

Standard Terms and Conditions of Trade

1. Application

- 1.1. "The COMPANY" means Fraser Global Trading (Pty) Ltd.
- 1.2. The acceptance of any quotation or any order placed by the CUSTOMER shall from date of acceptance or placement be subject to the conditions stated herein unless specifically varied by the COMPANY in writing, and these conditions shall at all times take precedence over any terms, conditions or stipulations contained in any of the CUSTOMER'S documentation as may be in conflict herewith. Should the CUSTOMER 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 CUSTOMER, the conditions set forth herein shall prevail and be of full force and effect unless specifically varied by the COMPANY in writing with specific reference to the CUSTOMER'S contrary documentation. The CUSTOMER acknowledges and agrees that all business transacted with the COMPANY from date hereof shall be subject to these terms and conditions of trade.

2. Price

- 2.1. All products are supplied at the prices as quoted which quote will be valid for a period of 30 (thirty) days unless the parties agree to a variation thereof in writing.
- 2.2. Prices and discounts are those as stated in the current COMPANY price list made available to all customers alternatively as stated on the relevant quotation issued to the CUSTOMER where applicable. All prices are quoted nett of VAT and transport costs. All prices are based on ruling exchange rates and on the understanding that the total quantity quoted for is ordered by the CUSTOMER. Any deviation from the quantities specified shall render this quotation null and void. Accordingly the COMPANY reserves the right to change any prices and/or discounts at any time and without notice in accordance with any change in the applicable rate of exchange or quantities occurring between the date of quotation and date of delivery.

3. Payment Terms

- 3.1. Unless credit facilities have been granted to the CUSTOMER all goods are sold on a strictly COD basis.
- 3.2. Where credit facilities have been granted to the CUSTOMER, payment of goods shall be made strictly within thirty (30) days of date of statement.
- 3.3. The CUSTOMER shall not under any circumstances be entitled to deduct or set off any amount from or against amounts due as indicated in the COMPANY'S monthly statement unless the COMPANY has authorised such set off or deduction in writing.
- 3.4. Failure to settle any statement by due date, shall entitle the COMPANY to cease all further deliveries of any orders until the entire statement has been settled in full.

- 3.5. The CUSTOMER acknowledges and consents thereto that the COMPANY will be entitled in its sole discretion to appropriate any payment made by the CUSTOMER to any part of the account which it may elect.

4. Orders

- 4.1. The CUSTOMER acknowledges that the COMPANY shall have the discretion to request a payment of 50% of the value of any order on the confirmation thereof. Should the CUSTOMER fail to effect payment thereof the COMPANY shall not be obliged to commence processing the order. Payment of any order or balance shall be paid in accordance with the terms of payment stipulated herein, alternatively as stated on any quotation and failing any such stipulation, on collection or delivery of the order. Failure to pay shall relieve the COMPANY from making further deliveries without prejudice to its entitlement to claim against the CUSTOMER for any loss or damage sustained in consequence of non-completion of contract. Failure to pay any balance owing prior to delivery shall also permit the COMPANY to cancel the relevant order and retain any deposit paid in respect thereof as "rouwkoop" in addition to any rights it may have in law in consequence of the CUSTOMER'S failure to pay any balance owing. Interest at current bank rate shall be chargeable on all accounts not settled in 30 days of due date.

The CUSTOMER accepts responsibility for safe keeping and issuing of its orders and agrees to pay for all orders which purport to be issued on its behalf and are given effect to in good faith by the COMPANY.

