

CONDITIONS OF CONTRACT

These are conditions which apply to every contract, for the sale of goods by the seller to any purchaser except to the extent to which they may be excluded or modified with the seller's consent.

- 1. PRICE**

Price lists and specifications issued by the seller from time to time are for general information purposes only and do not constitute offers for sale. The seller's prices are not subject any discounts unless expressly agreed in writing by the seller. The acceptance of this order is subject to the proviso that the goods will be supplied at prices ruling at the date of dispatch unless specifically agreed otherwise in writing. Prices established in a foreign currency shall be subject to the closing ruling Telegraphic Rate of Exchange at the date of dispatch of the goods sold.
- 2. PAYMENTS**
 - 2.1 The seller's terms are cash with order provided that credit facilities may in the discretion of the seller be extended to approved customers, in which event the purchase price shall be paid by the purchaser free of bank and other charges, within 30 (thirty) days from the date of the seller's invoice, at the address specified on the front of the invoice.
 - 2.2 If any payment is not made on due date, then the seller may, without prejudice to any other rights it may have, charge interest on the amount due at the prime rate.
 - 2.3 For the purpose of 2.2 "the prime rate" means the publicly quoted bank rate of interest at which the seller's bankers lend on overdraft, and a certificate from any manager or accountant of any branch of those bankers (whose appointment or authority need not be proved) as to that rate at any item shall be final and binding on the purchaser.
 - 2.4 If the purchase price is stated to be subject to a prompt payment discount then the discount will be allowed only if payment is made on or before the due date for payment of the amount in question. Prompt payment discount shall not apply to deposits on returnable containers or to any other charges which are included on the invoice but are not part of the actual price of goods supplied.
- 3. PAYMENT DIVERSION FRAUD DISCLAIMER**
 - 3.1 Purchaser is solely responsible for ensuring that payment is made to Zinchem's correct bank account. For payment diversion fraud avoidance purposes, Zinchem will never initiate bank account payment method changes via telephone or updated bank information on invoices. In the event Zinchem needs to change its payee bank account information or payment method, then Zinchem will send Purchaser a specific bank account change notification letter via post or email from a known email account. Upon receipt of such letter and prior to changing bank account information or payment method, Purchaser must contact Zinchem's representative, via valid/established contact channels, to positively confirm and validate the account change request. At all times, Purchaser is responsible for ensuring that payment is made to Zinchem's correct bank account and Purchaser accepts responsibility for misdirected funds.
- 4. DELIVERY**
 - 4.1 Unless otherwise stated the goods shall be delivered to the purchaser, at the seller's depot.
 - 4.2 In the absence of written advice in accordance with 7.2 or 7.3.2 the goods shall be deemed to have been delivered to and accepted by the purchaser complete and in a satisfactory condition.
 - 4.3 If the seller, at the purchaser's request, agrees to engage any carrier to transport the goods for the purchaser then:
 - 4.3.1 The seller is authorized to engage the carrier on the purchaser's behalf, on such terms and conditions as the seller deems fit.
 - 4.3.2 The purchaser shall indemnify the seller against all demands and claims which may be made against the seller by any carrier so engaged on all liability which the seller may incur arising out of the transportation of the goods.If the purchaser refuses to accept delivery of the goods when delivery falls due the seller shall be considered to have tendered and the purchaser to have refused to accept delivery, in this event the risk in the goods shall pass to the purchaser and the cost of storing the goods shall be for the purchaser's account and shall be paid by the purchaser to the seller on demand.

The seller does not guarantee delivery on any specified date but will endeavor to give delivery on the date stated in the contract of sale. Time shall not be the essence of any sale and failure by the seller to deliver on the specified date for any reason whatever shall not entitle the purchaser to cancel the contract or claim any damages arising therefrom.
- 4. OWNERSHIP AND RISK**
 - 4.1 Notwithstanding delivery of any goods, ownership shall not pass until the purchase price has been paid in full.
 - 4.2 Subject to 4.3 the risk in the goods shall not pass to the purchaser on delivery.
 - 4.3 In the case of goods supplied F.O.R. the seller's works the risk in the goods shall pass to the purchaser in respect of such goods immediately upon loading on rail at seller's works.
- 5. ORDERS**

Orders placed on the company's quotation are subject to acceptance by the company in writing. All orders whether oral or in writing placed with the seller shall be firm and irrevocable and may not be cancelled or modified without the prior written consent of the seller.
- 6. WARRANTY**

