

**1. Conditions of Sale**

- 1.1. Lasrust Enterprises (Pty) Ltd (hereinafter referred to as "the Supplier") has the discretion at all times whether or not to sell Goods to the Customer.
- 1.2. The Supplier's discretion to sell any Goods to the Customer in terms hereof may be guided by *inter alia* the following: (i) The availability of stock; (ii) Status and age analysis of the Customer's accounts with the Supplier.
- 1.3. Should the Supplier agree to accept the return of any Goods after same has been delivered, the Customer shall be liable to pay the Supplier a handling charge of not less than 15% on the invoiced price of the goods so returned. Where any damages are suffered as a result of the return of damaged goods, the purchase price will be repaid after the damages have been deducted and where applicable a credit will be set off against other amounts due by the Customer to the Supplier.
- 1.4. When the Supplier is required at the time of the Order to manufacture or supply Goods to the Customer's specification and/or drawings, special standards, regulations, legislation or carries out work according to the Customer's instructions, or those of its nominees, the Supplier accepts no responsibility for the efficiency or workability of goods so manufactured or work so carried out.
- 1.5. Should there be any apparent contradiction or mistake in the description, dimensions or quantity of the Goods ordered, the Customer shall refer the matter to the Supplier for correction or clarification before proceeding to execute the Order and shall notwithstanding delivery of the Goods, be obliged to effect payment of the account if the Customer has failed to query any such apparent contradiction, mistake or anomaly in the Order within 5 days of the delivery of the Goods.

2. Application for an Account with The Supplier

- 2.1. The Customer hereby authorizes the Supplier or its agents at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned under trade references, and to obtain any information relevant to the Customer's application and upkeep of the Customer's account.
- 2.2. The Customer understands that the information given in relation to this Agreement will assist the Supplier in determining whether or not to sell the Goods to the Customer on account and will be used by the Supplier for the purposes of assessing its creditworthiness. The Customer confirms that the information given by it is accurate and complete.
- 2.3. The Customer further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the above information at all times.
- 2.4. The Supplier does not grant any credit facilities and payment terms are to be strictly adhered to.

3. Price and Payment

- 3.1. Prices and discounts are those ruling at the date of dispatch of the Goods contained on the Order Form.
- 3.2. Prices on the Goods do not include taxes or government charges imposed by the State or other authorities.
- 3.3. The Supplier reserves the right to adjust or change any prices and/or discounts at any time with prior written notice to the Customer prior to the dispatch of the Goods in the event of any material changes in pricing including but not limited to labour costs, fluctuating exchange rates and/or price escalations.
- 3.4. For account holders, payment of the Goods will be 30 days from date of the invoice. For non-account holders, the full invoice price must be paid in full before the Supplier will render the Goods.
- 3.5. All payments in terms of the Order Form are payable exclusively to the Supplier;
- 3.6. If the purchase price in respect of any Goods or any part thereof is not paid on due date, then the full balance owing by the Customer to the Company shall become due and the Customer agrees that the Company shall be entitled to recover from the Customer (in addition to any other amounts to which it may be entitled): interest (reckoned from the due date of payment until the actual date of payment, both dates inclusive at the maximum rate stipulated from time to time in terms of the National Credit Act No. 34 of 2005 ("the Act"), currently 2% per month) from due date until payment in full; default administration charges and collection costs on a scale as between attorney and Customer, without prejudice to any other right the Company may have against the Customer. All payments shall be allocated firstly towards legal charges, thereafter to interest, then to unpaid charges or fees and finally towards capital. The Supplier will have the right to stop progress / delivery of the Goods if payment is not made on the due date (clause 3.4).
- 3.7. The Parties hereby specifically agree that the Customer shall not be entitled to any warranty provided by the Supplier that covers the Goods during the period of breach by the Customer of any of the terms of this Agreement, with specific reference to timeous payments of the Supplier's accounts. The Customer acknowledges and agrees that this clause is reasonable and necessary to enable the Supplier to perform in terms of its warranties provided.
- 3.8. A certificate under the hand of any director or manager or the account manager (whose appointment need not be proved) as to the existence and the amount of the Customer and/or Surety's indebtedness and to the Supplier at any time, as to the fact that such amount is due and payable, the amount of mora interest accrued thereon and the correctness thereof for the purpose of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the Customer and/or the Surety in any competent court and shall constituted as a liquid document for such purpose.

