

TERMS AND CONDITIONS OF SALE

1. Any order resulting herefrom shall be subject to the conditions herein unless varied by the Supplier in writing, and these conditions will take precedence over any terms, conditions or stipulations contained in any of the Buyer's documentation which may be in conflict herewith. Should the Buyer in any way purport to attach any conditions which vary, amend or are in conflict with the conditions set forth herein, then, notwithstanding anything to the contrary stipulated by the Buyer, the conditions set forth herein shall prevail and be of full force and effect unless specifically varied by the Supplier in writing with specific reference to the Buyer's contrary documentation.
2. Should the Buyer have previously made application to the Supplier for credit facilities, which said application would have embodied terms and conditions and should the Buyer have furnished any security to the Supplier for the due obligations of the Buyer to the Supplier on any previous occasion, the Buyer records and acknowledges that the signature by it on this document shall not be regarded as a novation of any such previous agreement or any prior security given by it to the Supplier. The Buyer furthermore records and acknowledges that, in so far as any provision contained herein may be inconsistent with any provisions contained in any document previously executed by it, the provisions of this document shall prevail.
3. Prices and discounts are those ruling at the date of dispatch of the goods and the Supplier reserves the right to adjust or change any prices and/or discounts at any time on reasonable notice to the Buyer.
4. The Buyer acknowledges that payment is due within (30) thirty days from date of statement, which date will be the last day of each succeeding month during which a particular delivery was made. Should the Buyer be entitled to any settlement, this is to be agreed in writing by the Supplier. To qualify for any settlement discount the payment needs to be reflected in the bank account of the Supplier on or before the last day of the month within the agreed terms.
 - 4.1 In the event that the account becomes overdue, the Supplier shall be entitled to charge interest (compounded monthly in arrears) on the overdue balances at the maximum rate permitted in law.
5. The Supplier has the discretion at all times whether or not to sell to the Buyer. The Supplier may withdraw any limit or withdraw the account facility or may vary the extent, nature and duration of such facilities at any time without prior notice and without giving reason therefore.
 - 5.1 The Supplier has the right to adjust the Buyer's limit without written consent to cater for increased or reduced buying patterns.
6. The Supplier's discretion to sell in terms hereof may be guided by inter alia the following:
 - 6.1 The availability of stock.
 - 6.2 Timeous receipt by the Supplier of any drawings, designs and specifications that may be required by the Supplier from the Buyer provided that such drawings, designs and specifications shall be deemed to have been given to the Supplier for the purpose of description only and shall not form part of the contract.
7. Time shall not be of the essence of the contract and delivery dates shall be treated as approximate only. Under no circumstances shall the Buyer be entitled to withdraw from or terminate the contract on account of any delay in delivery or have any claim of any nature whatsoever against the Supplier arising from late delivery
8. Ownership in the goods sold and delivered to the Buyer on account shall pass to the Buyer only when all amounts due by the Buyer to the Supplier has been paid, notwithstanding delivery of the goods to the Buyer. Risk in and to the goods shall however pass to the Buyer on delivery.
9. A signed Delivery Note shall constitute *prima facie* (at face value) proof that the goods have been delivered to and received by the Buyer in good condition, whether signed by the Buyer, an employee, an agent or a representative of the Buyer.
10. Set off shall operate automatically as a matter of law at the moment reciprocal debts between the Supplier and the Buyer come into existence and independently of the will of the parties and it shall not be necessary for either the Supplier or the Buyer to specifically raise set off. Upon the operation of an automatic set off aforementioned, the debt shall be mutually extinguished to the extent of the lesser debt with retrospective effect.
11. The Buyer agrees and acknowledges that in the event of -
 - 11.1 the Buyer breaching any condition contained in these conditions;
 - 11.2 the Buyer failing to pay any amount due and payable on due date;
 - 11.3 the Buyer suffering any civil judgment to be taken or entered against it;
 - 11.4 the Buyer causing a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936, as amended;



