

Movement by Perfection



The Royal League in ventilation, control and drive technology

General terms and Conditions of Business

September 2017



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General Terms and Conditions of Business of ZIEHL-ABEGG South Africa (Pty) Ltd.

IN THIS AGREEMENT THERE ARE CERTAIN CLAUSES OF SIMILAR FONT AND COLOUR TO THIS TEXT WHICH CONTAINS PROVISIONS THAT MAY HAVE THE EFFECT OF (I) LIMITING THE RISK OR LIABILITY OF THE COMPANY OR OF ANY OTHER PERSON AND/OR (II) MAY CONSTITUTE AN ASSUMPTION OF RISK OR LIABILITY BY YOU AND/OR (III) MAY IMPOSE AN OBLIGATION ON YOU TO INDEMNIFY THE COMPANY OR ANY OTHER PERSON FOR ANY CAUSE AND/OR (IV) MAY BE AN ACKNOWLEDGEMENT OF ANY FACT BY YOU. THESE PROVISIONS ARE VERY IMPORTANT AND YOU MUST ENSURE THAT YOU READ THEM CAREFULLY AND THAT YOU UNDERSTAND THEM CLEARLY.

1. GENERAL

- 1.1 This agreement governs the relationship between Ziehl-Abegg South Africa (Pty) Ltd with Registration Number: 2005/0369/07 and its customers.
- 1.2 All contracts including but not limited to all deliveries, services and offers are exclusively subject to the COMPANY'S terms and conditions of delivery and sale, the COMPANY rejects any terms and conditions of the CUSTOMER to the contrary or deviating from the COMPANY'S terms and conditions unless it has expressly consented to their validity in writing.
- 1.3 The terms and conditions set out herein cancel all previously issued terms and conditions.
- 1.4 These terms and conditions, as re-issued or revised by the COMPANY from time to time, apply to all orders placed with the COMPANY and such orders are subject to acceptance by the COMPANY and shall be deemed to be made subject to these terms and conditions.
- 1.5 No qualification or condition contained in any order form, acknowledgement of order or otherwise, shall form part of the contract of sale or override these terms, unless expressly agreed to in writing by the Managing Director of the COMPANY. No employee or agent of the COMPANY shall have the authority or the ability to change these terms in any manner whatsoever, save the Managing Director of the COMPANY.
- 1.6 Price lists issued by the COMPANY from time to time, are for information only and do not constitute offers for sale.
- 1.7 The COMPANY reserves the right to refuse an order and acceptance on the part of the COMPANY will only be deemed to have occurred on delivery of the GOODS.
- 1.8 Save insofar as may be otherwise specifically agreed in writing to the contrary by the COMPANY, orders are accepted only at prices and transport tariffs ruling on that date of dispatch.
- 1.9 Due to variables such as quantity, size, packaging, marketing etc., invoiced prices may differ marginally from advertised prices.

2. INTERPRETATION

In this AGREEMENT unless the context otherwise requires –

- 2.1 The singular shall import and include the plural and vice versa;
- 2.2 Words indicating one gender shall import and include other genders;
- 2.3 Words indicating natural persons shall import and include artificial persons;
- 2.4 The headnotes to this AGREEMENT are used for the sake of convenience only and shall not govern the interpretation of the clauses to which they relate;
- 2.5 Where any number of days is prescribed in this AGREEMENT, they shall be calculated exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday. In such day the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.6 If any doubt or conflict arises where figures are referred to in numerals and in words, the words shall prevail;
- 2.7 Should there be any conflict or inconsistency between this AGREEMENT and other agreement/s concluded between the Parties, then terms and conditions of this AGREEMENT shall prevail;
- 2.8 The rights and obligations of any Party arising from this AGREEMENT, shall devolve upon and bind its successors-in-title;
- 2.9 If any provision in a definition contained in this AGREEMENT is a substantive provision conferring rights

or imposing obligations on any Party, notwithstanding that it only appears in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the AGREEMENT;

2.10 This AGREEMENT shall be governed by and interpreted in accordance with the laws of the Republic of South Africa, provided that in the event of a conflict between or inconsistency in the laws applicable in the various provinces or regions of the Republic, the law as interpreted and applied in Gauteng will prevail.

2.11 The rule of construction that this AGREEMENT shall be interpreted against the PARTY responsible for the drafting or preparation of this AGREEMENT shall not apply. The same applies to the schedules or annexures.

