

TERMS AND CONDITIONS OF CONTRACT

- 1 These terms and conditions are binding between HSTM Distribution ("The Supplier") and the customer to whom the invoice is rendered.
- 2 Orders are accepted on the basis that the prices charged will be those applicable as at the date of the purchase order. The price of the goods and/or services provided by the supplier to the customer in respect of this sale is contained on the invoice ("the purchase price").
Unless otherwise expressly stated, prices are exclusive of Value Added Tax which shall be for the account of the customer unless the customer has given acceptable proof that the supply is a zero rated or an exempt supply. The customer shall pay or reimburse to the supplier the amount of any Value Added Tax simultaneously with the purchase price.
- 3 Payment of the purchase price shall be made into the Supplier's banking account held at Nedbank by Electronic Funds Transfer ("EFT") strictly in accordance with the terms and conditions contained herein, unless otherwise agreed in writing.
- 4 In the absence of any other agreement, payment shall be made strictly within 30 days from the date of invoice. No discount shall apply unless otherwise stated and agreed in writing. Payment must reflect on our banking (NEDBANK) statement before the 1st of every month.
- 5 The customer shall be obliged to pay in addition to the contract price herein -
 - 5.1 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 on a date after the date on which any price charged determined;
 - 5.2 any other additional cost of any nature whatsoever arising due to factors beyond the control of the supplier.
In particular, but without limiting the generality of the foregoing, the supplier shall be entitled to increase the purchase price in respect of any goods supplied in order to make provision for any increases in cost arising as a result of or during the period of any delay caused by the customers.
- 6 The purchase price does not include charges for off-loading of the goods at the customer's premises. They shall provide, at its cost the necessary labour, equipment or facilities required for off loading of the goods.
- 7 The purchase price in respect of any goods sold to the customer shall be payable -
 - 7.1 In cash
 - 7.2 In South African currency without deduction or set-off and free of any exchange; and
 - 7.3 during or before the expiry of the period indicated in 4 above unless otherwise stated and agreed to in writing
- 8 The customer has no right to withhold payment for any reason whatsoever. The customer is not entitled to set off any amount due to the customer by the supplier against any debt owed by the customer to the supplier nor shall an payment be withheld by virtue of any alleged counterclaim against the supplier by the customer.
- 9 The amount of the customer's indebtedness at any time(including interest and the rate of interest, if applicable) shall be *prima facie* determined by a certificate signed or purportedly signed by any manager of the Supplier.
- 10 No notices, cheques, cash or other documents sent to the supplier through the post shall be deemed to have been received by the supplier.
- 11 All payments made in respect of this invoice may be appropriated by the Supplier to such accounts or part thereof as the Supplier, in its discretion, may decide from time to time.
- 12 Nothing contained in these terms and conditions shall be construed as obligating the Supplier to continue supplying the customer with goods in the event of a breach hereof.
- 13 All sums due and payable by the Customer to the Supplier and not paid on due date as set out herein shall bear interest at the prime overdraft rate charged from time to time by the bankers of the Supplier calculated from the date that the sum became due and payable to the date of payment in full, compounded monthly in arrears. Such interest shall be payable on demand and the interest rate shall be proved by way of a certificate signed by any employee of Nedbank Limited. The clause shall not apply to a Customer that furnishes the Supplier with acceptable proof of having an annual turnover of less than R1 million per annum at the time of entering into this agreement.
- 14 The risk in and to any goods purchased by the Customer from time to time shall pass to the Customer on delivery. Ownership of the goods shall not pass to the customer until the purchase price (including interest, if any) in respect of the goods in question has been paid in full. The provisions hereof shall apply notwithstanding -
 - delivery and receipt of such goods by the Customer; or
 - the accession of such goods with any of the Customer's goods; or
 - that the goods may have been incorporated into or form part of any other goods or changed their character.
 All goods, whether fixed to immovable property or not, shall be deemed to remain the property and be deemed to be severable without injury to either property.
- 15 The supplier reserves the right to inform the owner/landlord of the premises in which the goods are or at any time may be, of the the provisions of this clause. The customer shall be obliged to advise the supplier of the name and address of the landlord of any such premises and shall promptly advise the supplier of any change in the name and/or the address of any landlord or of any new landlord.
- 16 The customer shall take all such steps as may be necessary to notify interested third parties that ownership of the relevant goods has not passed from the supplier to the customer. In particular the customer shall inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The customer shall produce written proof of such notices to the supplier on demand
- 17 Delivery to the address chosen by the Customer for purposes of delivery, shall irrefutably be deemed to be proper delivery and the onus of proving non-delivery shall rest with the Customer.
- 18 The Customer is required to forthwith upon delivery by the Supplier and receipt by the Customer examine the goods supplied in terms hereof for the purpose of ascertaining whether the customer is satisfied that the goods –
 - 18.1 are of the type and quality reasonably contemplated as per the agreement between the parties; and
 - 18.2 reasonably conform to the material specifications of the order.
- 19 The Customer is required to notify the Supplier forthwith of any defects in goods within 48 hours after delivery to the Customer. The Customer must give notice in writing, to the Supplier of any action to return goods for whatsoever reason, and return of goods must be confirmed/accepted by Supplier before goods are returned.
- 20 The Customer's failure to notify the Supplier and return the goods as stated in 19 above, shall exempt the Supplier from any and all liability whatsoever for any defects in the goods delivered and the Customer shall be liable for payment of the full purchase price. The Customer specifically agrees to indemnify the Supplier and hold the Supplier harmless against any and all loss or damage, from any cause arising, which the Supplier may sustain as a result of having delivered the goods to the Customer.
- 21 All reporting of "Goods damaged"; "Goods Return" and "Goods Short / Over receive" must be done within 48 hours from receiving of goods to our Sales rep in charge of your area. "Goods damaged"; "Goods Return" and "Goods Short / Over receive" must indicate clearly on both the Waybills (Courier copy) and Waybills (Courier copy) and the delivery notes.
- 22 official orders shall attract an "Administrative Recovery fee" of R50.00 per invoice per order.
All delivery costs incurred for incorrect products ordered to be returned will be charged and own transport for the return must be arranged. Goods returned must be in good condition. R250.00 administrative fee will be levied. Please ensure your buying department carries out our policy in the correct manner to avoid any fraudulent orders being placed. We will not accept any orders if the above procedures are not properly carried out in full.
- 23 Claims regarding "Price discrepancy" will not be entertained after two months (60 days) from the date of invoice.
- 24 The Customer acknowledges that this agreement between the parties is concluded in Cape Town by virtue of the Supplier's acceptance at it's head office situated at Cape Town of all orders placed by the customer. Therefore any claim which the Supplier may have against the Customer shall be instituted in the Western Cape High Court or a Cape Town Magistrates Court with jurisdiction.
- 25 In the event of the Supplier having to enforce its rights or having to institute legal action against the Customer as a consequence of a breach by the Customer of any of it's obligations in terms of this agreement, then the Customer shall be for all charges and expenses of whatsoever nature incurred, including without limitation, all legal costs on attorney and own client scale, collections commission, VAT and tracing fees, irrespective of whether proceedings in the court of law have actually been instituted by the Supplier or not.

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