

TERMS AND CONDITIONS

These are the conditions which apply to every contract for the sale of goods by the seller to any purchaser except the extent to which they may be excluded i.e. modified with the seller's consent.

1. PRICE

Price lists and specifications issued by the seller from time to time are for general information purposes only and do not constitute offers for sale.

The seller's prices are not subject to any discounts unless expressly agreed in writing by the seller.

The acceptance of this order is subject to the proviso that the goods will be supplied at prices ruling at the date of dispatch unless specifically agreed to otherwise in writing.

Prices established in foreign currency shall be subject to the closing ruling Telegraphic Rate of Exchange at the date of despatch of the goods sold.

2. PAYMENTS

The seller's terms are cash with order provided that credit facilities may in the discretion of the seller be extended to approved customers. In which event the purchase price shall be paid by the purchaser free of bank and other charges within 30 (thirty) days from the date of the seller's invoice at the address specified on the front of the invoice.

If any payment is not made on due date, then the seller may without prejudice to any other rights if they may have, charge interest on the amount due at the prime rate.

For the purpose of 2.2 "the prime rate" means the publicity quoted bank rate of interest at which the seller's bankers lend on overdraft and a certificate from any manager or accountant of any branch of those bankers (whose appointment or authority need not be proved) as to that rate at any time shall be final and binding on the purchaser.

If the purchase price is stated to be subject to a prompt payment discount then the discount will be allowed only if payment is made on or before the due date for payment of the amount in question. Prompt payment discount shall not apply to deposits or returnable containers or to any other charges which are included on the invoice but are not part of the actual price of goods supplied.

3. DELIVERY

Unless otherwise stated the goods shall be delivered to the purchaser at the seller's depot.

In the absence of written advice in accordance with 7.2 or 7.3.2 the goods shall be deemed to have been delivered to and acceptance by the purchaser complete and in a satisfactory condition.

If the seller at the purchaser's request agrees to engage any carrier to transport the goods for the purchaser then the seller is authorised to engage the carrier on the purchaser's behalf on such terms and conditions as the seller deems it.

The purchaser shall indemnify the seller against all demands and claims which may be made against the seller by any carrier so engaged and all liability which the seller may incur arising out of the transport of the goods.

If the purchaser refuses to accept delivery of the goods when delivery falls due the seller shall be considered to have tendered and the purchaser to have refused to accept delivery. In this event the risk in the goods shall pass to the purchaser and the cost of storing the goods shall be for the purchaser's account and shall be paid by the purchaser to the seller on demand.

The seller does not guarantee delivery on any specified date but will endeavour to give delivery on the date stated in the contract of sale.

Time shall not be the essence of any sale and failure by the seller to deliver on the specified date for any reason whatever shall not entitle the purchaser to cancel the contract or claim any damages arising from them.

4. OWNERSHIP AND RISK

Notwithstanding delivery of any goods, ownership shall not pass until the purchase price has been paid in full.

Subject to 4.3 the risk in the goods shall not pass to the purchaser on delivery.

In the case of goods supplied F.O.R. the seller's works the risk in the goods shall pass to the purchaser in respect of such goods immediately upon loading on rail at seller's works.

5. ORDERS

Orders placed on the company's quotation are subject to acceptance by the company in writing.

All orders whether oral or in writing placed with the seller shall be firm and irrevocable and may not be cancelled or modified without prior written consent of the seller.

6. WARRANTY

The seller does not give any warranty or guarantee expressed or implied in respect of the goods or their fitness for any particular purpose whether known to the seller or not and shall not be liable for any latent or other defect in the goods.

7. EXCLUSIONS

If any goods are to be supplied in accordance with any specifications

measurements or other instructions furnished by the purchaser the purchaser shall not have any claim of any nature whatsoever against the seller.

for any loss or damages of any kind, whether direct or consequential or whether claimed on grounds on breach specifications measurements or other instructions or

7.1.2 if the goods are not suitable for the purpose for which they are required whether or not those purposes are known to the seller.

Subject to 7.1 if any goods fail to comply in any respect with requirements if any sale the seller's election with reasonable promptness and without the charges provided that the seller receives written notice of the alleged failure within 14 (fourteen) days after the goods are delivered to the purchaser and provided such goods have been paid for and the purchaser shall not have any other claim against the seller for any such failure.

7.3 The seller is exempt from and not liable under any circumstances whatever

for:

7.3.1 any direct or consequential damages of any kind or any loss of profit or other special damages of any kind, whether within the contemplation of the parties or not which the purchaser may suffer as a result of any breach by the seller, its servants agents or sub-contractors of its/their obligations under any contract.

7.3.2 any claim for any alleged shortage in delivery unless written notice of the claim is received by the seller within 14 (fourteen) days after the goods are delivered to the purchaser.

7.3.3 any claim of any nature arising out of an oral order or oral variation of an order unless that oral order or oral variation order has been confirmed in writing to the seller before the seller has delivered under the contract.

7.4 Subject to and without in any way limiting any of the provision of the clause 7, the seller's liability to the purchaser for any damages sustained by the purchaser and which arise in any way out of any goods purchased from the seller including any damages caused by the circumstances be limited to an aggregate for all claims of 10% (ten percent) of the purchase price of the goods concerned.