3. APPLICATION OF THE CONSUMER PROTECTION ACT (THE CPA)

3.1 If the CPA is applicable to this AGREEMENT, the provisions of the CPA will be applied and take precedence where they contradict any provision of this AGREEMENT.

3.2 Whether the CPA applies to this AGREEMENT depends on whether certain values of the CUSTOMER's business (the "Threshold Values") are above or below the threshold.

3.3 The Threshold Values are the CUSTOMER's asset value or annual turnover. If either of these values exceed R 2 000 000 (Two Million Rand) on the date that the parties agree that the COMPANY will sell the GOODS, the CPA will not apply to this AGREEMENT.

3.4 The values measured and the threshold itself will be amended from time to time, in which case the Parties agree that the new measurements will apply to this AGREEMENT from the date of amendment.

3.5 The COMPANY's duties under this AGREEMENT may vary depending on whether the CPA applies to it, and the COMPANY will act upon the information given by the CUSTOMER in the credit application form. Consequently:

3.5.1 The CUSTOMER warrants that any statement made to the COMPANY in respect of its Threshold Value is accurate.

3.5.2 If the CUSTOMER claims that all the Threshold Values are below R 2 000 000 (Two Million Rand), or otherwise that the CPA applies to this AGREEMENT, the COMPANY may at its instance require the CUSTOMER to provide it with financial statements as proof thereof.

3.5.3 If the CUSTOMER misstates the Threshold Values

as below such values and in such a way that the COMPANY believes that this AGREEMENT is subject to the CPA when it is not, then the COMPANY may retroactively apply any provisions of this AGREEMENT that were not applied as a result of this belief.

3.6 The CUSTOMER will be liable for any costs or damage sustained by the COMPANY resulting from such misstatement.

4. DEFINITIONS

Unless such meaning is inconsistent with the context, the following terms shall, throughout this AGREEMENT, have the meanings respectively ascribed to them, namely:

4.1 "the/this AGREEMENT" – shall mean this AGREEMENT between the Parties with the terms and conditions contained herein and annexures, if any, attached hereto;

4.2 "the CUSTOMER" – shall mean the person or legal entity with whom an agreement is entered into for the sale of the GOODS;

4.3 "the COMPANY" – shall mean Ziehl-Abegg South Africa (Pty) Ltd (Registration Number: 2005/0369/07);

4.4 "the CPA" – shall mean the Consumer Protection Act, 86 of 2008, as amended.

4.5 "the GOODS" – shall mean the GOODS as described more specifically in the invoice;

4.6 "the CONTRACT PRICE" – shall mean the price of the GOODS as set out in the invoice;

4.7 "the CONTRACT SPECIFICATION" – shall mean the specification or other description of the GOODS on the invoice;

4.8 "the CPA" – shall mean the Consumer Protection Act, 86 of 2008, as amended;

4.9 "the INVOICE" – shall mean the invoice document of the COMPANY whereon an invoice number, full particulars of the CUSTOMER, CONTRACT PRICE, CONTRACT SPECIFICATION and the date of order of the GOODS by the CUSTOMER shall appear;

4.10 "DELIVERY NOTE" – shall mean a note on which is reflected at least the invoice number, delivery instruction note number, net and gross weights and number of bags/packages/cartons or other containers in which the GOODS are supplied. All INVOICES shall be accompanied by a tax invoice complying with the Value Added Tax Act (as amended).



5. APPLICATION OF THE CONSUMER PROTECTION ACT

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5.3 The Threshold Values are the CUSTOMER's asset value or annual turnover. If either of these values exceed R 2 000 000 (Two Million Rand) on the date that the parties agree that the COMPANY will sell the GOODS, the CPA will not apply to this AGREEMENT.

5.4 The values measured and the threshold itself will be amended from time to time, in which case the Parties agree that the new measurements will apply to this AGREEMENT from the date of amendment.

5.5 The COMPANY's duties under this AGREEMENT may vary depending on whether the CPA applies to it, and the COMPANY will act upon the information given by the CUSTOMER in the credit application form. Consequently:

5.5.1 The CUSTOMER warrants that any statement made to the COMPANY in respect of its Threshold Value is accurate.

5.5.2 If the CUSTOMER claims that all the Threshold Values are below R 2 000 000 (Two Million Rand), or otherwise that the CPA applies to this AGREEMENT, the COMPANY may at its instance require the CUSTOMER to provide it with financial statements as proof thereof.

