

STANDARD CONDITIONS OF SALE : ENERGY & COMBUSTION SERVICES (PTY) LIMITED

Registration number: 1996/010292/07

1. DEFINITIONS

- 1.1 "The company" means Energy & Combustion Services (Pty) Limited.
- 1.2 "The conditions" means these Standard Conditions of Contract.
- 1.3 "Customer" means any person or persons at whose request or on whose behalf or in respect of whom the company undertakes any business.
- 1.4 "Remuneration" means salaries, wages, allowances, bonuses and other benefits paid by the company to its employees.

2. APPLICABILITY OF CONDITIONS

- 2.1 All and any business undertaken, including without limitation, business in connection with the manufacture and/ or the supply of goods and/ or the giving of any advice or information, whether gratuitously or not, by the Company is and shall be subject to terms and conditions hereafter set out and each condition shall be deemed to be incorporated in and to be a condition of any agreement between the corporation and its customers.

3. QUOTATIONS AND ORDERS

- 3.1 No contract shall arise between the company and a customer in respect of an order placed by a customer unless such order is in writing and is thereafter accepted in writing by the company.
- 3.2 Acceptance of the order by the company shall be evidenced by the signature of the duly authorised signatory of the company.

4. PRICES

- 4.1 Prices are based on the costs to the company, at the date on which the contract between the customer and the company is concluded, of carrying out its obligations under such contract and such costs include:

- 4.1.1 government imposts, levies and other charges;
- 4.1.2 the cost of components and/ or materials
- 4.2 If, after the date of conclusion of the contract between the company and a customer there is:
 - 4.2.1 an increase in the applicable government imposts, levies or charges; or
 - 4.2.2 an increase in the cost of labour required for the contract by virtue of:
 - 4.2.2.1 a law or regulation coming into operation which obliges the company to increase the remuneration which it pays to its employees; or
 - 4.2.2.2 a negotiated increase in remuneration which is over and above the normal incremental increase;

- 4.2.3 an increase in the cost of components and/ or material required by the company to execute the contract; which result in an increased cost to the company of supplying the goods and/ or rendering services in question, then the company shall be entitled to adjust its price by the amount of such an increase.

- 4.3 The customer will be liable to the company for all additional costs incurred by the company as a result of work being suspended on the customer's instructions, or due to the customer's lack of instructions.
- 4.4 Should the customer vary the instructions according to which work is to be carried out by the company, after the company has commenced such work, the company shall have the election:

- 4.4.1 to cancel the contract and claim all the costs incurred by the company up to the date of cancellation plus all damages suffered by the company arising out of the premature termination of the agreement; or
- 4.4.2 to complete the work according to the varied instructions, in which case the customer shall be liable to pay the company for any additional goods and/ or equipment supplied; costs incurred and for any additional work performed, the amount of which costs and the price of which additional work shall be determined by the company on the same basis as its original price was determined.

- 4.5 The customer shall pay to the company, at same time as it is obliged to pay the sum in respect of goods or equipment supplied or services rendered or to be rendered any tax payable thereon by the company in terms of the Value Added Tax Act 1991 or any replacement Act.

5. PAYMENT

- 5.1 Unless otherwise agreed in writing, all sums shall be paid to the company on presentation of an invoice by the company to the customer.
- 5.2 All payments due by the customer to the company shall be made without deduction or demand. No set off shall be applied to any amount due to company and payment shall not be withheld or deferred on account of any counter claim.
- 5.3 If the company agrees to accept post-dated cheques in payment of any amount due to it by the customer, such acceptance will not constitute a novation of the customer's original obligation. Accordingly, if payment of any post-dated cheque is not met for any reason, the company will be entitled to proceed against the customer's original obligation or the unpaid cheque or both.

- 5.4 The company does not risk in respect of any cheques sent to it by post and payment of any amount due to the company which has been forwarded to it by cheque shall be deemed to have been made only when such cheque has been deposited into the company's bank account and duly cleared.

- 5.5 Prior to commencing work or delivery of any goods the company may require a deposit to be paid by the customer or to be satisfied as to the financial standing of the customer and the arrangements made by the customer to pay the contract price. Until the deposit has been paid or it is so satisfied, the company shall not be obliged to commence work or deliver goods in terms of any contract.
- 5.6 An amount not paid on due date shall, at the discretion of the company, bear interest from due date until it is paid, at a rate not exceeding 2 percentage points above the published prime overdraft lending rate from time to time of the company's principal bankers, or, if it is lower, at the maximum rate prescribed by law in respect of the amount in question.
- 5.7 A certificate purporting to be signed by a manager of a bank which describes itself as the company's principal bankers in Durban, setting out the prime bank overdraft lending rate and the date and extent of any changes thereto shall be prima facie proof of its contents.