4. Delivery and Packaging:

- 4.1. The Supplier has based its calculations on the information and dates specified in the Order Form and based on the interpretation of the Customer's requirements
- 4.2. Delivery is deemed to take place at the Supplier's Offices, within the normal working hours.
- 4.3. A signed Delivery Note shall constitute *prima facie* proof that the Goods have been delivered to and received by the Customer in good condition, whether signed by the Customer, an employee, an agent or a representative of the Customer.

5. Receipt of Goods:

- 5.1. The Customer will arrange for the receipt of the Goods at its own costs.
- 5.2. Upon receipt of the Goods, the Customer: (i) must ensure that the Goods correspond with the Order Form; (ii) must inform the Supplier within 10 (ten) days from receipt of the Goods, in writing, of any faults in compliance with the order as discovered;
- 5.3. The Customer will not be allowed to return any of the Goods without the prior written approval by the Supplier. Should, after verification by the Supplier, any faults in compliance be confirmed, the Supplier will arrange for replacement of the Goods or have the original Goods repaired.
- 5.4. The Customer will renounce any claim for damages it has against the Supplier in the instance where faults are found.
- 5.5. Any difference concerning the defects of Goods between the Parties will be referred to an expert. The costs of the expert will be for the Party's account that referred the matter.
- 5.6. Returns will not be accepted if: (i) Items are not sealed in their original packaging; (ii) The seal of the packaging is broken; (iii) The packaging is damaged.

6. Ownership:

- 6.1. The Goods remain the full and exclusive property of the Supplier until the full purchase price, had been paid in full by the Customer.
- 6.2. The Customer will return all the Goods upon written request from the Supplier in the instance where the full purchase price had not been paid in full. All costs associated in the returning of the Goods sold will be for the Customer's account.
- 6.3. The Customer will assume all the risk in and to the Goods upon receipt of the Goods from the Supplier.
- 6.4. The Customer will exercise the utmost care over the Goods and ensure that it can be identified until date of full and final payment thereof.
- 6.5. The Customer will not be entitled to use the Goods as security or as guarantee.
- 6.6. The Supplier will have a lien over the Goods sold until such time that it is paid in full.
- 6.7. The Customer will not be entitled to re-sell the Goods to any third party until such a time that the full purchase price has been paid in full to the Supplier.
- 6.8. In the event where the Goods are sold by a distributor of the Supplier and such are not paid in full by the distributor, the distributor indemnifies the Supplier against any claims, costs and damages, both direct and consequential, as a result of the end user's failure to settle the distributor's outstanding account.
- 6.9. The distributor agrees and acknowledges that it will upon requests from the Supplier, cede and assign all its rights and interests it may have against the end user to the Supplier to enable the Supplier to institute legal action against the end user. The Supplier will have the sole discretion to claim damages from the distributor or against the end user.

7. Force Majeure

- 7.1. Neither of the Parties shall be liable for a failure to perform any of its obligations insofar as it proves: (i) that the failure was due to an impediment beyond its control; (ii) that it could not reasonably be expected to have taken the impediment and its effects upon the party's ability to perform into account at the time of the conclusion of this Agreement; and (iii) that it could not reasonably have avoided or overcome the impediment or at least its effects.
- 7.2. An impediment, as aforesaid, may result from events such as the following, this enumeration not being exhaustive: (i) war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage; (ii) natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning; (iii) explosions, fires, destruction of machines, of factories and of any kind of installations; (iv) boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises and work stoppages; (v) acts of authority, whether lawful or unlawful, apart from acts from which the party seeking relief has assumed the risk by virtue of any other provisions of this Agreement.
- 7.3. For the purposes of this clause "impediment" does not include lack of authorisations, licences, permits or approvals necessary for the performance of this Agreement and to be issued by the appropriate public authority.
- 7.4. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the party seeking relief gives notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist; provided that if such impediment continues for a period of more than 60 (sixty) days either of the Parties shall be entitled to terminate this Agreement.

