted obligations until payment is made.

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### 9. GUARANTEE

- (a) The Company shall repair or replace (at its election) any defective part of the goods if, in its opinion, the defect arises out of its workmanship and provided that:
- (i) the Company receives written notice of the alleged defective workmanship within 14 (fourteen) days from the date of delivery of the goods to the Purchaser or its agent;
  - (ii) if the Company so requires, the Purchaser shall return the allegedly defective goods to the Company at such place in the Republic as the Company may require and at the Purchaser's cost (which cost shall not be refunded to the Purchaser if the Company accepts the Purchaser's claim).
- (b) Subject to the provisions of sub-paragraph 9 (a), and the relevant provisions of the South African Consumer Protection Act No 68 of 2008, the Company:
- (i) does not give any warranty or guarantee or make any representations whatever in respect of the goods or the Company's workmanship, or that the goods will be suitable for any particular purpose (whether or not that particular purpose is known to the Company).
  - (ii) shall not be liable under any circumstances for any latent or other defect in the goods, or for any defective workmanship.

### 10. OWNERSHIP

Notwithstanding the delivery of the goods to the Purchaser or any person nominated by the Purchaser, ownership of the goods shall not pass to the Purchaser until the Company has received payment of the contract price of the goods.

### 11. RISK

Subject to paragraph 6 (h), the risk shall pass to the Purchaser when the goods leave the Company's premises.

### 12. ERECTION AND INSTALLATION

- (a) Unless specifically stated in the Schedule the Contract Price shall not include the installation of the goods.
- (b) If the installation of the goods is specifically included in the Schedule, then the following provisions shall apply:
- (i) installations shall be carried out at the rates and charges specified in the Schedule, or if no rates and charges are so specified, then at the Company's usual rates and charges at the time the work is carried out;
  - (ii) the provisions of paragraph 4 (a), (b) and (d) shall apply, mutatis mutandis, to any rates and charges specified in the Schedule for the installation.

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### 13. CANCELLATION

- (a) The Company may cancel the contract, or any uncompleted part of it, if the Purchaser:
- (i) commits a breach of any of the terms or conditions of the contract;  
or
  - (ii) being an individual, dies or is provisionally sequestered, or surrenders his estate, or applies for debt review relief, or a rearrangement of his/her financial obligations;  
or
  - (iii) being a partnership, the partnership is terminated;  
or
  - (iv) being a Company, is placed under a provisional or final order of liquidation or judicial management, or applies to be placed under business rescue;  
or
  - (v) compromises or attempts to compromise generally with any of the Purchaser's creditors.
- (b) The Company's rights in terms of sub-paragraph (a) shall not be exhaustive and shall be in addition to its common law rights.
- (c) No relaxation which the Company may permit at any time in regard to the carrying out of the contract shall prejudice or be a waiver of the Company's rights under the contract.
- (d) Upon the termination of the contract for any reason whatsoever:
- (i) all amounts then owed by the Purchaser to the Company in terms of the contract shall become due and payable forthwith;
  - (ii) the Company may retake possession of any goods in respect of which ownership has not been passed.

### 14. JURISDICTION

The Company shall be entitled to institute any proceedings against the Purchaser, arising out of the contract in any Magistrate's court having jurisdiction over the Purchaser even if the cause of action in question exceeds the jurisdiction of that court.

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### 15. INTERPRETATION

The headings in these conditions are for convenience only and are not to be taken into account for the purpose of interpreting the contract.

### 16. LEGAL ACTION

In the event of the Company instructing attorneys in regard to any breach by the Purchaser, of the conditions of this Agreement, then the Purchaser shall pay all the costs on the scale between Attorney and own Client, including any costs incidental to such action instituted against the Purchaser including, but not necessarily limited to, collection charges, tracing fees, and counsel fees.

### 17. SEVERABILITY

If any of the provisions of this Agreement are held to be invalid, the validity of the remainder of this Agreement shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the invalid term, and to this end the provisions of this Agreement, and the application thereof are hereby declared to be severable.

### 18. NON VARIATION

- (a) This Agreement constitutes the entire agreement between the Parties and no representation by either of the Parties or their agents, whether made prior or subsequent to the signing of this Agreement, shall be binding on either of the Parties unless done in writing and signed by both Parties hereto.
- (b) No variation, alteration or consensual cancellation of this Agreement, or any of the terms thereof, shall be of any force or effect, unless done in writing and signed by the Parties hereto.
- (c) No waiver or abandonment by either Party or any of its rights in terms of this Agreement, shall be binding on that Party, unless such waiver or abandonment is in writing and signed by the waiving Party.
- (d) No indulgence, extension of time, relaxation or latitude which any Party may show, grant or allow to another shall constitute a waiver by a Party of any such Party's rights and such Party shall not thereby be prejudiced or stopped from exercising any of its rights against any Party that may have arisen in the past or which might arise in the future. Unless the context indicates otherwise, the rights and obligations of any Party arising from this AGREEMENT shall evolve upon and bind its successors-in-title.
- (e) The Parties agree that they will do all things and sign all documents necessary to give effect to the terms of this Agreement and to all transactions deriving therefrom.