6. SPECIFICATION, STANDARDS, MATERIALS, COMPONENTS, TECHNIQUES AND TOLERANCES

- 6.1 Unless the customer gives a written request for the company to carry out work in accordance with a specifically defined specification and/ or standard, and/ or to use specific materials; components and/ or techniques, the company shall be entitled to carry out such work in accordance with the commercially accepted materials, components and/ or techniques. No liability will attach to the company in respect of its use of such specification, standard, materials, components and/ or techniques.
- 6.2 Where the customer requests the company in writing to carry out work in accordance with a specifically defined specification and/ or standard and/ or to use specific materials, components and/ or techniques, the company shall do so, but, no liability will attach to the company in respect of such use.
- 6.3 If any information, specifications, drawings or equipment are supplied to the company by or on behalf of a customer, to enable the company to carry out any work for, or supply any goods to the customer, then the customer indemnifies the company and agrees to hold it harmless against all claims and actions arising out of the production, delivery and use of the goods.
- 6.4 The company shall not be required to work to tolerance closer than the standard industry tolerance for such goods. Should the goods not fall within the standard tolerances, the customer shall within 30 days after the date of delivery advise the company thereof in writing. If no such notice is received by the company, the goods shall be deemed to have been received in good order.

- 6.5 All quotations given by the company to the customer shall be valid for a period of 30 days only.

7. TIME NOT OF THE ESSENCE

- 7.1 Although the company will make a reasonable effort to deliver goods and render services within the times stated in the contract, the time stipulated for the delivery of any goods or the rendering of any service or the doing of any other act, by the company, in approximate only, and shall not be material term. It is also subject to the customer providing any required access, data, specifications, drawings or information to enable the company to carry out the contract in a proper manner.
- 7.2 If the company is unable to complete the goods within the time stipulated for delivery he customer will have no claim against the company arising therefrom.
- 7.3 Works in terms of contracts will be executed by the company during normal working hours and without overtime, unless the customer requests the company to do so or the company and the customer agree in writing to the contrary. In this event the extra remuneration occasioned by overtime payments shall be added to the price.

8. DELIVERY AND RISK

- 8.1 Unless otherwise stipulated, the customer shall take delivery of goods ex works at the company's premises.
- 8.2 Where the customer takes delivery of the goods at the company's premises, the risk of loss or damage to the goods will pass to the customer when the customer takes delivery.
- 8.3 If the company agrees to deliver the goods anywhere else then the following provisions will apply:
 - 8.3.1 the customer will be liable for all the costs of delivery. Such costs shall be paid to the company by the customer on demand;
 - 8.3.2 the company may employ someone to deliver the goods for it ("the carrier") on such terms as the company thinks are reasonable, and the customer will be liable for all the carriers charges and for any claim that the carrier makes against the company, which amounts shall be paid to the company by the customer on demand;
 - 8.3.3 the risks of loss of or damage to the goods shall pass to the customer on delivery of the goods by the company to the carrier. The carrier shall be deemed to be the agent of the customer.
- 8.4 The company may effect delivery of goods at different times and the customer shall accept delivery in instalments;
- 8.5 If the company or the carrier is late in delivering the goods, or fails to deliver them on the agreed date, or if the goods are damaged during delivery, the customer may not cancel the sale of the goods or claim any compensation from the company whether on the basis that the company has breached the agreement or on the basis that it was negligent in any degree or on any other ground whatsoever.
- 8.6 If the customer does not take delivery of the goods at the agreed time or place the company shall be entitled to charge the customer an amount equivalent to the expenses incurred by the company in attempting to make the delivery. The company shall also be entitled to store the goods and the customer shall be liable for the costs of such storage.

9. INSURANCE

- 9.1 The company shall not be obliged to insure the goods except upon specific instructions given in writing by the customer. All insurance effected by the company pursuant to such instructions will be subject to such exclusions and conditions as may be imposed by the insurance company and the company shall not be required to obtain separate cover for any risks so excluded. The company shall not be obliged to effect separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason, the customer shall have recourse only against the insurers and the company shall not be liable to the customer in regard thereto, notwithstanding that the premium upon the policy may not be the same amount as that paid to the company by the customer.

