

Union Engineering

Registration Number: 2013/048596/07, VAT Number: 4440265090

5 Maroela Street, P.O. Box 2892, East End, Bloemfontein, 9320

Phone: +2751 448 1100, Fax: +2751 448 2259, E-Mail: admin@unionengineering.co.za

Standard Trading Conditions

1. Interpretation

- 1.1. In these conditions, save where the context otherwise requires, the following words and expressions shall have the following meaning: -
 - 1.1.1. A reference to the company shall be a reference to the company, its successors and assigns;
 - 1.1.2. A reference to the customer shall be a reference to the natural or juristic person to whom or on whose behalf the company sells or manufactures any goods or provides any information, advice or service, or with whom the company does any business;
 - 1.1.3. A reference to a trade term shall be a reference to the term as defined by Incoterms 2010;
- 1.2. Expressions which denote a natural person shall include a reference to bodies corporate and other juristic persona.
- 1.3. Expressions which denote the masculine shall include a reference to the feminine gender.
- 1.4. Expressions which denote the singular shall include a reference to the plural and vice versa.
- 1.5. Headings are for reference purposes only and shall not be considered in the interpretation of the conditions to which they relate.

2. Applicability of Conditions

- 2.1. These conditions shall apply to all business undertaken by the company including, without limitation, all goods sold or manufactured, and any information, advice or service rendered, whether gratuitous or not.
- 2.2. These conditions shall govern all existing contractual relationships between the parties and all future contractual relationships between the parties.

3. Orders

- 3.1. All orders are subject to: -

- 3.1.1. The availability of necessary stock, equipment, production and design capacity, manpower and materials; and
 - 3.1.2. Acceptance by the company, which need not necessarily be in writing; and
 - 3.1.3. The approval by the customer, if applicable, of the proofs referred to in 3.6.2.
- 3.2. Orders must be in writing although the company reserves the right, in its sole discretion, to accept oral orders.
- 3.3. Once accepted by the company, orders may not be cancelled, varied or withdrawn unless the company agreed to in writing thereto.
- 3.4. Where the company does so agree in writing to the cancellation or withdrawal of an order in respect of standard products, the customer shall be liable to pay the company a cancellation fee calculated at 20% of the contract price, in addition to reimbursing the company for all its expenses and costs. In the event that this pertain to non-standard items, the cancellation fee shall be calculated at between 50% and 75%, at the company's discretion.
- 3.5. Unless otherwise agreed to by the company in writing, forward orders will be priced at the ruling price as at date of dispatch of the goods.
- 3.6. Where the customer places an order for custom-manufactured goods:
 - 3.6.1. Its is the sole responsibility of the customer to provide the company with all of the necessary details, specifications, and dimensions in relation to such goods.
 - 3.6.2. The customer must approve any proofs, samples, specimens, sketches, renderings, technical drawings and the like materials produced by the company in relation to such goods.
 - 3.6.3. Such approval shall be binding upon the customer and the company shall not be held responsible for any errors contained in such materials which may manifest itself in the goods.
 - 3.6.4. The customer shall pay for all costs resulting from any amendment requested by the customer to such materials or the goods themselves, save in the event that such amendments are necessitated to correct any manifest error made by the company in producing the same.
 - 3.6.5. The customer shall pay for the cost of all materials produced by the company for it, even in the event that the customer declines to proceed with the manufacture thereof or unreasonably withholds its approval for such materials.
 - 3.6.6. Ownership in and of materials referred to herein shall vest in the company.

3.7. Unless specifically quoted upon by the company in writing, the contract price does not include the cost of installation or commissioning or call outs, all of which services will be charged for separately.

4. Delivery

- 4.1. Any delivery dates or performance times given or agreed to by the company, if any, are merely estimates and the company shall not be held responsible, and shall incur no liability to the customer, in the event of the company failing to deliver or perform on the agreed date or within the agreed period.
- 4.2. Where goods are delivered by a third party, such third party shall be deemed to be the agent of the customer. It is the customer's responsibility to obtain proof of delivery from such party.
- 4.3. The company shall be entitled, in its sole discretion, to split the delivery of goods ordered in the quantities and on the dates that it decides. However, the company shall notify the customer in writing should it be necessary or reasonable that this occur.
- 4.4. Any delivery note signed by the customer or by a third party engaged to transport the goods shall be prima facie proof of delivery to the customer.
- 4.5. The customer may not refuse delivery of the goods when tendered by the company and shall, in any event, accept delivery or arrange for collection thereof within 7 (seven) days of notification thereof by the company.
- 4.6. Where the company has tendered the goods and the customer has not accepted delivery thereof or arranged for the collection thereof, the company may, without prejudice to its rights, store the good on behalf of the customer, in terms of clause 4.7.
- 4.7. Where the company stores goods on its premises, the company shall be entitled to charge a reasonable amount as would fairly be allowable in the ordinary course of business if the goods were stored by a third party warehouseman, after notifying the customer thereof, in writing.
- 4.8. Should the storage of goods by the company on its premises result in any increase in the insurance premiums payable by the company in respect thereof, the customer shall pay for such increase.