- 11.5 the Buyer passing away;
- 11.6 the Buyer's estate being placed under any order of provisional or final sequestration, provisional or final winding up, or provisional or final judicial management or business rescue, as the case may be; then the Supplier shall, without detracting from any other remedies which may be available to it, be entitled to cancel the sale of the goods to the Buyer on reasonable notice, to repossess those goods sold and delivered by the Supplier to the Buyer, or to claim specific performance of all of the Buyer'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.
- 12 Should the Buyer have any complaint of whatsoever nature concerning any of the goods which are not manufactured by the Supplier, it shall be entitled to require the Supplier to cede to it any rights, which the Supplier may have against the original supplier of those goods but shall have any other claim against the Supplier in respect of the matter complained of. The Buyer shall not be entitled to withhold payment from the Supplier in respect of such goods for any reason whatsoever.
13. Should the Supplier agree to accept the return of any goods, the Buyer shall be liable to pay the Supplier a handling charge of not less than 10% on the invoiced price of the goods so returned.(subject to damages suffered, the purchase price will be repaid, where applicable by set off against other amounts due by the Buyer).
14. The Supplier will not be liable for any delay in delivery of the goods irrespective of the reason for such delay or failure or any interruption, temporarily or indefinitely of any such delivery, but not restricted or limited in any way whatsoever to any strike, flood, riot, boycott, cessation of supply, fire, explosion, act of God or other circumstances beyond the reasonable control of the Supplier.
15. It is expressly agreed that the Supplier will not be liable in contract or delict or otherwise of whatsoever nature (including both direct and consequential loss) for any loss or injury arising from or caused by the failure of the Supplier to perform any of its obligations herein, including any loss or injury attributable to any negligent act or omission of the Supplier or its employees or agent and all such liability is expressly excluded. The Supplier shall under no circumstances whatsoever be liable for any loss of profits and/or revenue, whether it is a direct or indirect loss.
16. The Buyer indemnifies and holds the Supplier harmless against any claim of whatsoever nature which may be brought against the Supplier by any person as a result of death, injury, damage to or loss of property at any time arising out of or in connection with the provision of or failure to provide the goods, including but not limited to a negligent act or omission by the Supplier or its employees or agents as a result of the rendering of a service by the Supplier for any reason whatsoever. It is agreed that no insurer will have any rights of subrogation against the Supplier and the Buyer agrees to notify its insurers of all the provisions of this clause.
17. Subject to clauses 14 to 16, the Supplier's total liability to the Buyer in the event that the Supplier is held to be liable to the Buyer for damages which are not excluded in terms hereof, by a court with competent jurisdiction shall not exceed 10% of the total of the sums paid or payable by the Buyer to the Supplier under this Agreement for the 12 month period preceding the date upon which such claim arose.
18. It is a condition of each sale that the goods are sold voetstoots and without any warranties or representations whatsoever. In addition the Buyer shall be precluded from raising any complaints or disputing liability to the Supplier in any way unless it shall have notified the Supplier of its complaints or grounds of dispute in writing within 7 days of receipt of the goods in question.
19. Notwithstanding the timeous raising of a complaint or dispute of liability by the Buyer, the Buyer shall, under no circumstances, be entitled to withhold payment in respect of the goods from the Supplier pending the resolution of such dispute or complaint. Subject to the foregoing, the Supplier shall, in its discretion, be entitled to either remedy any failure by adjusting, repairing, replacing the goods in question, or refunding the whole or part (as the case may be) of the contract price paid to it by the Buyer in respect of such goods.
20. When the Supplier is required to manufacture or supply goods to the Buyers' specification and/or drawings, or carries out work according to the Buyer'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.
21. Save as otherwise specifically provided for herein, the Supplier shall not be liable to the Buyer 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 Buyer may suffer as a result of any breach by the Supplier of any of its obligations under these conditions or out of any other cause whatsoever. The Buyer 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.



Tel: +27 (0)31 705 1373



Unit 1 Manchester Park, 1 Manchester Road, Pinetown 3610, South Africa



P O Box 738 · New Germany 3620 · South Africa



info@idsprotect.co.za



www.idsprotect.co.za

22. In the event of the Supplier or its agents instructing attorneys to collect from the Buyer an amount owing to the Supplier, the Buyer agrees to pay all costs on the scale as between attorney and own client, including collection commission and tracing charges.
23. In the event of the Supplier or its agent instructing a Debt Collector to collect from the Buyer an amount owing to the Supplier, the Buyer agrees to pay collection commission in accordance with the Debt Collectors Act (Act. 114 of 1998).
24. The Buyer 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 may exceed the normal jurisdiction of the Magistrate's Court.
25. The Buyer nominates as its address for service for all notices or processes arising herefrom as the address reflected on the face hereof under the heading "Registered office/Physical address", and the surety nominates as his address for service for all notices or processes arising herefrom the address reflected on the face hereof alongside his name in connection with any claim for any sum due to the Supplier or any ceded claim.
26. No relaxation or indulgence granted to the Buyer 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.
27. The Buyer and Surety agree that in the event of the account becoming overdue and remaining unpaid for 30 days past original due date, that the Supplier and/or its agents may adverse list the Buyer and/or Surety with any credit bureaux and that this clause serves as Notice of this due action.
28. The Buyer understands that the information given in relation to this agreement will assist the Supplier in determining whether or not to sell to the Buyer and will be used by the Supplier and / or it's agent for the purposes of assessing its creditworthiness. The Buyer confirms that the information given by it is accurate and complete. The Buyer further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the above information.
- 28.1 The Buyer hereby authorises the Supplier and / or its agents at all times to contact and request information from any persons, credit bureaux or businesses, including those mentioned under trade references, and to obtain any information relevant to the Buyer's credit assessment. (to determine the Buyers ability to pay for the goods)
- 28.2 If the Buyer fails to meet its obligations under these terms and conditions of sale, it authorises the Supplier and / or its agents to record its non-performance with any credit bureaux, which information will be available to third parties. The Buyer further authorises the Supplier and / or it's agents researching its records at any credit bureau, to use new information and data obtained from any credit bureaux in respect of details of how the Buyer has performed in terms of these terms and conditions of sale.
- 28.3 The Buyer hereby authorizes the Supplier or its agents at all times to furnish information concerning the Buyer's dealings with the Supplier, including without being limited to, the Buyer's credit worthiness and defaulting payments to the Supplier.
29. In these conditions, words importing one gender shall include the other gender, and words importing the singular, shall include the plural (and vice versa)