10. RETURN OF GOODS

- 10.1 The decision whether any goods may be returned by a customer shall lie with the company whose decision shall be final. If the company accepts the return of any goods it shall be entitled to charge the customer a handling charge of not more than 10% of the selling price of the goods returned.

11. OWNERSHIP

- 11.1 Ownership of all goods and equipment sold and/ or delivered and/ or installed shall remain with the company until such time as the purchase price due in respect thereof has been paid in full.

12. FRUSTRATION OF THE COMPANY'S PERFORMANCE BY MATTERS BEYOND THE CORPORATION'S CONTROL

- 12.1 If any performance by the company is prevented or delayed by strikes, lock-outs, shortened working hours, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or suppliers of the company, war, political or civil disturbances, the elements or any other cause whatever beyond the company's control, then the company shall have the election either:

- 12.1.1 to cancel the contract in question; or
- 12.1.2 subject to clause 12.2, to extend the time for performance until the cause preventing or delaying performance ceases to apply;

- 12.1.3 if the company elects to extend the time for performance in terms of clause 12.1.2, the customer shall be entitled to cancel the contract, if the company does not commence or recommence performance within a period of 90 days following the original date of prevention or delay of performance, by giving written notice to that effect to the company.

13. GUARANTEES/ ELIMINATION OF LIABILITY

- 13.1 Subject to the other provisions in this clause 13, if any goods supplied, or services rendered, in respect of such goods or repair or otherwise by the company are defective, the company's liability shall-
 - 13.1.1 in the case of goods supplied be limited to the replacement or repair thereof (the choice lying with the company) and if the company fails either to replace or repair the goods the customer's claim shall be limited to direct loss in an amount not exceeding the purchase price of such goods;
 - 13.1.2 in the case of services, be limited to the remedying of the defective service and if the company fails to remedy the defect, the customer's claim shall be limited to direct loss in an amount not exceeding the company's contract price in respect of such services;

- 13.2 If the defective goods supplied by the company were not manufactured by the company, the customer's claims against the company shall under no circumstances exceed the claims which the company is entitled to make against the manufacturer in respect of such defective goods.

- 13.3 Subject to the provisions of clause 13.1, neither the company nor any of its officers, employees or agents shall be liable for any loss or damage, whether direct, indirect, consequential or otherwise, suffered by the customer or the customer's officers, employees or agents, arising from any cause in connection with any business (including without limitation, any cause in connection with goods sold or the use, release or other disposal of such goods or anything done or not done pursuant to the contract), whether such loss or damage results from beach of contract (whether total, fundamental or otherwise), delict, negligence of any degree or any other cause without limitation.
- 13.4 If a customer sells, leases or disposes any goods supplied to it by the company or in respect of which the company has undertaken any business, to a third party to use such goods, the customer shall include in the customer's agreement with the third party a provision in terms of which the company's afforded similar limitation of liability to that contemplated in clause 13.3. Accordingly the customer indemnifies the company and agrees to hold it harmless in respect of all claims made by such third parties arising out of any failure by the customer to effect such limitation of liability.

- 13.5 Notwithstanding any other provisions to the contrary, any claim which a customer has against the company in connection with or arising out of any business shall lapse and become extinguished unless within-
 - 13.5.1 90 days of such claim arising, the customer gives written notice thereof to the company and at the same time discloses to the company in writing the material facts on which the claim is based; and
 - 13.5.2 12 months of such claim arising, the customer institutes legal proceedings against the company in respect of the claim by issuing summons out of a court of competent jurisdiction and having such summons served on the company

14. WARRANTIES

- 14.1 It is the sole responsibility of the customer to determine whether the goods ordered by him and in particular the design and load specifications are suitable for the purpose for which he intends using them. The company gives no warranty, express or implied, concerning the suitability of the goods supplied for any purpose whatsoever. The company shall not be liable for any direct, indirect, consequential or other loss, including loss to third parties, arising out of any unsuitability of goods for use as intended.

15. INDEMNITY

- 15.1 The customer indemnifies the company, its members, agents and employees against any claim made against the company, its members, agents or employees, by anyone, for any loss or damage suffered in consequence of any act or omission of the company, its member, agents or employees, which act or omission was in any way related to the contact between the customer and the company.