5.5.3 If the CUSTOMER misstates the Threshold Values as below such values and in such a way that the COMPANY believes that this AGREEMENT is subject to the CPA when it is not, then the COMPANY may retroactively apply any provisions of this AGREEMENT that were not applied as a result of this belief.

5.5.4 The CUSTOMER will be liable for any costs or damage sustained by the COMPANY resulting from such misstatement.

6. CONTRACT PRICE

6.1 Save insofar as may be otherwise specifically agreed in writing to the contrary by the COMPANY, orders are accepted only at prices and transport tariffs ruling on that date of dispatch.

6.2 Unless otherwise agreed in writing, the CONTRACT PRICE shall, inter alia, be deemed to include charges for landing costs, packing and storage.

6.3 The COMPANY shall retain the title to and copyrights in all offer documents; these may not be made available to third parties without the COMPANY'S express written consent.

6.4 The CONTRACT PRICE shall specifically exclude Value Added Tax (VAT) and any other taxes that may be levied in respect of the GOODS. The COMPANY reserves its rights to effect price increases from time to time without notification to the CUSTOMER. The onus shall be on the CUSTOMER to remain informed of the prices of the COMPANY.

6.5 Notwithstanding the stated price on the INVOICE, the CONTRACT PRICE shall, at all material times, be subject to any increase of duties, levies, taxes, transport, storage and packing costs, wages and the COMPANY shall endeavour, where reasonably possible, to inform the CUSTOMER in advance of any anticipated increases of the aforesaid.

6.6 The COMPANY reserves its right to add a reasonable charge for storage on any items which have not been collected or could not be delivered within fourteen (14) days of the date on which they were available for delivery or collection, as the case may be, and in the event that this is as a result of the CUSTOMER'S conduct.

7. PAYMENT

7.1 Unless otherwise agreed payment in full without deduction within 10 (ten) days after issue thereof. Payment in cash or bill of exchange will only be accepted if expressly agreed to by the COMPANY and the CUSTOMER.

7.2 The COMPANY reserves the right to extend credit facilities to CUSTOMERS from time to time without any obligation to do so notwithstanding having extended such facilities in the past to any CUSTOMER.

7.2.1 Where the COMPANY has agreed to supply GOODS on credit, payment in full shall be due within 30 (thirty) days from date of the first monthly statement rendered by the COMPANY.

7.2.2 The monthly accounts of the COMPANY are closed on the 25th day of each month. Payment must be credited to the banking accounts of the COMPANY by the 25th day of the following month.

7.3 Credit facilities shall only be afforded to CUSTOMERS after completion of the necessary documents required by

the COMPANY and having provided the COMPANY with the required guarantees/suretyships.

- 7.4 The COMPANY reserves its right to, at any time and after having provided the CUSTOMER with reasonable notice, and reasonable notice to be deemed to be 30 (thirty) days, advise that credit facilities to a CUSTOMER by the COMPANY will be terminated, and the COMPANY will be under no obligation whatsoever to provide any reasons for such termination.
- 7.5 It is specifically agreed and recorded that at all material times, it shall be the sole prerogative of the COMPANY to decide to which CUSTOMERS it would be willing to extend credit facilities, it specifically being understood by CUSTOMERS that any differentiation shall not be deemed to be discriminatory, but shall be deemed to form part of the COMPANY'S internal credit risk limitation policy.
- 7.6 The COMPANY shall be entitled to refuse sale of the GOODS to any CUSTOMER in the event of overdue accounts owing by the CUSTOMER to the COMPANY or in the event that a CUSTOMER is not able to obtain/provide satisfactory guarantees/suretyships. It is specifically recorded and agreed that any late payments by a CUSTOMER shall constitute an automatic breach of any credit facility agreement entered into between the COMPANY and the CUSTOMER and provided to the CUSTOMER by the COMPANY and accordingly, the COMPANY reserves the right at any time to refuse any further sale of GOODS to the CUSTOMER on a cash on delivery basis until all outstanding accounts including any accrued interest on such outstanding accounts have been settled in full by such CUSTOMER.
- 7.7 IT IS SPECIFICALLY RECORDED AND AGREED THAT THE CUSTOMER WAIVES ALL CLAIMS AGAINST THE COMPANY FOR ANY DAMAGES OR LOSSES THAT IT MAY SUFFER AS A RESULT OF THE REFUSAL OF THE COMPANY TO SELL GOODS TO THE CUSTOMER IN THE EVENT OF AN OVERDUE ACCOUNT, OR IN CONNECTION WITH ANY OTHER DISPUTE WHATSOEVER ARISING OUT OF PAYMENT FOR GOODS.