- 4.2. The COMPANY may in its discretion agree to the cancellation, variation or diversion of orders by the CUSTOMER if products have already been dispatched to the CUSTOMER. The CUSTOMER will reimburse the COMPANY for any costs incurred with regard to the cancellation, variation or diversion of any orders.
- 4.3. The COMPANY may cancel in its sole discretion, any order if the CUSTOMER breaches any term of this agreement or makes any attempt to compromise, liquidate, sequester or terminate the CUSTOMER or when judgement is given against the CUSTOMER or any of its directors/members and/or partners.
- 4.4. If the COMPANY does not have sufficient stock of the goods which are ordered by the CUSTOMER, unless the CUSTOMER cancels its order in writing, the goods will be supplied as soon as the COMPANY receives stock thereof.
- 4.5. Where the COMPANY is required to supply goods to the CUSTOMER'S specification and/or, those of its nominees, or goods that are not ex current stock or where the quantum of exceeds the COMPANY'S current stock (special goods/special order) pursuant to an accepted quotation the CUSTOMER shall become liable for any special damages or consequential loss should the CUSTOMER cancel the order for any reason whatsoever.
- 4.6. Where goods ordered are subject to the CUSTOMER'S inspection they shall be inspected at the COMPANY works premises and such goods passed by the CUSTOMER shall be final. If the CUSTOMER fails to give notice of its intention to inspect goods at the time of ordering, the goods will be deemed to be in all respects in accordance with the contract and the CUSTOMER shall be bound to accept and pay for them accordingly. The COMPANY'S quoted price does not include for costs, which may be incurred in meeting CUSTOMER'S special requirements for witnessed operating tests.

5. Delivery, Ownership and Risk

- 5.1. Notwithstanding delivery, or collection of any goods supplied, by the COMPANY to the CUSTOMER, ownership in those goods sold, and delivered shall only pass to the CUSTOMER when the purchase price in respect of those goods, has been paid in full. Risk in and to the goods shall, however, pass to the CUSTOMER upon delivery/collection.
- 5.2. A signed delivery note shall constitute prima facie proof that the goods have been delivered to and received by the CUSTOMER in good condition, whether signed by the CUSTOMER, an employee, an agent or representative of the CUSTOMER. Delivery to or collection by the CUSTOMER'S agent or carrier shall constitute delivery to the CUSTOMER.
- 5.3. Should the COMPANY agree to accept the return of any goods for credit, the CUSTOMER shall be liable to pay the COMPANY a handling charge of not less than 15% on the invoiced price of the goods so returned. Any goods returned shall be returned in its original packaging so as to enable traceability and full compliance by the COMPANY with the manufacturer's requirements. Any goods not returned in its original packaging shall be rejected by the COMPANY.
- 5.4. The CUSTOMER shall be precluded from raising any complaints or disputing liability to the COMPANY in any way unless it shall have notified the COMPANY of its complaints or grounds of dispute in writing within 7 days of receipt of the goods in question. Notwithstanding the timeous raising of a complaint or dispute of liability by the CUSTOMER, the CUSTOMER shall, under no circumstances, be entitled to withhold payment in respect of the goods from the COMPANY pending the resolution of such dispute or complaint.
- 5.5. Notwithstanding any other provision to the contrary, the obligation to deliver goods shall in all cases be subject to the following conditions precedent:-
- 5.5.1. The availability to the COMPANY of the product ordered if same is not ex stock.
- 5.5.2. The timely receipt by the COMPANY of any drawings, designs, technical data and specifications that may be required by it from the CUSTOMER for the purposes of supplying the goods ordered. Provided that such drawings, designs and specifications shall be deemed to have been given to the COMPANY for the purpose of description only and shall not form part of the contract.
- 5.5.3. Time shall not be of the essence of the contract and delivery dates shall be treated as approximate only based on the latest information available to the COMPANY. Under no circumstances shall the CUSTOMER 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 COMPANY arising from late delivery.
- 5.5.4. The COMPANY shall be exempt from and shall not be liable under any circumstances whatsoever for any 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 CUSTOMER may suffer as a result of any delay in delivery of the goods ordered.