7.5 The purchaser hereby indemnifies the seller against all damages costs and expenses for which the seller may become liable as a result of work done in accordance with the purchaser's specifications which involves the infringements of any letters patent or registered design.

8. VIS MAJOR

The purchaser shall not have any claim of any nature whatever against the seller for any failure by the seller to carry out any of its obligations under the contract as a result of vis major.

The seller shall be entitled to cancel the contract forthwith or delay deliveries or to reduce the amount delivered, if it is prevented from or hindered in delivery goods of the description covered by the contract through vis major, provided that if that cause has not ceased to operate within 3 (three) months from when it arose the contract may be terminated by the purchaser giving 30 (thirty) days written notice thereof to the seller.

For the purpose of 8.1 and 8.2 vis major shall include without being limited to strikes, lockouts, accidents, shortage or unavailability of labour any default or delay of suppliers transport, delays, riots, political or civil disturbances, the elements any act of any state of government or any other authority or any cause beyond the seller's reasonable control.

9. CANCELLATION AND SUSPENSION

The seller may cancel the contract or any uncompleted part of it if the purchaser

commits a breach of any of the terms or conditions of the contract, or being an individual dies or provisionally or finally sequestered or surrenders his estate, or being a partnership the partnership is terminated, or

being a company or a closed corporation is placed under a provisional or final order of liquidation or judicial management, or compromises or attempts to compromise generally with the purchaser's creditors.

The seller's rights in terms of 9.1 shall not be exhaustive and shall be in addition to its other rights under the agreement or otherwise.

Upon termination of the contract for any reason whatever,

all amounts then owed by the purchaser to the seller in terms of the contract shall become due and payable forthwith.

the seller may retake possession of any goods in respect of which ownership has not passed.

the seller shall be entitled to retain all moneys paid by the purchaser as roukoop.

If any amount owed by the purchaser is not paid on due date or if the purchaser commits any other breach of the contract then without prejudice to any other right the seller may have.

it may immediately suspend the carrying out of any of its then uncompleted obligations until payment is made.

it may terminate any credit facilities previously granted to the purchaser.

all amounts then owed by the purchaser to the seller in terms of the contract or from any other cause whatever shall become due and payable forthwith.

10. SPECIAL CONDITIONS

Every endeavour will be made to deliver the correct quantity ordered but owing to difficulty of producing exact quantities and in conformity with normal metal trade practice estimated are conditional upon a margin of 50% being allowed for over and under deliveries, the same to be charged for or deducted as the case may be on a pro rata basis.

When goods are consigned in or on returnable containers, drums, spools, boxes, crates, bags, packages, etc., any deposits or charges raised and invoiced in respect of such returnable containers, etc., shall be due and payable by the purchaser at the same time as payment, is due for the goods so consigned. Returnable empties shall be consigned pak, or carriage forward, as agreed in respect of each order to the works from which they were originally despatch and prompt notification of such consignment shall be sent to the seller. Upon receipt of such returned empties in good condition, the seller shall credit the purchaser (or refund the purchaser on request) with the full amount deposited or paid therefore by the purchaser.

Value Added Tax will be levied unless a copy of the exemption certificate is supplied to the seller. It is the purchaser's responsibility when placing an order to indicate whether that order is subject to the abovementioned tax or not.

11. WAIVER

Any relaxation which the seller may permit or any one occasion in regard to any of the purchaser's obligations shall not prejudice or be regarded as a waiver of the seller's right to enforce those obligations on any subsequent occasion.

12. NON-VARIATION

No alteration or variation of these conditions shall be of any force or effect unless it is recorded in writing and signed by or on behalf of the seller.

13. NEGOTIABLE INSTRUMENTS

Any promissory note bill of exchange or other negotiable instrument received by the seller from the purchaser shall not by a novation of the debt for which it is given and the purchaser waives presentment notice of dishonour of protest where applicable.

14. RETURN OF GOODS

14.1 No goods may be returned or changed without the seller's prior written consent.

14.2 If the seller does consent in terms of 14.1 the purchaser shall be obliged to pay a handling fee of 10% (ten percent) of the invoiced price of the goods, which handling fee shall form part of the selling price of the goods which price will be increased by an amount equivalent to such handling fee.

15. PROPER LAW

The validity of the contract its interpretation the respective rights and obligations of the parties and all other matters arising in any way out of it, or its performance or expiration or earlier terminations for any reason, shall be determined in accordance with the laws of the Republic of South Africa.

16. JURISDICTION

If the purchaser is resident or carries on business in the Republic of South Africa, then the seller shall be entitled to institute any proceedings against the purchaser arising out of the contract in any Magistrates Court having jurisdiction over the purchaser even if the cause of action exceeds the jurisdiction.

If the purchaser is not a resident of and does not carry on business in the Republic of South Africa, then the purchaser consents and submits to the jurisdiction of the Witwatersrand Local Division of the Supreme Court of South Africa and all Courts of Appeal there from for all purposes arising out of the contract.

17. LEGAL COSTS

The purchaser shall pay all legal costs on the attorney and client scale (including collection commission incurred by the seller in the recovery from the purchaser of all or any moneys owing by the purchaser under contract of sale.

18. DOMICILIUM

The purchaser chooses the address at which the goods are to be delivered as its domicilium citandi et executandi for all purposes under the contract.

19. 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.