8. INTEREST

It is specifically agreed and recorded that interest on overdue accounts shall be at the rate as per the Prescribed Rate of Interest Act 55 of 1975.

9. DELIVERY

- 9.1 Time of delivery shall not be of the essence in this AGREEMENT. The COMPANY and the CUSTOMER may agree in writing to non-binding dates for delivery, which may only act as a guideline therein.
- 9.2 WHILST EVERY EFFORT WILL BE MADE TO DISPATCH AND DELIVER THE GOODS AS ADVISED, THE COMPANY DOES NOT GUARANTEE DISPATCH AND/OR DELIVERY ON ANY SPECIFIC DATE AND SHALL NOT BE LIABLE FOR ANY DAMAGES INCLUDING CONSEQUENTIAL DAMAGES THAT MAY BE SUFFERED BY THE CUSTOMER AS A RESULT OF ANY DELAYS IN THE DELIVERY OF THE GOODS THAT MAY OCCUR, SAVE TO THE EXTENT THAT THE COMPANY MAY BE LIABLE FOR ANY LOSSES IN TERMS OF SECTION 47 OF THE CONSUMER PROTECTION ACT 68 OF 2008 AS AMENDED.
- 9.3 The CUSTOMER shall not be entitled to cancel any order by reason of such delay.
- 9.4 Should the COMPANY be prevented from the performance of any of its obligations as a result of Force Majeure, or any cause whatsoever beyond the control of the COMPANY, The COMPANY shall be entitled at its option to cancel the AGREEMENT or to suspend performance of its obligations there under and SHALL NOT BE LIABLE WHATSOEVER FOR ANY LOSS OR DAMAGE CONSEQUENTIAL OR OTHERWISE RESULTING FROM SUCH INABILITY TO PERFORM ITS OBLIGATIONS, CANCELLATION OR SUSPENSION.
- 9.5 Unless otherwise agreed in writing, delivery and passing of the risk in the GOODS shall be deemed to have taken place when the GOODS are offloaded at the CUSTOMER'S premises.

10. SUPPLY OF SOFTWARE

- 10.1 If software is supplied, the Customer is granted a non-exclusive and non-transferable right to use the software and the related documentation for the operation of the goods for which the software is supplied. The Customer is not permitted to make copies, except for one back-up copy. References to authors, series numbers, and other features serving the identification of the software may not be removed or altered.
- 10.2 The Customer is obligated to prevent unauthorized access to the software and the documentation by third parties by taking appropriate precautions. The Customer must store the original data storage media supplied and the back-up copy at a place that is secured against unauthorized access by third parties. The Customer must insistently point out to its staff the duty to comply with the present terms of supply and with the provisions of copyright law.



10.3 Our liability for the loss or alteration of data is limited to the typical cost of restoration that would be incurred if back-up copies were made at regular intervals and according to risk.

11. RESERVATION OF OWNERSHIP

11.1 The COMPANY shall reserve ownership of GOODS delivered, until receipt of all payments due in terms of this AGREEMENT. Further, the COMPANY reserves ownership of retained GOODS until the CUSTOMER has paid any further payments due in terms of this AGREEMENT of whatever nature.

11.2 In the event that the CUSTOMER defaults in payment, he shall deliver the GOODS to the COMPANY upon receipt of notice by the CUSTOMER from the COMPANY, without undue delay.

11.3 The COMPANY may elect without detracting from other remedies which may be available to it, to continue with the AGREEMENT or to cancel it and cancel the sale of any further GOODS to the CUSTOMER and to rely on the provisions of this clause to repossess those GOODS sold and delivered by the COMPANY to the CUSTOMER or to claim specific performance of all the CUSTOMER'S obligations whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to the COMPANY'S rights to claim damages.

11.4 The COMPANY'S request for repossession and repossession itself shall not be construed as rescission from the contract. After repossession of the delivered items the COMPANY shall be authorised to realise the same. The realisation proceeds shall be set off against the CUSTOMER'S liabilities – less appropriate realisation costs. The COMPANY may also realise the repossessed reserved GOODS by selling them by private contract.