- 5.5.5. The CUSTOMER shall not be entitled to withhold acceptance or delay delivery of part or the whole of goods to be supplied under any order. Should the CUSTOMER withhold acceptance or delay delivery of any goods to be supplied delivery of such goods will be deemed to be effected in 48 hours from the time the COMPANY made the goods available for delivery to the CUSTOMER.
- 5.5.6. Clear and unrestricted access must be provided at the delivery point for offloading of the product.
- 5.5.7. Delivery will be made at a central point only.
- 5.5.8. If the delivery has to be made in instalments, then the provisions of this clause 4 shall apply to each delivery.
- 5.5.9. Any costs incurred in the transport, handling or storage of goods that cannot be delivered or are not accepted for delivery and any connected demurrage charges which have arisen due to the COMPANY being unable to unload its products within a reasonable period will be for the CUSTOMER's account.
- 5.5.10. Should the CUSTOMER request that the product be returned to the manufacturer, the COMPANY may at its sole discretion agree to such request however the CUSTOMER will be responsible for any additional transport or any other costs that may be incurred which shall be paid in advance of delivery to manufacturer.

6. Governing Law

These terms and conditions shall be governed by and interpreted in accordance with the Law of the Republic of South Africa in all respects.

7. Consent To Jurisdiction – Domicilium

- 7.1. In terms of Section 45 of the Magistrate Act of 1944 the CUSTOMER consents to the jurisdiction of the Magistrate Court otherwise having jurisdiction in respect of any action to be instituted against it by the COMPANY in terms hereof.
- 7.2. It shall nevertheless be entirely within the discretion of the COMPANY as to whether to proceed against the surety in such Magistrate Court or any other court having jurisdiction.
- 7.3. In the event of the COMPANY instituting legal action against the CUSTOMER for any purpose arising out of this agreement, the CUSTOMER shall be liable for legal costs on the scale as between attorney and own client including any commission.
- 7.4. The CUSTOMER nominates as its address for service of all notice or processes arising herefrom as the address reflected in the New Customer Registration Form/Credit Application Form, for service upon the CUSTOMER of all notices and processes in connection with any claim for any sum due to the COMPANY arising out of any services/work/sales rendered by the COMPANY to the CUSTOMER.

8. Force Majeure

If the COMPANY is restricted directly or indirectly from carrying out any of its obligations under this agreement by any cause beyond the reasonable control of the COMPANY, including but not restricted to war, civil commotion, riot, insurrection, strikes, lockouts, fire, explosion, flood, earthquake, bad weather, acts of God and acts of State, the COMPANY shall be relieved of such obligations during the period that such cause continues, whether directly or indirectly.

9. Suspension of The COMPANY's Obligations

9.1. If the CUSTOMER fails and/or refuses, for whatever reason, to make payment of any amount due and payable, the COMPANY will be entitled, without prejudice to any alternative or additional right of action or remedy available to the COMPANY to –

9.1.1. Demand all amounts that the CUSTOMER is indebted to the COMPANY be paid immediately;

9.1.2. Suspend the carrying out of any of its then uncompleted obligations to the CUSTOMER, arising from any cause whatsoever, until payment of the full outstanding amount is received;

9.1.3. Terminate any credit facilities granted to the CUSTOMER.

10. Cancellation

10.1. The COMPANY may cancel the order/contract or uncompleted part of it forthwith, if the CUSTOMER –

10.1.1. Commits, or permits commission of a breach of any of the terms or conditions of this contract; or

10.1.2. Being an individual, dies or is provisionally or finally sequestrated or surrenders his estate; or

10.1.3. Being a partnership, the partnership is terminated; or

10.1.4. Being a company or close corporation is placed under provisional or final order of liquidation or judicial management; or

10.1.5. Compromises or attempts to compromise generally with any of its creditors.

10.2. The COMPANY's rights in terms of this clause shall not be exhaustive and shall be in addition to any other rights it may have whether under the agreement or otherwise.

10.3. Upon termination of the contract for any reason whatsoever, all amounts then owed by the CUSTOMER to the COMPANY in terms of the contract, shall become due and payable forthwith.