5. Warranty

- 5.1. The company warrants that the goods or services supplied by it will ordinarily conform to the specifications and requirements agreed to by it in writing for a period

of 12 (twelve) months from date of commissioning with the exclusion of any and all electrical components and fair wear and tear excepted.

- 5.2. It is the responsibility of the customer to establish that the goods or services ordered by it are suitable for its purposes, save that the company may provide detail drawings and designs, which may be relied upon.
- 5.3. Save to the extent set out in 5.1, the company provides no representations, warranties, guarantees, or undertakings to the customer, whether express, tacit or implied.
- 5.4. The customer shall not be entitled to cancel any order as a result of a breach by the company of the warranty referred to in 5.1 or to claim any damages from the company as a result thereof, and the company's sole obligation shall be to repair the goods, or to replace the goods, or to rectify the services within a reasonable period of time after having been notified in writing of the breach of warranty in question. In the event of replacement parts being supplied in terms of the company's defect liability obligation, such parts shall only be warranted in accordance with the remainder of the initial warranty period in terms of clause 5.1.
- 5.5. Where the company is called out (or elects) to perform an on-site inspection as a result of an alleged breach of the warranty referred to in 5.1, the customer shall be responsible for the cost of that call out in the event of it being established that the warranty was not so breached.

6. Claims

- 6.1. Any claims against the company must be notified to the company in writing within 7 (seven) days of the event giving rise to the claim, failing which it shall be deemed to have extinguished for all purposes.
- 6.2. In the case of short or improper delivery, the event giving rise to the claim shall be the date of delivery and in the case of non-delivery, the event giving rise to the claim shall be 3 (three) days after the date of the applicable invoice.

7. Invoicing

- 7.1. The company will not, under any circumstances, be precluded from raising or correcting any debit (and from obtaining payment thereof) in relation to any amount due to it.
- 7.2. The company shall be entitled to invoice split deliveries separately.

- 7.3. Should the customer content that any rate, charge or amount as reflected in any invoice or statement be incorrect, then the customer shall be obliged to notify the company in writing of its contention within 7 (seven) days of receipt of such invoice or statement, failing which the customer shall be precluded from denying the correctness of such rate, charge or amount.
- 7.4. The customer will pay for all costs or increases resulting from any act or omission of the customer including, without limitation, suspension of delivery, modification of requirements, failure or delay in giving particulars requisite to enable orders to proceed on schedule or requests that goods be delivered earlier or later than scheduled.
- 7.5. The company reserves the right, by written notice given to the customer prior to shipment, to increase the price, if there is any increase in the price or costs of goods to the company by virtue of foreign exchange fluctuations, currency regulations, changes in duties or taxes, increase in the cost of raw materials, labor or transport or any other causes beyond the control of the company.

8. Payment

- 8.1 Unless otherwise specifically agreed to by the company in writing: -
 - 8.1.1. where the customer carries on business within the Republic of South Africa, accounts are payable on presentation thereof, in cash/EFT;
 - 8.1.2. where customers carries on business outside the Republic of South Africa, accounts are payable: -
 - 8.1.2.1. on presentation thereof, in cash; or
 - 8.1.2.2. by means of an irrevocable letter of credit in favour of the company, issued in the English language under the Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce, upon terms satisfactory to the company, confirmed by the Standard Bank of South Africa, valid for a period acceptable to the company.
- 8.2. Unless otherwise specifically agreed to between the parties, the company shall not be entitled to present its account prior to the manufacture, dispatch or delivery of the goods or prior to the rendering of the services in question.
- 8.3. Should credit facilities be specifically extended to the customer by the company in writing, accounts shall, unless otherwise agreed to by the company specifically in

writing, be payable 30 (thirty) days net from date of invoice or, where statements are sent, 30 (thirty) days net from date of statement, whichever is the later.