11.5 The CUSTOMER undertakes to handle the delivery items with care; in particular, he is obliged to insure them adequately at the reinstatement value against damage caused by inter alia, fire, water, and theft at his expense.

11.6 In case of attachments or other intervention by third parties, the CUSTOMER shall inform the COMPANY in writing without undue delay. The CUSTOMER shall be liable to the COMPANY for the judicial and extra-judicial costs of any necessary action pursuant to third-party action against execution.

11.7 The CUSTOMER is entitled to resell the GOODS in the ordinary course of business. In exchange, he herewith assigns to the COMPANY all claims against his customers or third parties to the amount of the invoice total (including value added tax) which, to his benefit, accrue

from the resale, irrespective of whether the delivered item was resold without any processing or after processing. The COMPANY accept this assignment of the CUSTOMER to the COMPANY.

11.8 The CUSTOMER shall remain authorised to collect these claims even after the assignment. However, the COMPANY shall be authorised to collect the claim itself, if the CUSTOMER no longer performs his obligations to pay from the collected proceeds, or there has been a suspension of payments. In these cases, the COMPANY may demand that the CUSTOMER discloses to the COMPANY the assigned claims and their debtors, furnishes all the information required to collect the claims, delivers the pertinent documents and notifies the debtor (third party) of the assignment. However, it shall not be possible for the COMPANY to collect the claim if this conflicts with the Insolvency Act of 1936, as amended.

11.9 In processing or transforming the GOODS, the CUSTOMER shall invariably be acting for the COMPANY and on its behalf. If the GOODS are processed with other items not belonging to the COMPANY, the COMPANY shall acquire joint title to the new thing in the same proportion as the value of the delivered item bears to the other processed items at the time of the processing. In all other cases, the new thing having resulted from the processing shall be governed by the same provision as GOODS. The reservation of title shall remain effective even if individual claims of the COMPANY or all of the COMPANY'S claims are included in a current account and a balance is struck or the balance is confirmed.

12. RETURN OF GOODS

12.1 A PRECONDITION OF THE WARRANTY RIGHTS (CLAIMS BASED ON DEFECTS) OF THE CUSTOMER IN TERMS OF THE AGREEMENT IS THAT A CUSTOMER WHO IS A MERCHANT INSPECTS THE GOODS UPON RECEIPT WITHOUT UNDUE DELAY AND GIVES WRITTEN NOTICE OF ANY VISIBLE DEFECTS WITHOUT UNDUE DELAY AFTER THE INSPECTION OR OF HIDDEN DEFECTS AFTER THEIR DISCOVERY, SPECIFYING THE DEFECT. THIS SHALL ALSO APPLY TO WRONG DELIVERIES OR ITEMS IN INSUFFICIENT QUANTITIES BEING DELIVERED. NOTIFICATION MUST BE GIVEN WITHIN A PERIOD OF 10 (TEN) DAYS. OTHER CUSTOMERS SHALL ALSO EXAMINE ITEMS AT THEIR OWN EXPENSE AND THEN NOTIFY THE COMPANY OF APPARENT DEFECTS INCLUDING INCORRECT DELIVERIES OR INSUFFICIENT QUANTITIES IN WRITING AND WITHOUT UNDUE DELAY. FOR NON-MERCHANTS NOTIFICATION MUST BE GIVEN WITHIN A PERIOD OF (14) FOURTEEN DAYS.

12.2 If the CUSTOMER notifies the COMPANY as such, the CUSTOMER shall arrange for a fact finding immediately upon receipt. The results shall be forwarded to the COMPANY directly.

12.3 SHOULD THERE BE AN ALLEGATION THAT ANY GOODS ARE UNSAFE, OR DEFECTIVE THE COMPANY SHALL NOT BE LIABLE FOR ANY HARM CAUSED WHERE SUCH ALLEGED UNSAFE GOODS CHARACTERISTIC, FAILURE, DEFECT OR HASARD DID NOT EXIST IN THE GOODS AT THE TIME AT WHICH THEY WERE SUPPLIED TO THE CUSTOMER BY THE COMPANY. THEREFORE IF NO SUCH NOTIFICATION IS RECEIVED IN TERMS OF CLAUSE 9.1 ABOVE, IT WILL BE REGARDED AS SUFFICIENT (PRIMA FACIE) PROOF THAT NO DEFECTS WERE PRESENT AT THE TIME OF DELIVERY AND THAT THE GOODS WERE DELIVERED IN ACCORDANCE WITH THE AGREEMENT.