CESSION OF CLAIMS

30. The Buyer and Surety hereby jointly and severally, irrevocably and *in rem suam* (concerning (in) one's own affairs) cedes 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 howsoever arising which the Buyer 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 Buyer and/or Surety from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in *securitatum debiti* (as security for the debt) and is not an out-and-out cession.
31. Should it transpire that the Buyer 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 Buyer and/or Surety's reversionary rights.
32. This Cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Buyer and/or Surety's indebtedness to the Supplier.
33. For the purpose of giving effect to the foregoing Cession both the Buyer and Surety hereby nominate, constitute and appoint the Supplier to be its Attorney and Agent, *in rem suam* (concerning (in) one's own affairs), with full authority for the Buyer and/or Surety and in the Buyer 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 Buyer and/or Surety's behalf and in the Buyer and/or Surety's name in connection with the recovery of the said sums and to give acquittances and receipts for the Buyer and/or Surety.



Tel: +27 (0)31 705 1373



Unit 1 Manchester Park, 1 Manchester Road, Pinetown 3610, South Africa



P O Box 738 · New Germany 3620 · South Africa



info@idsprotect.co.za



www.idsprotect.co.za

34. The Buyer 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 Buyer and/or Surety for the purpose of recovery of payment.
35. The Buyer and Surety shall be obliged to furnish the Supplier with a schedule of all debts due to the Buyer 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 Buyer 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.

DEED OF SURETYSHIP

36. The signatory hereto binds himself as surety and co-principal debtor in solidum with the Buyer in favour of the Supplier for the due payment of all amounts which may at any time be payable by the Buyer to the Supplier from any cause of action whatsoever and whether acquired by the Supplier by way of cession or otherwise. The terms and conditions of this Sale Agreement shall apply *mutatis mutandis* (*in precisely the same manner*), to the Suretyship. The Surety/ies further waives the benefits of excussion and division (by renouncing these benefits, the Supplier becomes entitled to sue any one Surety for the full amount owing without first proceeding against or suing the Buyer or any other Surety) and of the legal exceptions non numeratae pecuniae (by renouncing this benefit the Surety is precluded from raising the defence that no money or equivalent thereof has passed between the Buyer and the Supplier) and non-causa debiti (by renouncing this benefit a Surety is precluded from raising the defence that there was no cause of action or reason for the Buyer's indebtedness to the Supplier) and acknowledges himself to be fully acquainted with the meanings of these terms.
37. This suretyship is a continuing suretyship and shall remain of full force and effect notwithstanding any fluctuation in, or temporary extinction of the Buyer's indebtedness to the Supplier. It may not be withdrawn, revoked or cancelled by the Buyer without the Supplier's prior written consent. Any consensual cancellation or withdrawal of this suretyship by the Buyer and the Supplier shall only be valid and effective if reduced to writing and signed by both parties thereto.
38. Any admission of liability by the Buyer shall be binding upon the Surety.
39. A certificate under the hand of any director or manager of the Supplier (whose appointment need not be proved) as to the existence and the amount of the Buyer's indebtedness and the Surety's indebtedness 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 as to any other fact, matter or thing relating to the Buyer's indebtedness to the Supplier and the Surety's indebtedness to the Supplier, shall be sufficient and satisfactory proof of the contents and correctness thereof for the purpose of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the Buyer and/or the Surety in any competent court and shall be valid as a liquid document for such purpose.
40. I/ We hereby guarantee in favour of the Supplier, the payment of all and / or any debts which are the subject matter of this deed of suretyship.
41. I/ We furnish the guarantee to the Supplier as a principal obligation and assume liability for such principal obligation (as distinct from the corollary obligation referred to elsewhere in this deed of Suretyship).
42. I/We guarantee payment to the Supplier of any amount which may still be owing to the Supplier subsequent to the Supplier having received any amount from the Buyer by way of reduction of the Supplier's claim against the Buyer, whether having received the amount by way of compromise, settlement or pursuant to any business rescue plan as provided for in the Companies Act No.71 of 2008, irrespective of whether the plan provides for the release of the Buyer, or under any circumstance of whatsoever nature.