16. PATENTS AND COPYRIGHTS

- 16.1 The company's products and designs are protected by registered patents and copyright ("the intellectual property"). The company at all times shall remain the owner of the intellectual property. The customer may not in any way infringe the intellectual property and in particular the customer may not copy any of the company's designs nor may it manufacture or cause to be manufactured any products which infringe the company' intellectual property.

17. NOTICES AND DOMICILIA

- 17.1 All notices to be given in terms of this agreement shall be in writing and shall be delivered by hand or sent by prepaid registered post to the company at Suite 8, Hillcrest Office Park, 2 Old Main Road, Hillcrest and to the customer at the physical business address set out in the customer application form printed on the reverse of these standard terms and conditions of contract which physical address the parties select as their domicilium citandi et executandi.

- 17.2 Each party shall be entitled at any time to change its domicilium to any other physical address within the Republic of South Africa: provided that such change shall take effect only upon delivery or deemed delivery of notice thereof to the other party.
- 17.3 Any notice shall, if delivered by hand during normal business hours to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery and if sent by prepaid registered post be deemed to have been received 6 days after posting.

- 17.4 Notwithstanding the above any notice actually received by the party to whom it is addressed shall be adequate notice to it.

18. CANCELLATION

- 18.1 In addition to any other rights it may have, the company may cancel any or all its contracts with the customer if the customer:
 - 18.1.1 commit a breach of any of the contracts and remains in breach for a period of 10 days after receipt of a notice from the company calling upon the customer to rectify the breach;
 - 18.1.2 is an individual or a partnership and such individual or partnership is finally or partly sequestrated or surrenders its estate;
 - 18.1.3 is a partnership and the partnership is terminated;
 - 18.1.4 is a company or a close corporation and is placed under provisional or final order of liquidation or judicial management;
 - 18.1.5 commits an act of insolvency as defined in the Insolvency Act; or
 - 18.1.6 fails to satisfy or takes steps to rescind or appeal against a judgement granted against him within 14 days of the date of judgement; provided that any such cancellation or cancellations shall be without prejudice to the accrued claims of the company or to any claim that it may have for damages arising out of such breach of contract or contracts cancelled.

- 18.2 As soon as the contracts between a customer and the company are cancelled pursuant to clause 18.1:
 - 18.2.1 all amounts owing in terms of those contracts will immediately become due and payable; and
 - 18.2.2 the company may immediately take possession of any goods sold in terms of those contracts in respect of which ownership has not yet passed.

19. GENERAL

- 19.1 No agent or employee of the company, other than a managing member of the company, has the company's authority to alter or vary these conditions.
- 19.2 The customer may not rely on a representation which he claims persuaded him to enter an agreement with the company unless the representation is set down in writing and signed by a managing member of the company.

- 19.3 No agreement varying, adding to, deleting from or cancelling any of the conditions, and no waiver of any of the conditions, shall be effective unless reduced to writing and signed by a managing member of the company.
- 19.4 No indulgence granted by the company shall constitute a waiver of any of the company's rights; accordingly, the company shall not be precluded as a consequence of having granted such indulgence, from exercising any rights against the customer which may have arisen in the past or which may arise in the future.

- 19.5 All agreements between the company and a customer, wherever entered into, shall be governed and construed according to the laws of the Republic of South Africa.
- 19.6 If the company institutes or defends any legal arbitration proceedings to enforce or protect its rights, the company shall be entitled to recover from the customer all legal costs (on an attorney and own client basis) incurred by the company in that regard.

- 19.7 In the event of the company deciding to institute legal proceedings for the enforcement of any of its rights against a customer, the company shall be entitled to do so in the Magistrates Court which would, but for the amount involved, have jurisdiction.
- 19.8 The customer may not cede any of his rights or delegate any of his obligations in terms of an agreement with the company unless a managing member of the company gives prior written consent.

- 19.9 Unless it conflicts with the context of these conditions, words signifying one gender will include the other genders, words signifying the singular will include the plural and vice versa, and words signifying natural persons will include artificial persons and vice versa.
- 19.10 Headings of clauses are inserted for the purpose of convenience only and shall be ignored in the interpretation of this agreement.

- 19.11 If any part of these conditions is or becomes unenforceable, it will be severable from the rest of these conditions which will continue to be binding.