12.4 In the event that the COMPANY receives notification in terms of clause 9.1 above and it is satisfied that the GOODS are defective or does not conform to specifications, then the COMPANY will, at the CUSTOMER'S election, replace such quantity of GOODS with an equal quantity of GOODS or refund the applicable portion of the purchase price to the CUSTOMER against return of the defective portion of the GOODS (the return to be made at the COMPANY'S risk and expense).

12.5 The CUSTOMER may not however return to the COMPANY any GOODS for any reason whatsoever unless:-

12.5.1 the parties have agreed in writing to such return and to the conditions of such return;

12.5.2 the GOODS are being returned in accordance with the provisions of clauses 9.1 and 9.4 above;

12.5.3 the GOODS were intended to satisfy a particular purpose communicated to the COMPANY prior to the PURCHASE thereof and have been found not to satisfy the purpose for which they were intended, within 10 (ten) business days of delivery and the COMPANY has been notified of this in writing within that time period.

12.5.4 the CUSTOMER was not permitted to inspect the GOODS upon delivery thereof;

12.5.5 the CUSTOMER is exercising its right to cool-off in terms of section 16 of the Consumer Protection Act 68 of 2008 as amended.

13. REPRESENTATION AND WARRANTIES

13.1 For a period of six months from the date of the CUSTOMER'S receipt of the GOODS sold hereunder, the COMPANY warrants that such GOODS shall be of the COMPANY'S standard quality and are reasonably suitable for the purposes for which they are generally intended. The COMPANY makes no other warranty of any kind, express or implied, including without limitation, any warranty of merchantability, or non-infringement. The COMPANY specifically makes no warranties as to any services or as to compliance with laws, regulations, standards and/or conventions including any related to the environment or to the packaging, labelling and/or transport of hazardous GOODS. No warranty shall apply to shipping damage, damage caused by improper installation or improper wiring, including incorrect electrical voltage, GOODS that have been modified or altered in any way, damage caused by corrosion, abrasion, or severe temperatures, or GOODS that have been subjected to improper maintenance, abuse, misuse, abnormal usage, or accident.

13.2 THE CUSTOMER WARRANTS THAT IT SHALL FULLY COMPLY WITH ALL LABEL DIRECTIONS FOR THE HANDLING, STORAGE, POSSESSION OR USE OF THE GOODS SOLD HEREUNDER AND THE CUSTOMER AGREES THAT IT SHALL INDEMNIFY AND HOLD THE COMPANY HARMLESS FROM ALL CLAIMS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) OF PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ANY NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT ON THE PART OF THE CUSTOMER OR FROM ANY FAILURE OF CUSTOMER TO COMPLY WITH THE TERMS OF THIS WARRANTY.

13.3 Specifications, illustrations and the like remain the property of the COMPANY and may only be used for the purpose specified in the Agreement and must be returned upon the request of the COMPANY.

13.4 WHILST THE COMPANY SHALL TAKE ALL REASONABLE STEPS TO ENSURE THAT THE GOODS TO BE SOLD AND DELIVERED TO THE CUSTOMER IN TERMS HEREOF ARE MANUFACTURED IN ACCORDANCE WITH THE CUSTOMER'S SPECIFICATIONS, THE COMPANY DOES NOT WARRANT THAT THE SAID GOODS WILL BE FIT FOR THE SPECIFIC PURPOSE FOR WHICH THE CUSTOMER INTENDS TO USE THE SAID GOODS, AND THE CUSTOMER ACCORDINGLY ABSOLVES THE COMPANY FROM ANY LIABILITY WHATSOEVER AS A RESULT OF THE SAID GOODS NOT BEING FIT FOR THE PURPOSE FOR WHICH THE CUSTOMER INTENDS TO USE THE SAID GOODS,



UNLESS THE CUSTOMER HAS SPECIFICALLY INFORMED THE COMPANY IN WRITING OF THE PARTICULAR PURPOSE FOR WHICH THE CUSTOMER WISHES TO ACQUIRE ANY GOODS OR THE USE TO WHICH THE CUSTOMER INTENDS TO APPLY THOSE GOODS AND THE COMPANY AGREES TO SUPPLY SUCH GOODS.