8. Disclaimer

- 8.1. The Supplier shall be exempted from and shall not be liable under any circumstances whatsoever for any damages including direct, indirect and/or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in the contemplation

- of the Parties or not, which the Customer may suffer as a result of any delay in delivery of the Goods ordered.
- 8.2 Save as otherwise specifically provided for herein, the Supplier shall not be liable to the Customer or to any other person for any damages including indirect or consequential damages of any nature whatsoever or any loss of profit, or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the Customer may suffer as a result of any breach by the Supplier of any of its obligations under these conditions or out of any other court whatsoever. The Customer hereby indemnifies the Supplier against any claim which may be made against the Supplier by any other person in respect of any matter for which the liability of the Supplier is excluded in terms of the foregoing.
- 8.3 The Supplier will under no circumstances be held responsible for the incorrect use of the Goods or damages including direct, indirect and/or consequential damages of any nature as a result of the use for the Goods for any other purpose that for which it is normally used.
- 8.4 The Supplier will under no circumstances be held responsible for the Customer modifying the Products or any part thereof. The Customer will assume full liability for any electrical and/or mechanical problem which may occur as a result of such modification.
- 8.5 The Customer will be responsible to ensure that all necessary safety measures are implemented and/or steps are taken to obtain full satisfaction from the use of the Goods.
- 8.6 The Customer will be responsible to inform the Supplier of any special standard, regulation or legislation to the Goods at the time when the order is placed.

9. Breach

- 9.1 The Customer agrees and acknowledges that in the event of the Customer breaching any condition contained in these conditions: (i) the Customer failing to pay any amount due and payable on due date; (ii) the Customer suffering any civil judgment to be taken or entered against it; (iii) the Customer causing a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936, as amended; and/or (iv) the Customer passing away, then the Supplier shall, without detracting from any other remedies which may be available to it, be entitled to summarily cancel the sale of the Goods to the Customer without notice to the Customer and to re-possess those Goods sold and delivered by the Supplier to the Customer, or to claim specific performance of all of the Customer's obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to the Supplier's right to claim damages.
- 9.2 The Supplier will be entitled to charge interest in the event of non-payment by the Customer as per clause 3.6 above.
- 9.3 In the event of non-payment or partial payment of an invoice on due date, the Supplier will be entitled to: (i) Nominate the anticipated date for payment of the full outstanding debt; (ii) Suspend all services and/or orders for the Customer; (iii) Furnish the Customer with a written notice that it will terminate all orders within 7(seven) days should the Customer fail and/or refuse to rectify its breach; (iv) Request guarantees for payments; and (v) Keep any down payment as compensation without prejudice to any other compensation it might be entitled to.
- 9.4 In the event of the Supplier or its agents instructing attorneys to collect from the Customer any amount owing to the Supplier, the Customer agrees to pay all costs on the scale as between attorney and own Customer, including collection commission and tracing charges.
- 9.5 In the event of the Supplier or its agent instructing a debt collector or attorney to collect from the Customer an amount owing to the Supplier, the Customer agrees to pay the collections commission as allowed by law in addition to capital, interest and legal costs.
- 9.6 If the Customer fails to meet its obligations under these terms and conditions of sale, it authorizes the Supplier or its agents to record its non-performance with any credit bureau, which information will be available to third parties. The Customer further authorizes researching its records at a credit bureau, use new information and data obtained from the credit bureau in respect of details of how the Customer has performed in terms of these terms and conditions of sale.

10. Domicilium address:

- 10.1 The Customer nominates as its *domicilium citandi et executandi* (address where he will accept service of all legal processes) the address reflected on the face hereof under the heading registered office/business physical address, and the surety nominates as his *domicilium citandi et executandi* the address reflected on the face hereof alongside his name, for service upon them of all notices and processes in connection with this Agreement and its implementation.
- 10.2 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's *chosen domicilium citandi et executandi*.