11. Warranties

- 11.1. The CUSTOMER acknowledges that the COMPANY is not the manufacturer of any goods supplied in terms hereof. All products are sold “voetstoots” and the COMPANY makes no warranty of any nature whatsoever in respect of any product sold, unless specified otherwise. The COMPANY accepts no responsibility for the efficiency, workability, quality or colour consistency of any goods sold.
- 11.2. It is the sole responsibility of the CUSTOMER to determine whether the product supplied is suitable for the purpose for which the CUSTOMER intends using it. The COMPANY gives no warranty, express or implied, concerning the suitability of the goods supplied for any purpose whatsoever.
- 11.3. Any advice or assistance given, whether concerning processing or application possibilities relating to the COMPANY's products, technical recommendations or similar indications, plant, machinery or otherwise is given in good faith but without obligation and subject specifically to the exclusion of any liability whatsoever on the COMPANY, or on the part of the COMPANY's employees for damages, whether direct or consequential, or otherwise howsoever arising. All data, statements and recommendations made are based upon information believed to be reliable but are made without any representation or guarantee or warranty or accuracy. The COMPANY's goods are sold on the condition that the CUSTOMER will examine, in relation to the COMPANY's recommendations, the uses to which the COMPANY's goods are to be put in order, to assess their suitability for such uses for adoption or application.
- 11.4. The COMPANY shall not be liable under any circumstances whatsoever for any damages, loss of profit, or demurrage, whether direct or indirect, consequential or otherwise alleged to be sustained by the CUSTOMER as a result of or attributed to any product supplied by the COMPANY being defective or incorrectly used and or used in conjunction with materials not supplied by the COMPANY or any loss or injury arising from the supply of the products, including attributable to any negligent act of the COMPANY or its servants or agents or in respect of any representations or warranties as to the goods given by any of the COMPANY's servants or agents is hereby excluded.
- 11.5. Save as otherwise specifically provided for herein, the COMPANY shall not be liable to the CUSTOMER or any other person for indirect or consequential damages or any loss of profit or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the CUSTOMER may suffer as a result of the failure of any product or any breach by the COMPANY of any of its obligations under these conditions or out of any other cause whatsoever. The CUSTOMER hereby indemnifies the COMPANY against any claim which may be made against the COMPANY and by any other person in respect of any matter for which the liability of the COMPANY is excluded in terms of the foregoing.
- 11.6. The COMPANY's liability and connection with any products proved to have been defective at the time of dispatch from the factory is limited to the gratuitous replacement of the defective goods at place of original delivery. All products so replaced shall be returned to the COMPANY at the place of original delivery, and shall remain its property. Under no circumstances is the COMPANY liable for charges of removal, reinstallation, other expenses or consequential damages of any kind whatsoever.

12. General

- 12.1. No relaxation or indulgence which the COMPANY may grant to the CUSTOMER shall constitute a waiver of the rights of the COMPANY and shall not preclude the COMPANY from exercising any rights which may have arisen in the past or which may arise in the future.
- 12.2. This agreement constitutes the sole record of the agreement between the parties. Any express or implied term, representation, warranty, promise or the like not recorded herein shall bind no party. No addition to or variation of these terms nor any cession or assignment of any rights or obligations by the CUSTOMER shall be of any force or effect unless in writing and signed by or on behalf of the COMPANY.
- 12.3. Should there be any discrepancy or conflict between the quotation, any drawing or written specification and the provisions hereof these terms and conditions shall prevail.
- 12.4. A certificate under the hand of any director or manager of the COMPANY (whose appointment need not be proved) as to the existence and the amount of the CUSTOMER'S indebtedness at any time, as to the fact that such amount is due and payable, shall be prima facie proof of the contents and the correctness thereof for the purposes of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the CUSTOMER in any competent court and shall be valid as a liquid document for such purpose.
- 12.5. The CUSTOMER shall inform the COMPANY within 7 (seven) days of any change of name or ownership under which the account and credit facilities are being used, and/or change of any information as stated in the credit application, failing which the full outstanding amount on the account will immediately become due and payable and all credit facilities will become null and void.

13. National Credit Act

In the event that the National Credit Act ("the NCA") applies to any transaction between the COMPANY and the CUSTOMER, then if any provision of these terms and conditions are in conflict with the NCA, such conflicting terms and conditions shall not apply.