13.5 NO LIABILITY FOR DAMAGES RESULTING FROM; UNSUITABLE OR IMPROPER USE, IMPROPER ASSEMBLY AND IMPROPER COMMISSIONING OR HANDLING BY THE CUSTOMER OR BY THIRD PARTIES, ANY OTHER DISREGARD OF INSTALLATION AND OPERATING INSTRUCTIONS OR OF GENERALLY ACCEPTED TECHNICAL RULES AND NORMAL OPERATIONAL WEAR AND TEAR, WILL ATTACH TO THE COMPANY.

14. LIMITATION OF LIABILITY

14.1 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 ATTORNEYS' FEES, WHETHER FORESEEABLE OR UNFORESEEABLE. BASED ON CLAIMS OF THE CUSTOMER OR ITS CLIENTS OR THE CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF BUSINESS, GOODWILL, PROFITS, LOSS OF MONEY OR USE OF GOODS OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, IN DELICT OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THE CONTRACT, EXCEPT IN THE CASE OF PERSONAL INJURY OR PROPERTY DAMAGE WHERE AND ONLY TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. TO THE EXTENT THE CUSTOMER INCORPORATES OR CAUSES OTHERS TO INCORPORATE THE GOODS IN ITS OWN GOODS OR THE GOODS OF ANY THIRD PARTY, THE COMPANY SHALL NOT BE LIABLE FOR THIRD PARTY CLAIMS FOR INFRINGEMENT OF LETTERS PATENT, REGISTERED DESIGN, TRADEMARK OR COPYRIGHT RESULTING FROM SUCH INCORPORATION AND BASED UPON THE USE OF THE GOODS OR THE MANUFACTURE, USE, SALE OR OFFER FOR SALE OF ANY GOODS CONTAINING SUCH GOODS, EXCEPT AS SUCH LIABILITY FOR THIRD PARTY CLAIMS FOR INFRINGEMENT IS EXPRESSLY REQUIRED BY APPLICABLE LAW AND NOT WAIVABLE BY THE CUSTOMER THE CUSTOMER ASSUMES RESPONSIBILITY FOR ALL PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM HANDLING, POSSESSION, USE, RESALE OR DISPOSAL OF THE GOODS.

14.2 ANY ACTION BY THE CUSTOMER FOR BREACH OF THE CONTRACT BY THE COMPANY OR ANY OTHER CAUSES OF ACTION OF THE CUSTOMER EXPRESSLY ALLOWED UNDER THE CONTRACT MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED, FAILING WHICH NO CLAIM SHALL BE ACKNOWLEDGED BY THE COMPANY.

15. BREACH

In the event that the CUSTOMER:

15.1 Breaches any condition contained in these conditions and failing to pay any amount due and payable on due date, and having failed to rectify such breach or outstanding payment within 10 (ten) days of having been requested to do so in writing by the COMPANY';

15.2 Suffering any civil judgment to be taken or entered against it, causing a notice of surrender of its estate to be published in terms of the Insolvency Act of 1936 (as amended);

15.3 The CUSTOMER dying or ceasing to exist;

15.4 The CUSTOMER'S estate being placed under an Order of provisional or final winding up, , business rescue, as the case may be, then, and in that event, the COMPANY shall, without retracting from other remedies which may be available to it, be entitled to cancel this AGREEMENT and cancel the sale of any GOODS to the CUSTOMER without notice to the CUSTOMER and to rely on the provisions of this clause to repossess those GOODS sold and delivered by the COMPANY to the CUSTOMER or to claim specific performance of all the CUSTOMER'S obligations whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to the COMPANY'S rights to claim damages.

16. PRESCRIPTION

THE CUSTOMER HEREBY EXPRESSLY WAIVES ITS RIGHT TO CLAIM PRESCRIPTION UNDER THE RELEVANT PROVISIONS OF THE PRESCRIPTION ACT NO. 68 OF 1969, AS AMENDED FROM TIME TO TIME.

17. CONFIDENTIALITY

The contracting parties are under obligation to maintain, for an unlimited period of time, the confidentiality of any and all information that becomes available to them and is referred to as confidential or can be recognized as a trade or business secret according to other circum-

stances, and they may neither record nor pass on or exploit such information. The contracting parties shall ensure through adequate contractual arrangements with their employees and agents that the latter, too, refrain for an unlimited period of time from the exploitation, circulation, or unauthorized recording of such trade or business secrets on their own behalf.

