

SALES TERMS AND CONDITIONS

1. DELIVERY

Delivery of the goods shall be effected on the “due delivery date” referred to in the quotation/invoices provided by us, alternatively on a date, agreed to in writing between the parties.

We shall endeavour to ensure that delivery is made on the date referred to above but we shall not be accountable for any late delivery due to:

- I. Failure to complete manufacture resulting from strikes, lockouts, vis major, fire, accidents defective material, casus fortuitous; or
- II. Any other cause whatsoever beyond our reasonable control; or
- III. Delays occasioned by late delivery, for whatever reason, of equipment / goods emanating from manufacturers or distributors, on whom we are dependent for the supply of such goods or equipment.
- IV. Force Majeure (see Clause 18)

If we are unable to complete the manufacture or make delivery for any of the above reasons, we shall be entitled to cancel the contract and the purchaser shall likewise have no claim for loss or damages, consequential or otherwise.

Signature of our official invoice/delivery note by the Purchaser, or any appointed independent carrier, shall constitute proof of delivery of the goods/equipment or service rendered, as the case may be.

2 RISK

All risk in the goods, whether partial or complete, and from whatsoever cause shall pass to the Purchaser on delivery.

Delivery shall be deemed to have been effected on the date the Purchaser is advised the goods are ready to be delivered in accordance with its instructions unless we shall have undertaken in writing to deliver the goods to a place nominated by the Purchaser, in which event, delivery of the goods to a carrier (including our own carrier) shall be deemed to be delivered to the Purchaser.

The cost of any special packing materials and the cost of carriage shall be paid by the Purchaser, unless otherwise stated and acknowledged by both parties in writing.

3. OWNERSHIP

Notwithstanding anything herein contained express or implied and the fact that risk in the goods shall be deemed to have passed to the Purchaser on delivery, ownership in the goods shall remain vested in us and shall not pass to the Purchaser until all amounts due, in terms hereof, have been paid in full.

It shall however be at our discretion at all times to decide whether or not ownership has passed to the Purchaser.

Where the goods are subject to an Instalment Sale Agreement with LM Engineering and Supplies cc, it is specifically recorded that LM Engineering and Supplies cc will merely be acting as the appointed supplier of such equipment to the Purchaser on behalf of the appointed financial service provider (FSP).

As such ownership will remain with the appointed FSP and the goods will be delivered to the purchaser strictly on the basis that ownership therein is reserved to the appointed FSP and will only pass to the Purchaser upon payment in full and the fulfilment of all its obligations to the appointed FSP under the relevant Instalment Sale Agreement.

The terms of all documentation between the Purchaser and us will, where in conflict with the terms and conditions, be regarded as pro non scripto and the conditions in any documentation between the Purchaser and the appointed FSP will take precedence.

4. TERMS OF PAYMENT

- (a) Unless otherwise provided in writing and signed by both parties, the Purchaser shall be required to pay the purchase consideration and all other charges, in advance or within 30 (thirty) days net from date of our invoice, subject to advance credit approval, and where the Purchaser has signed off all account conditions including acceptance of these Terms and Conditions of Sales.
- (b) All payment due in terms of this Agreement shall be made via electronic funds transfer (EFT) or at such other place/methodology as we may in writing direct, free of exchange and any deductions.
- (c) This agreement constitutes the entire contract between the parties. No amendment to our variation of any of the terms and conditions herein contained will be valid and binding unless reduced to writing and signed by or on behalf of the parties hereto.
- (d) Any liability on our part is subject to payment being made on due date and the Purchaser complying with all its obligations.

5. DAMAGE IN TRANSIT

Where our quoted price includes insurance and delivery charges, we shall repair or replace at our option and free of charge, goods damaged in transit, provided:

- a) Both the carrier and ourselves have been given written notice of such damage within 3 (three) working days from date of delivery, and
- b) We shall not be liable to the Purchaser for any claims for loss or damage (including consequential loss and from whatever cause whatsoever), by reason of the damage of the goods.

Where the Purchaser itself collects the goods or engages its own carrier to collect the goods from LM Engineering and Supplies cc, all risk in and to the goods shall reside exclusively in the Purchaser and there shall be no liability whatsoever on the part of LM Engineering and Supplies cc to the Purchaser.

6. GUARANTEE/WARRANTY

- a) Unless otherwise agreed to, in writing, LM Engineering and Supplies cc will guarantee the condition of the goods on a back-to-back basis of the original supplier/manufacturer to LM Engineering and Supplies cc.
- b) All warranty/guarantee terms and conditions of the original supplier/manufacturer to LM Engineering and Supplies cc will be the upheld, subject to the required procedures and timeline.
- c) The final decision of the original supplier/manufacturer to LM Engineering and Supplies cc, as to the warranty approval, cannot be disputed with LM Engineering and Supplies cc and any future claim must be dealt with directly with original supplier/manufacturer to LM Engineering and Supplies cc by the Purchaser.
- d) Cost to return goods subject to the claim and subsequent repair/replacement is for the Purchaser account
- e) The cost of delivering the repaired or new parts shall be for the account of the Purchaser;

7 CLAIMS/ RETURNS

In the event of there being any defect in any of the items delivered or any query relating to prices of the items delivered, such defect or query shall be brought to our attention writing within 14 (fourteen) days of the date stated on the invoice.

Acceptance of returns shall be solely within our discretion and shall at all times be subject to a 20 (twenty percent) handling charge.