- 8.4. All accounts are payable by the customer in full without deduction or set-off and the customer shall not be entitled to withhold or to defer payment because of any claim or counterclaim which it might allege or for any reason whatsoever.
- 8.5. Should any account not be paid on due date, all other monies owing by the customer to the company shall immediately become due and payable.
- 8.6. The company shall be entitled, without prejudice to its rights, to levy and recover from the customer, interest on all outstanding accounts at a rate of 3 % above prime lending rate of the Standard Bank of South Africa Limited from time to time compounded monthly in advance.
- 8.7. Notwithstanding any prior dealings between the parties, should the customer elect to make payment through any intermediary or service including, without limitation, the postal service, the customer does so at its risk and the responsibility of ensuring that the company actually receives the payment is that of the customer.
- 8.8. Unless specifically agreed to by the company in writing, the company provides no discounts to the customer including, without limitation, any early settlement discount. Should the company agree to a discount in writing, such discount will be forfeited should payment not be made in full on due date.
- 8.9. The company does not necessarily equate the tender of a cheque with payment in cash. No cheques will be accepted without prior arrangement with the company and the company reserves the right, in any event, to require that such cheque first clear its account before proceeding with its obligations.

9. Retention

- 9.1. Unless specifically agreed to by the company in writing, the customer shall not be entitled to withhold payment of any portion of the contract price from the company by way of a “retention amount” or equivalent.
- 9.2. Where the company has agreed to a retention amount in writing: -
 - 9.2.1. The company shall be entitled to require that the customer pay it the retention amount against the tender by the company to the customer of an appropriate guarantee in lieu thereof.
 - 9.2.2. Such retention amount shall in any event be released to the company upon date of delivery of goods or, where the company has agreed to commission

the goods, upon expiry of a period of 2 (two) months from date of delivery of the goods.

10. Credit Facilities

- 10.1. The company is under no obligation to extend credit facilities to the customer and no such facilities shall be extended unless done so specifically by the company in writing.
- 10.2. The nature and extent of such facilities shall at all times be in the company's sole discretion and the company reserves the right to amend, vary, suspend or withdraw such facilities at any time.

11. Ownership and Risk

- 11.1. Ownership in and of any goods supplied by the company shall remain vested in the company until such time as they have been paid for in full.
- 11.2. Risk in and to the goods shall pass to the customer upon delivery thereof to the customer or its agent or, where the parties have agreed upon a particular trade term, in accordance with the provisions of that trade term.

12. Credit Information

- 12.1. The customer agrees that the information provided by it to the company may be utilised by the company to assess its credit worthiness.
- 12.2. The company has the customer's consent to contact any third party including, without limitation, any credit bureau information pertaining to the credit worthiness of the customer.
- 12.3. The company has the customer's consent to furnish information concerning the customer's purchasing and payment record with the company, to any third party including, without limitation any credit bureau.

13. Inspections

- 13.1. Unless otherwise agreed to by company in writing, the company shall be under no obligation to arrange for any pre- or post-shipment inspection of the goods by any third party including, without any limitation, any inspection agency.
- 13.2. Unless otherwise agreed to by the company in writing, any such pre- or post-shipment inspection shall be for customer's account.

14. Insurance

14.1. Where the company agrees in writing to obtain insurance for the goods, the company's obligation, unless otherwise agreed to in writing, is to obtain cargo insurance:-

14.1.1. for the price of the goods or at the maximum insurance procurable circumstances, whichever is the lesser;

14.1.2. in accordance with with the minimum cover of the Institute Cargo Clauses, excluding war, strikes, riots and civil commotion risk insurances.

14.2. Unless otherwise agreed to by the company in writing, the company has no obligation to insure the goods.

14.3. For the avoidance of doubt, Union Engineering and its subsidiaries will not insure "free-issue" goods.

15. Packaging

The customer warrants that it will provide the company with all information relevant to the transportation of the goods and to the packaging thereof.

16. Liability

16.1 The company will not, under any circumstances, be liable for any indirect or consequential loss, loss of profits and/or loss of opportunity arising from a failure to perform any of its obligations, whether arising in contract or delict and whether resulting from any negligent act, omission or statement or otherwise.

16.2. In such circumstances as set out in 16.1. above where the company is nevertheless liable to the customer arising from a failure by the company to perform any of its obligations, the maximum liability of the company shall not, in any event, exceed 50 (fifty) % of the amount payable by the customer for the provision of the goods or services in question.

17. Arbitration

At the option of the company, all disputes arising out of or in connection with any contractual relationship or other business dealings between the parties shall be referred for arbitration in Bloemfontein under the Rules of the Arbitration Foundation of South Africa or under the Rules of Arbitration of the International Chamber of Commerce, as the company may elect, by one or more arbitrators appointed in accordance with said rules, whose award shall be binding upon the parties with no right of appeal.

