



Master Distributors of:



## GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS AND / OR RENDERING OF SERVICES

### 1. Definitions and Interpretation

1.1 In this agreement, unless inconsistent with the text, shall have the following meaning:

"Agreement"	means these terms and conditions together with any annexure and/or schedules thereto (if any);
"Buyer"	means the person described in the Schedule or his/its duly appointed agent and/or representative;
"Company"	means Titeforce Engineering (Pty) Ltd as supplier of the Goods and/or Services;
"Goods"	means the goods described in the schedule to this Agreement;
"Services"	means the services described in the schedule to this Agreement;
"Parties"	means the Company and the Buyer.

1.2 Words importing the singular include the plural and vice versa.

1.3 Words signifying one gender include the other gender as well as, but not limited to, artificial persons such as companies, close corporations, trusts, associations and vice versa.

1.4 Headings to the clauses are for reference purposes only and are not to be used in interpreting the meaning of the text.

1.5 Any reference to "days" shall mean days determined in terms of the Gregorian calendar and shall exclude weekends and all public holidays of South Africa.

1.6 This Agreement shall be governed and interpreted in accordance with the laws of the Republic of South Africa.

### 2. Application of Terms

2.1 The sale of the Goods and/or the rendering of the Services shall be subject to this Agreement to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) and without prejudice to any securities and/or guarantees which the Company holds.

2.2 This Agreement constitutes the entire agreement between the parties and no representation by any person, or variations or consensual cancellations of or amendments to any of the terms and conditions hereof shall be valid or binding on the Company unless reduced to writing and signed by a director or duly authorised representative of the Company

2.3 The Buyer acknowledges and agrees that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in this Agreement.

### 3. Description of Goods and/or Services

3.1 The Goods shall comprise of the range of goods supplied by the Company from time to time. The Company shall be entitled to vary the range of the Goods and/or Services its supplies from time to time.

3.2 The quantity and description of the Goods and/or Services shall be as set out in the Company's quotation or acknowledgement of the purchase order.

3.3 All illustrations, samples, drawings, descriptive matter, specifications, performance figures, technical data, price lists, catalogues, brochures and advertising furnished by the Company in respect of the Goods, and whether in writing or not, are furnished on the basis that they will not form part of the Agreement or be relied upon by the Buyer for any purpose.

#### **4. Quotations and Orders**

- 4.1. A quotation submitted to the Buyer by the Company shall be valid and open for acceptance by the Buyer for 15(fifteen) days from the date set out in the quotation. All quotations for the sale of the Goods and/or provision of the Services shall be subject to the terms and conditions of this Agreement as if specifically incorporated in such quotation.
- 4.2. All purchase orders for the Goods and/or Services shall be transmitted to the Company by fax or electronic mail. No purchase order communicated orally to the Company shall be accepted.
- 4.3. No order placed by the Buyer shall be accepted by the Company until a written acknowledgement thereof is communicated to the Buyer.
- 4.4. Every purchase order submitted by the Buyer and accepted by the Company shall constitute a separate contract between the parties, subject to the terms and conditions in this Agreement.
- 4.5. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

#### **5. Collection and Delivery**

- 5.1. Unless otherwise agreed in writing by the Company:
  - 5.1.1. collection of the Goods shall take place at the Company's place of business; and/or
  - 5.1.2. the Services shall be rendered at the place and times set out in the Company's acknowledgement of the Buyer's purchase order.
- 5.2. In the event of the Goods being delivered to the Buyer, the Company shall, unless agreed otherwise between the parties, determine the best method of delivery of the Goods including, but without limitation, courier delivery, rail, ship or aircraft delivery
- 5.3. The Buyer shall collect seven (7) days of the Company giving it notice that the Goods are ready for collection. If for any reason the Buyer fails to collect any of the Goods on the collection date, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorizations:
  - 5.3.1.1. the risk in the Goods shall immediately pass from the Company to the Buyer ; and
  - 5.3.1.2. the Company shall store the Goods until collection or delivery thereof. The Buyer shall be liable to pay, on demand, the reasonable costs, including but without limitation, storage and insurance costs of keeping the Goods.
- 5.3.2. Any dates specified by the Company for delivery of the Goods or the rendering of the Services are intended to be an estimate and time shall not be made of the essence by notice. If no dates are so specified, delivery of the Goods or performance of the Services shall be within a reasonable time
- 5.3.3. The signature of any employee, agent or representative of the Buyer which appears on the Company's official delivery note or waybill or the delivery note of any authorised carrier (hereinafter known as a "POD") will constitute conclusive evidence of delivery of the Goods purchased. The Buyer hereby warrants that the person signing the POD and accepting the Goods on its behalf is duly authorised thereto.
- 5.3.4. If more than one delivery is to be made, the provisions of this clause 5 shall apply to each delivery.
- 5.3.5. The Company shall be exempted from and shall not be liable under any circumstances for any complaints or claims for any alleged shortage in delivery or failure of the goods to comply with this Agreement, unless written notice is received by the Company within 7(seven) days after delivery of the Goods to the Buyer.
- 5.3.6. The Buyer shall at its expense provide adequate and appropriate equipment, facilities, power and manual labour for the loading and receiving of the Goods.