Any benefit under this clause shall not apply to any goods which have been sold by an appointed FSP to the Purchaser under an Instalment Sale Agreement where the relevant terms and conditions contained in the warranty clauses of those agreements shall be applicable in such event.

8 ARBITRATION

All or any dispute arising as a result of the Purchaser claiming under our Warranty/Guarantee shall be referred to arbitration in terms of the Arbitration Act and the meaning and effect of such warranty/guarantee shall be determined in accordance with the laws of the Republic of South Africa.

In the case of goods supplied or sold by an appointed FSP to the Purchaser, the terms of the relevant Instalment Sale Agreement shall take precedence over these terms and shall apply thereto.

9 WAIVER

No relaxation or indulgence which we may grant the Purchaser shall in any way prejudice our rights and shall not be regarded as a waiver of such rights.

10 OBLIGATIONS OF THE PURCHASER

Until all amounts due by the Purchaser have been paid in full, the Purchaser shall (if applicable):

- a) Notify us within 14 (fourteen) days of any change of business address;
- b) Maintain the goods in proper repair and good working order;
- c) Allow us reasonable facilities for the inspection of the goods, and;
- d) Advise us forthwith of any loss or damage to the goods.

11 CESSION

The Purchaser shall not have the right to cede or assign any of its rights under this Agreement.

12 CANCELLATION

Should the Purchaser fail to comply with any of the TERMS AND CONDITION of this contract or any written and signed variation thereof, and persist in such failure for a period of 5 (five) working days from the date we shall have dispatched to it by prepaid registered post, notice calling on it to rectify such default or should the Purchaser fail to timeously make payment of any amount due in terms hereof on due date, or should the Purchaser be placed under provisional or final liquidation, or judicial management or attempt to compromise with its creditors, then and in such event we shall be entitled, inter alia, and without prejudice to any of our other rights and particularly the right to claim damages and consequential damages to forthwith cancel this contract, and recover possession of all goods supplied by us.

The Purchaser shall be liable for all legal costs on the Attorney and Client scale and collection charges.

13 DOMICILIUM

The Purchaser hereby chooses domicilium citandi et executandi for all purposes under this Agreement, as communicated in writing to LM Engineering and Supplies cc.

As per Clause 10, changes to such must be communicated with 14 (fourteen) days.

14 JURISDICTION

The Purchaser agrees and consents to the jurisdiction of the Magistrates Court of South Africa having jurisdiction in respect its person notwithstanding that the amount in dispute is beyond the jurisdiction of the Court.

It is agreed however that we, shall be entitled to institute action in any High Court having jurisdiction over the Purchaser in our sole discretion.

15 RISKS IN THE USE OF THE EQUIPMENT (if applicable)

The Purchaser acknowledges that there are dangers/hazards inherent in the use of the equipment which must be utilized strictly in accordance with the Manufacturer's / Distributor's Operating Manual and Safety Instructions (where applicable) as well as in accordance with sound engineering practice.

The Purchaser will also undertake to implement any revised /upgraded instructions in this regards which may be issued by the Manufacturer / Distributor from time to time.

The Purchaser also undertakes at all times to use only suitably qualified and trained personnel in connection with the repair/maintenance and operation of the equipment.

Under no circumstances shall LM Engineering and Supplies cc be responsible for any loss/damages or injury to any party resulting from the use of the equipment the Purchaser hereby specifically indemnifies LM Engineering and Supplies cc against any claim arising there from.

16 APPLICABILITY OF THE CONSUMER PROTECTION ACT ("CPA")

Since the majority of its Purchasers fall outside the provisions of the CPA, these Terms and Conditions of Sale have been prepared on the basis that the transaction envisaged would not be subject to the provisions of the CPA.

Where, however, the provisions of the CPA are indeed applicable, then any of the Terms and Conditions of Sale which are not consonant with the CPA, shall be regarded a pro non scripto to the extent that they are in conflict with the provisions of the CPA.

17 LIABILITY AND IMDEMNITY

- a. These Terms and Conditions takes precedence over all and any Purchaser Terms and Conditions
- b. Neither party is liable to the other party for any punitive penalties or pure economic cost, indirect, incidental, special or consequential loss or damage; economic loss; loss of opportunity; loss of production; loss of use; loss of sales; loss of goodwill; loss of profit or anticipated profit; or loss of revenue, in each case whether foreseeable or not, suffered or incurred by the other party howsoever arising, including out of a breach by the other party of this contract, a tortious or intentional (including negligent) act or omission, in equity, a breach of a statutory duty or obligation, or otherwise (whether or not such loss or damage was foreseeable by either party) or in the contemplation of the parties at the time the contract was entered into.
- c. Subject to clause 17a and provided the Purchaser has signed and accepted the goods and at all times, LM Engineering and Supplies cc total maximum aggregate liability arising out of or relating to the contract, regardless of legal theory, shall be capped at 20% of the amounts paid under the order acceptance to which such liability relates.
- d. Purchaser shall indemnify, defend and hold harmless LM Engineering and Supplies cc from and against all claims, damages, losses, costs and expenses arising out of or resulting from the Purchaser's or Purchaser's subcontractors and/or employees' failure to install, commission, operate, store or maintain the goods and/or services, inconsistent with the LM Engineering and Supplies cc documentation.

18 FORCE MAJEURE

No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make previously owed payments to the other Party hereunder) when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labour stoppages or slowdowns or other industrial disturbances; (i) epidemic, pandemic or similar influenza or bacterial infection (which is defined by the United States Centre for Disease Control, or other recognised global authority, as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate medical supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the Impacted Party.