18. Force Majeure

No failure by the company to perform any of its obligations shall constitute a breach of such obligations nor give rise to any claim or remedy by the customer in the event that such failure arose as a result of force majeure, including acts of God, war, revolution, riot, civil unrest, strikes or other labor action, sanctions, natural disasters, changes in law, regulations, ordinances or the like or as a result of any other circumstances wholly beyond its control. However, if the delay pertains to a material obligation on the party affected by such event of force majeure and such event shall exceed 6 (six) months, either party shall be entitled to terminate any agreement between them by written notice to the other.

19. Address

19.1. In the event that these conditions are annexed or attached to, or incorporated by reference in, a document in which the customer's physical address or addresses are reflected, then the customer agrees to accept delivery of any notice or service of any court process or other documentation at such address or any of such addresses.

19.2. Any notice will be deemed to have been duly delivered to the customer:-

19.2.1. within 30 (thirty) days of postage by prepaid registered mail to any postal address of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference;

19.2.2. within 1 (one) hour of being faxed to any fax number of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference;

19.2.3. upon being delivered by hand against receipt by signature of any employee of the customer to any physical address of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference.

20. Litigation

20.1. A certificate under the hand of any director or manager of the company in respect of any indebtedness of the customer to the company or in respect of any other fact, matter or thing, including without limitation, that goods were delivered or services rendered, shall be prima facie evidence of the customer's indebtedness to the company and prima facie evidence of delivery of such goods and rendering of such services.

20.2. In the event of the company taking legal action against the customer because of a breach by the customer of its obligations to the company including, without limitation, its failure to pay any account, the customer shall pay for all legal costs incurred by the company on the scale as between attorney and client including, without limitation, collection fees, tracing agents fees and fees of council as set on brief.

21. Consent to Jurisdiction

The company shall, at its election, be entitled to institute action out of any Magistrates court exercising jurisdiction over the customer's person, notwithstanding that the amount of its claim or the nature of the relief sought would otherwise have exceeded the jurisdiction of that court.

22. Non Variation

22.1 No amendment, alteration, variation, deletion, addition or termination to or of these conditions or the contract to which the conditions are annexed, attached or incorporated, whether consensual or uni-lateral, shall be of any effect unless reduced to writing and signed by both parties.

22.2. These conditions supersede, and will apply in the future to the exclusion of, any provision contained in any purchase order, enquiry, remittance, trading conditions, purchase conditions or other documents of the customer.

23. Non Waiver

No latitude, indulgence or extension of time granted by the company to the customer shall in any way prejudice the rights of the company nor be construed as a waiver of the company's rights.

24. Severability

Each of these conditions shall be considered to be a separate provision, distinct from the others. In the event of any of these conditions being found to be illegal, invalid, prohibited or unenforceable, such conditions shall be ineffective only to the extent of that specific illegality, invalidity, prohibition or unenforceability and the remaining conditions shall remain of full force and effect.

25. Applicable Law

These conditions and any contract to which these conditions are annexed or attached or incorporated by reference, shall be governed by, and interpreted in accordance with, the laws of the Republic of South Africa, notwithstanding the place of conclusion hereof or the residence or domicilium of the parties.

26. Value Added Tax

26.1 Unless the contrary is stated by the company in writing, any and all prices quoted by the company to the customer are exclusive of Value Added Tax, which tax is payable by the customer in addition to the said price.

26.2. Applicable Rate

26.2.1. The customer acknowledges that the question of whether the prices quoted by the company will be subjected to Value Added Tax at the standard rate or at a rate of zero percent will depend upon the provisions of the Value Added Tax Act (Act 89 of 1991) as amended or substituted, irrespective of the place of business or domicile of the customer.

26.2.2. Without limitation, is is recorded that orders subject to an Ex Works term will, and orders subject to a Free Alongside Ship, Free on Board, Free Carrier, and Delivered Frontier term may, in certain circumstances, attract Value Added Tax at the standard rate.

27. Incoterms

A reference to a trade term in any document to which these conditions are annexed or attached or incorporated by reference shall be deemed to constitute a reference to that term as defined by Incoterms 2010.

28. CISG

The parties hereby expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to their business dealings.

29. Duty to Inform

The customer shall be obliged to timeously inform the company in writing whenever there is a change to the customer's physical address(es), delivery address(es), postal address(es), e-mail address(es), bank account(s) and the like before all or any part of its business or its major assets are disposed of to a third party.

30. Reservation of Ownership – Intellectual Property

The company is the owner of any and all Intellectual Property, know how, trade secrets and the like, in and to any document, material, goods and services supplied to the customer and ownership thereof shall remain vested in the company during and after execution of a purchase order and subsequent supply of the aforementioned.