#### **6. Restriction and movement of the Goods**

- 6.1. Until full payment of the Goods is made by the Buyer, the Goods may not be used or transported beyond the borders of the Republic of South Africa without the prior written consent of the Company.

## **7. Risk/Title**

- 7.1 The Goods are at the sole risk of the Buyer from the time of delivery or collection thereof.
- 7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received payment thereof in full (in cash and cleared funds)
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 7.3.1 hold the Goods on a fiduciary basis as the Company's agent;
  - 7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party and in such a way that they remain readily identifiable as the Company's property;
  - 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 7.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks of loss, damage or destruction to the reasonable satisfaction of the Company. On request of the Company, the Buyer shall produce the policy of insurance to the Company.
- 7.4 The Buyer grants the Company, its agents and employees an irrevocable right at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7.5 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 7.6 On termination of the Agreement, howsoever caused, the Company's (but not the Buyer's) rights contained in this clause 7 shall remain in effect.

## **7. Price**

- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery or collection and the price for the Services shall be as stated in the Company's quotation or acknowledgement of order.
- 7.2 The price shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage, delivery, storage and insurance, all of which amounts the Buyer shall pay, on demand, for the Goods.
- 7.3 The list price for the Goods is the agreed price therefore and not subject to any discounts unless agreed otherwise between the parties in writing.
- 7.4 No discount or waiver shall be given on the official rate of the statutory value added tax ("VAT") charges applicable to the sale of the Goods
- 7.5 If any discount is agreed between the parties, such discount shall only be allowed if payment is received by the Company by the due date for payment thereof and such discount shall only apply to the actual price of the Goods themselves. The Buyer agrees that the discount shall be withdrawn and the full price of the Goods payable in the event that payment of any discounted charges are not paid on the due date.

## **8. Payment**

- 8.1 Payment for the Goods or the Services is due in the currency specified on the Company's invoice.
- 7.2 Unless otherwise agreed in writing between the parties, payment shall be due on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered or collected and/or the Services are performed
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4 The Buyer shall make all payments due under this Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 8.5 If the Buyer fails to pay the Company any sum due pursuant to this Agreement, the Buyer shall be liable to pay interest to the Company on such outstanding amounts then due and payable to the Company from the due date for payment at the rate of four 4% (four percent) above the prime lending rate of the Company's commercial bankers from time to time accruing on a daily basis, in arrears, until payment is made.

8.6 Against the acknowledgement of a purchase order from the Buyer but prior to its execution and delivery of the Goods, the Buyer shall, if required by the Company, pay an initial deposit amount for the Goods. The deposit amount due and payable shall be determined at the sole discretion of the Company

## 9 Suspension of the Company's Obligations

9.1 If any amount owed by the Buyer is not paid on the due date, then without prejudice to or any other rights it may have, the Company may immediately suspend the carrying out of any of its then uncompleted obligations until the payment is made.

## 10. Quality

10.1 The Company warrants that (subject to the other provisions of these conditions) on collection or delivery, and for a period of 12 (twelve) months from the date of collection or delivery, the Goods shall be of satisfactory quality and, where applicable, comply with any specification set out in the Company's quotation or acknowledgement of order and that any Services will be performed with reasonable care and skill.

10.2 No warranty is given as to fitness for purpose and the Buyer shall satisfy itself as to the suitability of the Goods for its own particular purpose.

