

Conditions of Sale FE

“the company”

and the customer whose name and address appears on the front page hereof (“the customer”)

1. The customer agrees that the contact between the company and the customer is governed by these conditions of sale.
2. Stated performance figures are based on the company’s experience of what be achieved on test. The company shall not be liable for any loss or damage incurred or sustained by the customer as a result of such figures not being achieved unless the company shall in writing, have –
 - a) guaranteed such figures within specified tolerances; and
 - b) agreed to pay a penalty or liquidated damages in the event of such figures not being achieved, in which event the company’s liability shall be limited to the amount of such penalty or damages.
3. The customer shall be obliged to pay the cost of transport of the goods purchased by it and the risk in the goods shall pass to the customer immediately the goods are handed to Cartage Contractors or the South African Transport Services or any other carriers.
4. The company warrants that the goods supplied will conform to such specifications or confirmed requirements may be agreed between the company and the customer in writing. The express warranty set forth above is in lieu of all other representations and/or warranties, express or implied, including without limitation, any warranties of merchantability or fitness for a particular purpose, and all such representation and/or warranties are hereby specifically disclaimed and excluded by the company.
5. Should the goods be proved, within 12 calendar months of delivery, to be not in accordance with such specifications or confirmed requirements as may be agreed between the company and the customer in writing, or should defects attributable to faulty design, materials or workmanship appear within such period, the customer’s sole and exclusive remedy therefore shall be limited to the repair or replacement, at the company’s option, of the goods (for parts thereof) by the company free of charge and the company shall, within a reasonable time after receipt of written request from the customer, repair such goods (or parts) or supply goods or replacement parts which comply with the said specifications of requirements, provided that the company’s said obligation shall always be subject to the conditions that:
 - (i) allegedly defective goods or parts shall have been returned to the company’s work at the customer’s expense; and
 - (ii) the customer shall have established to the reasonable satisfaction of the company that the goods have been properly used or applied for normal purposes; and
 - (iii) no person, whether authorised by the customer or not, shall have tampered with the goods or parts or shall have attempted to rectify the alleged defect in the goods or parts in any way before inspection thereof by representatives of the company; and
 - (iv) notwithstanding anything to the contrary in the foregoing provisions of this paragraph 5 contained, whether or not the company has

repaired or replaced alleged defective goods the company shall be entitled at any time to refund the purchase price of allegedly defective goods to the customer and such refund shall be in full and final settlement of such customer's claim in respect of the allegedly defective goods; and

- (v) the company's said obligation shall not be applicable to goods which are not of the company's manufacture unless the company is entitled to the benefit of the same or similar undertaking, mutatis mutandis from the supplier or manufacturer thereof. In the later event the company's liability shall be not greater than and shall accordingly be conditional upon
6. Notwithstanding anything to the contrary in these Conditions of Sale or elsewhere contained, the company shall not under any circumstances be liable –
- (i) in any way for any loss of trade or profit occurring to the customer in the event of the delivery of goods being frustrated or delayed by acts of God or force majeure such as, but not limited to, strikes, riots, lockouts, trade disputes, fire, war, mobilisation, military conscription, confiscation, uprising, trade embargoes, shortage of raw materials, or by any other cause beyond the company's control.
 - (ii) to the customer for loss of profit or any special, incidental or consequential damages whatsoever whether arising from breach of contract, delict, negligence, or from any other cause, even if the company shall have been advised of the possibility of such potential loss or damage.
7. The invoice is payable by the customer to the company by no later than 30 days after the end of the month during which this invoice is presented to the customer, notwithstanding any claim submitted by the customer to the company. The company shall be entitled to charge interest at the rate of 1% above the prevailing bank overdraft rate on all amounts unpaid and overdue, provided that if such rate of interest is in excess of rate of interest allowed by law, then the rate of interest shall be the maximum allowed in law.
8. The company shall retain ownership of the goods until the full purchase price thereof shall have been paid. Failure to pay any amount of the purchase price when due shall give the company the right to repossession and removal of all or nay of the goods for which no payment has been received at any time upon giving at least 7 days prior written notice to the customer. The company's repossession shall be without prejudice to any other remedies which the company may have.
9. Any claim by the customer for alleged "short delivery" of goods must be sent to the company by the customer by registered post within 10 days from receipt of the goods by the customer, failing which no claims whatsoever shall be recognised and the customer shall be deemed to have accepted the goods in full compliances with his order.
10. (a) It shall always be in the discretion of the company as to whether or not the company shall accept the return of any goods of r credit to be passed to the customer's account, and as to what amount if any, shall be credited in respect of any goods returned.

(b) Under no circumstances whatsoever shall any credit be allowed unless:

- (i) the goods are returned to the company with the prior consent of the company, and
- (ii) the goods are received at the company's premises within 60 days after the same were delivered to the customer and the customer, within the said period, has supplied to the company the reference number of the company's invoice or waybill relating to the goods returned.
- (iii) prior arrangements must be made for the return of goods, and our reference quoted. Unless otherwise agreed, goods returned for credit will be subject to a minimum of 10% handling charge, exclusive of reconditioning costs.

11. No agreement varying, adding to, deleting from or cancelling these conditions of sale, shall be effective unless reduced to writing and signed by the duly authorised representatives of the company and the customer.
12. The contract between the company and the customer shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters in connection therewith shall be determined in accordance with such laws.
13. The company shall be entitled, at its option, to institute any legal proceedings which arise out of or in connection with the contact between the company and the customer, in any Magistrate's Court in the Republic of South Africa having jurisdiction in respect of the person of the customer in terms of Section 28 of Magistrate's Court Act. No. 32 of 1944, as amended.

Notwithstanding the foregoing the company shall at its option be entitled to institute all or any proceedings against the customer arising out of the contract between the company and the customer in any Division of the Supreme Court of South Africa, having jurisdiction.