11. Miscellaneous

- 11.1 The Customer consents to the jurisdiction of the Magistrates' Court in terms of Section 45 of the Magistrates' Court Act, No. 32 of 1944, as amended, having jurisdiction under Section 28 of the said Act, notwithstanding that the claim exceeds the normal jurisdiction of the Magistrate' Court.
- 11.2 No relaxation or indulgence granted to the Customer by the Supplier, at any time, shall be deemed to be a waiver of any of the Supplier's rights in terms hereof, and such relaxation or indulgence shall not be deemed as a novation of any of the terms and conditions set out herein, or create any estoppel against the Supplier.
- 11.3 Any agreement purporting to vary or novate the terms of this Agreement, or any consensual cancellation, shall not be valid unless reduced to writing and

signed by the Customer and the Supplier. For the purposes of this clause electronic communication does not constitute writing.

12. Cession of Claims

- 12.1 The Customer and Surety hereby jointly and severally, irrevocably and *in rem suam* cede and assign as a pledge unto and in favour of the Supplier, all the right, title, interest in and to all claims of whatsoever nature and description and whatsoever arising which the Customer and/or Surety may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Customer and/or Surety from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in *securitatum debiti* and is not an out-and-out cession.
- 12.2 Should it transpire that the Customer and/or Surety entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customer and/or Surety's reversionary rights.
- 12.3 This Cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Customer and/or Surety's indebtedness to the Supplier.
- 12.4 For the purpose of giving effect to the foregoing Cession, both the Customer and Surety hereby nominate, constitute and appoint the Supplier to be its Attorney and Agent, *in rem suam*, with full authority for the Customer and/or Surety and in the Customer and/or Surety's name to demand, sue for, recover and receive all sums of money hereby ceded and assigned and with the authority to sign all documents on the Customer and/or Surety's behalf and in the Customer and/or Surety's name in connection with the recovery of the said sums and to give acquittances and receipts for the Customer and/or Surety's.
- 12.5 The Customer and Surety agree that, on request by the Supplier, they shall be obliged to hand over to the Supplier all books of account, contracts, invoices, documents and the like which it may require for the purposes of ascertaining the amounts due to the Customer and/or Surety for the purpose of recovery of payment.
- 12.6 The Customer and Surety shall be obliged to furnish the Supplier with a schedule of all debts due to the Customer and/or Surety by its debtors monthly and upon demand. Notwithstanding the foregoing, the Supplier or its nominee shall at all times be entitled to inspect all or any of the Customer's and Surety's records as the Supplier deems fit. Failure by either party to give effect to the foregoing shall not in any way prejudice the rights of the Supplier hereunder, and the Supplier shall at all times be deemed to have perfected its security in terms hereof.

13. Guarantee:

- 13.1 The Supplier passes onto the Customer all conditions and benefits of the Principal's guarantee. In all cases, the Principal will, at its expense and through the Supplier, make good any defects in material and workmanship of its products under proper use and within its guarantee, being twelve months from the date of delivery from the Supplier to the Customer.
- 13.2 Liability is limited to the repair or replacement of the product, at the discretion of the Principal, and this liability specifically excludes injury or consequential damage to other equipment or production losses or penalty claims no matter how caused. Such repair or replacement shall take place at the premises of either the Principal, or the Supplier as required by the Principal.
- 13.3 The Customer alone is responsible for any costs of removal and re-installation, packaging, insurance and transport of the goods to and from the Supplier's premises.
- 13.4 The Customer will only be able to enforce the terms of the guarantee on Goods that has been paid in full and should be dealt with in conjunction of clause 3.4.

('Principal' shall mean the manufacturer of the Goods, from which Lasrust Enterprises (Pty) Ltd obtains the Goods.
 ('Agency' covers all formal agreements where Lasrust Enterprises (Pty) Ltd represents the Principal as an Agent/Dealer/Distributor/ Stockist).

14. Application of National Credit Act

- 14.1 Notwithstanding anything contained to the contrary in these Terms and Conditions and/or the Application for Credit, neither the completion and/or signature of the Application for Credit nor the imposition of charges in terms of clause 3 above, constitutes a credit facility or credit agreement in terms of the Act. In the event that the amount deferred remains unpaid 20 business days after the imposition of the interest as per clause 3.6, this Agreement shall constitute an incidental credit agreement in terms of the Act.

Signed at this day of 20.....

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 Initials & Surname of Customer

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 Designation of Customer

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 Signature of Customer

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 Signature Witness 1

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 Signature Witness 2