10.3 Ancillary components which form part of the Goods but which by their nature are more prone to wear and tear are not covered by the warranty contained in clause 10.1. Components subject to wear and tear include, but are not limited to:

- Mechanical Seals;
- Oil & Gas Seals;
- Air Seals

10.4 The Company shall not be liable for a breach of the warranty in condition 10.1 if:

10.4.1 the Buyer makes any further use of such Goods after giving such notice; or

10.4.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

10.4.3 the Buyer alters or repairs such Goods without the written consent of the Company.

10.5 If any of the Goods do not conform with the warranty in clause 10.1 the Company shall, at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

10.6 Any replacement of Goods or parts of the Goods, as the case may be, shall be guaranteed on the terms in this clause 10 for the expired portion of the 12 month period set out in clause 10.1.

## 11. Limitation of Liability

11.1 Subject to clause 10,

11.2 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

11.3 Subject to condition 11.2

10.3.1 the Company's total liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the replacement of the Goods; and

10.3.2 the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement.

## 12. Buyer's Obligations for Services

12.1 Where the Agreement includes the provision of Services, the Buyer shall:

12.1.1 co-operate with the Company in all matters relating to the Services;

12.1.2 provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Buyer's premises, data and other facilities as required by the Company;

- 12.1.3 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises;
- 12.1.4 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Buyer's premises.
- 12.2 If the Company's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.
- 12.3 The Buyer shall be liable to pay to the Company on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement, subject to the Company confirming such costs, charges and losses to the Buyer in writing.

### **13. Intellectual Property**

- 13.1 As between the Buyer and the Company all intellectual property rights in the Goods shall be owned by the Company.
- 13.2 Where Goods are manufactured and supplied by the Company in accordance with the Buyer's own designs and/or specifications, the Company shall not be liable for any loss or damage arising out of any claim made or threatened against the Company for alleged infringement of any such rights and the Buyer shall fully indemnify the Company against all losses, costs, claims and demands which so arise.

### **14. Assignment**

- 14.1 The Company may assign this Agreement or any part of it to any person, firm or company.
- 14.2 The Buyer shall not be entitled to assign this Agreement or any part of it without the prior written consent of the Company.

### **15. Force Majeure**

- 15.1 The Company reserves the right to defer the date of delivery of the Goods or rendering of the Services or to cancel this Agreement or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question persists for a continuous period in excess of ninety (90) days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Agreement.

### **16. General**

- 16.1 Each right or remedy of the Company under this Agreement is without prejudice to any other right or remedy of the Company it has in law.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 This Agreement constitutes the entire contract between the parties. This Agreement shall not be amended or amplified in any way unless reduced to writing and signed by the parties

## 17. Breach and Jurisdiction

- 17.1 Should either Buyer commit a breach of any of the provisions of this Agreement and fail to remedy such breach within 14(fourteen) days after receiving written notice from the Company to do so, then the Company shall be entitled, without prejudice to its other rights in law, cancel this Agreement or to claim specific performance, and in either event and without prejudice to the Company's rights, claim damages.
- 17.2 The Company shall be entitled, but not obliged, to institute any proceedings against the Buyer, arising out of any breach of this Agreement, in any Magistrate's Court having jurisdiction over the Buyer notwithstanding that the claim or the value of the matter in dispute may exceed the jurisdiction of the Magistrate's Court.
- 17.3 The Buyer agrees to be liable for all legal costs on the attorney-and-client scale and collection charges and tracing costs which may arise.
- 17.3 A certificate of balance signed by any Director or office bearer of the Company, whose authority need not be proved, showing the amount due and owing by the Buyer at any given time shall be conclusive proof of the facts therein stated for the purpose of all legal proceedings against the Buyer for recovery of the said amount.

## 18 Communications

- 18.1 All communications between the parties in respect of this agreement shall be in writing and delivered by hand or sent by pre-paid post
- 18.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- 18.1.2 (in the case of the communications to the Buyer) to the registered office of the Buyer or its principal place of business (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Agreement or such other address as shall be notified to the Company by the Buyer.
- 18.2 Communications shall be deemed to have been received:
- 18.2.1 if sent by pre-paid post, 4 (four) days (excluding Saturdays, Sundays and public holidays) after posting (exclusive of the day of posting); or
- 18.2.2 if delivered by hand, on the day of delivery; or
- 18.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.

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***Titeforce Engineering (Pty) Ltd***

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