CESSION BY SUPPLIER

43. Should the Supplier cede its claim against the Buyer and surety to any third party ("the Cessionary"), then the above Cession of Claims and Deed of Suretyship shall be deemed to have been given by the Buyer and Surety to such Cessionary as continuing covering security for the due payment of every sum of money which may at the time of such Cession or at any time thereafter be or become owing by the Supplier and Surety to the Cessionary (whether acquired the Cessionary by way of Cession or otherwise), and such Cessionary shall be entitled to exercise all rights in terms of the Cession of Claims and Deed of Suretyship as if such Cessionary were the Supplier hereunder.
44. The Buyer agrees that if one clause is found to be invalid, this invalid clause does not affect the validity of the remainder of the Agreement.



Tel: +27 (0)31 705 1373



Unit 1 Manchester Park, 1 Manchester Road, Pinetown 3610, South Africa



P O Box 738 · New Germany 3620 · South Africa



info@idsprotect.co.za



www.idsprotect.co.za

PERMISSION TO USE YOUR PERSONAL INFORMATION

45. Your organisation's privacy is very important to the Supplier and we will use reasonable efforts in order to ensure that any information, including personal information, provided by the Buyer, or which is collected from the Buyer, is stored in a secure manner.
46. By providing information to us you also agree that we may process it as set out in our Privacy Statement
47. The Buyer agrees to give (where applicable) honest, accurate and current information about the Buyer to the Supplier and to maintain and update such information when necessary.
48. The Buyer's personal information collected by the Supplier may be used for the following reasons:
 - 48.1 The performance of services as described in this Agreement.
 - 48.2 Processing by third parties within the Suppliers Group of entities
 - 48.3 Direct marketing - please see our privacy statement on our website ([\(Privacy Center | IDS \(idsprotect.co.za\)\)](#)) for further information on how to opt-out from direct marketing activities.
 - 48.4 Fraud prevention.
 - 48.5 SARB and SARS reporting.
49. Processing shall include the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, use, dissemination by means of transmission, distribution or making available in any other form; or merging, linking, as well as blocking, degradation, erasure or destruction of information. This consent is effective immediately and will endure until the relationship between the Buyer and the Supplier has been terminated.
50. The Buyer acknowledges that any information supplied to the Supplier in terms of these Terms and Conditions of Sale is provided voluntarily.
51. By submitting any information to the Supplier in any form the Buyer further acknowledges that such conduct constitutes an unconditional, specific and voluntary consent to the processing of such information by the Supplier under any applicable law in the manner contemplated above, which consent shall, in the absence of any written objection received from the Buyer, be indefinite and/or for the period otherwise required in terms of any applicable law.
52. Unless the Buyer has consented, the Supplier will not sell, exchange, transfer, rent or otherwise make available any personal information about the Buyer (such as name, credit card, banking details, physical address, email address, telephone numbers and any other information provided to the Supplier) to other parties.
53. The Buyer indemnifies the Supplier from any unintentional disclosures of such information to unauthorized persons.
54. In the event that the Supplier becomes aware of any unauthorised use of the Buyer's personal information, the Supplier will notify the Buyer thereof.
55. Should the Buyer believe that the Supplier has utilised the Buyer's personal information contrary to applicable law, the Buyer shall first resolve any concerns with the Supplier. If the Buyer is not satisfied with such process, the Buyer has the right to lodge a complaint with the Regulator, once established.

PROTECTING YOUR SPECIAL PERSONAL INFORMATION

56. By agreeing to the terms of this Agreement the Buyer expressly consents to the processing of special personal information as defined in the Protection of Personal Information Act, 4 of 2013, by the Supplier.



Tel: +27 (0)31 705 1373



Unit 1 Manchester Park, 1 Manchester Road, Pinetown 3610, South Africa



P O Box 738 · New Germany 3620 · South Africa



info@idsprotect.co.za



www.idsprotect.co.za

YOUR RIGHTS IN TERMS OF THIS CONSENT

57. It shall remain the Buyer's obligation to update their personal information and special personal information as defined in the Protection of Personal Information Act, 4 of 2013.

TRANS-BORDER FLOW OF INFORMATION

58. The Buyer hereby expressly consents to the processing of its personal information by way of the trans-border flow of information. This will occur where personal information has to be sent to service providers outside of the Republic of South Africa for storage or further processing on the Buyer's behalf



Tel: +27 (0)31 705 1373



Unit 1 Manchester Park, 1 Manchester Road, Pinetown 3610, South Africa



P O Box 738 · New Germany 3620 · South Africa



info@idsprotect.co.za



www.idsprotect.co.za