18. REMEDIES

The CUSTOMER'S exclusive remedy for shortage of the GOODS, damaged or defective GOODS (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 replacement of nonconforming GOODS or payment of an amount not to exceed the purchase price of the GOODS for which damages are claimed, at the COMPANY'S option. The CUSTOMER shall have no right to setoff, to withhold payment or to make a reduction in price. The CUSTOMER'S remedy of replacement or refund is available only if non-conformance was not caused by the CUSTOMER or by accident, fire or other hazard.

19. INDEMNITY

The CUSTOMER agrees to indemnify, hold harmless and defend the COMPANY and the COMPANY'S directors, officers, employee's and agents, and the directors, officers, employees and agents of any the COMPANY parent, subsidiary or related company (the "COMPANY Indemnities") from and against any and all claims, suits, losses, damages, costs, fees and expenses arising out of the death or injury to person or damage to property resulting from the sale, marketing or use of the GOODS by the CUSTOMER, except that such claims, suits, losses, damages, costs, fees or expenses arise or result from any negligent or wrongful act or omission of the COMPANY.

20. INSURANCE

The COMPANY shall obtain coverage as required by law and such other insurance coverage as the COMPANY deems necessary, in its sole discretion, to fulfil its obligations under the contract.

21. LEGAL ACTION

In the event of the COMPANY instructing attorneys in regard to any breach of the CUSTOMER, of the conditions of this AGREEMENT, then the CUSTOMER shall pay all the costs on the scale between Attorney and Client, including any costs incidental to such action instituted against the CUSTOMER.

22. CERTIFICATE OF INDEBTEDNESS

A certificate under the hand of the Managing Director of the COMPANY as to the existence and the amount of the CUSTOMER'S indebtedness to the COMPANY, as well as the amount of interest accrued thereon, and as to any other fact, matter or thing relating to the CUSTOMER'S indebtedness to the COMPANY, shall be accepted as sufficient (prima facie) proof of the contents and correctness thereof and of the amount of the CUSTOMER'S indebtedness for the purpose of provisional sentence or summary judgement or any other proceedings against the CUSTOMER in any competent Court and shall be valid and constitute a liquid document for such purposes. Furthermore, it shall not be necessary to prove the appointment of the person signing such a certificate and it shall be deemed to be sufficient particularly for the purpose of any action or any other proceeding instituted by the COMPANY against the CUSTOMER.

23. JURISDICTION

23.1 The Parties do hereby consent that the Magistrate's Court shall have jurisdiction to determine any action or proceedings which may arise under or in connection with this AGREEMENT.

23.2 This AGREEMENT, as well as the relationship between the COMPANY and the CUSTOMER is governed by the Law of the Republic of South Africa.

24. 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.



25. NOTICE AND DOMICILIA

25.1 Any notices to be given to the Parties in terms of this AGREEMENT shall be in writing and delivered by hand during ordinary business hours or posted by pre-paid registered post to the addresses mentioned hereunder, which addresses the Parties choose as their domicilium citandi et executandi for all purposes arising out of this AGREEMENT.

25.2 The COMPANY: 51 Loper Road, Spartan/Aeroporto, Kempton Park, Johannesburg, 1619, South Africa.

25.3 The CUSTOMER: The delivery address as reflected on the face of the latest delivery note issued to the CUSTOMER, or such other address within the Republic of South Africa as either party may choose by written notice to the other.

26. NO VARIATION

26.1 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 the Parties unless done in writing and signed by both Parties hereto.

26.2 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.

26.3 No waiver or abandonment by either Party of 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.

26.4 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 hereby be prejudiced or estopped from exercising any of its rights against any Party which 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 devolve upon and bind its successors-in-title.

26.5 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 there from.
SIGNED ATBY THE CUSTOMER ON

THIS THE DAY OF 2015.

THE CUSTOMER CONFIRMS THAT HE/SHE/IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS DOCUMENT AND UNDERSTANDS THAT HE/SHE/IT IS BOUND BY THESE TERMS AND CONDITIONS.

Signature:

Name:

Designation:

CUSTOMER'S Street Address:



The Royal League