The seller does not give any warranty or guarantee, expressed or implied, in respect of the goods or their fitness for any particular purpose, whether know to the seller or not and shall not be liable for any latent or other defect in the goods.
- 7. EXCLUSIONS**
 - 7.1 the purchaser shall not have any claim of any nature whatever against the seller.
 - 7.1.1 for any loss or damages of any kind, whether direct or consequential or whether claimed on grounds of breach of contract or negligence, sustained by the purchaser as a result of any error, discrepancy or defect in those specifications, measurements or instruction, or
 - 7.1.2 if the goods are not suitable for the purposes for which they are required, whether or not those purposes are known to the seller.
 - 7.2 Subject to 7.1, if any goods fail to comply in any respect with requirements of any sale, the seller's elections with reasonable promptness and without any charges provided that the seller receives written notice of the alleged failure within 14 (fourteen) days after the goods are delivered to the purchaser and provided such goods have been paid for and the purchaser shall not have any other claims against the seller for any such failure.
 - 7.3 The seller is exempt from and not liable under any circumstance whatever for:
 - 7.3.1 any indirect or consequential damages of any kind or any loss of profit or other special damages of any kind, whatever within the contemplation of the parties or not which the purchaser may suffer as a result of any breach by the seller, its servant agent or sub-contractors of it its / their obligations under any contract.
 - 7.3.2 Any claim for any alleged shortage in delivery unless written notice of the claim is received by the seller within 14 (fourteen) days after the goods are delivered to the purchaser.
 - 7.3.3 Any claim of any nature arising out of an oral order or oral variation of an order unless that oral order or oral variation order has been confirmed in writing to the seller before the seller has delivered under the contract.
 - 7.4 Subject to and without in any way limiting any of the provisions of this clause 7 the seller's liability to the purchaser for any damages sustained by the purchaser and which are in any way out of any goods purchased from the seller including any damages caused by the circumstances be limited to an aggregate for all claims of 10 % (ten percent) of the purchase price of the goods concerned.
 - 7.5 The purchaser hereby indemnifies the seller against all damages, costs and expenses for which the seller may become liable as a result of work done in accordance with the purchaser's specifications which involves the infringement of any letters patent or registered design.

- 8. VIS MAJOR**
 - 8.1 The purchaser shall not have any claim of any nature whatever against the seller for any failure by the seller to carry out any of its obligations under the contract as a result of vis major.
 - 8.2 The seller shall be entitled to cancel the contract forthwith or delay deliveries or to reduce the amount delivered, if it is prevented from or hindered in delivering goods of the description covered by the contract through vis major, provided that if that cause has not ceased to operate within 3 (three) months from when it arose, the contract may be terminated by the purchaser giving 30(thirty) days written notice thereof to the seller.
 - 8.3 For the purposes of 8.1 and 8.2 vis major shall include without being limited to strikes, lockouts, accidents, shortages or unavailability of labor, any default or delay of suppliers, transport, delays, riots; political or civil disturbances, the elements, any act of any state or government or any other authority or any cause beyond the seller's reasonable control.
- 9. CANCELLATION AND SUSPENSION**
 - 9.1 The seller may cancel the contract or any uncompleted part of it, if the purchaser:
 - 9.1.1 commits a breach of any of the terms, or conditions of the contract or
 - 9.1.2 being an individual dies or is provisionally or finally sequestrated or surrenders his estate or
 - 9.1.3 being a partnership the partnership is terminated or
 - 9.1.4 being a company or a closed corporation is placed under a provisional or final order of liquidation or judicial management or
 - 9.1.5 compromises or attempts to compromise generally with the purchaser's creditors
 - 9.2 The seller's rights in terms of 9.1 shall not be exhaustive and shall be in addition to its other rights under the agreement or otherwise.
 - 9.3 Upon termination of the contract for any reason whatever.
 - 9.3.1 all amounts then owed by the purchaser to the seller in terms of the contract shall become due and payable forthwith.
 - 9.3.2 The seller may retake possession of any goods in respect of which ownership has not passed.
 - 9.3.3 The seller shall be entitled to retain all monies paid by the purchaser as roukoop
 - 9.4 If any amount owed by the purchaser is not paid on due date or if the purchaser commits any other breach of the contract, then without prejudice to any other right the seller may have
 - 9.4.1 It may immediately suspend the carrying out of any of its then uncompleted obligations until payment is made.
 - 9.4.2 It may terminate any credit facilities previously granted to the purchaser
 - 9.4.3 All amounts then owed by the purchaser to the seller in terms of the contract or from any other cause whatever shall become due and payable forthwith.
- 10. SPECIAL CONDITIONS**

Every endeavor will be made to deliver the correct quantity ordered, but owing to difficulty of producing exact quantities and in conformity with normal metal trade practice, estimates are conditional upon a margin of +/- 50 % being allowed for over and under deliveries, the same to be charged for or deducted as the case may be, on a pro rata basis. When goods are consigned in or on returnable containers, drums, spools, boxes, crates, bags, packages, etc. any deposits or charges raised and invoiced in respect of such returnable containers, etc. shall be due and payable by the purchaser at the same time as payment is due for the goods so consigned. Returnable empties shall be consigned carriage paid or carriage forward, as agreed in respect of each order to the works from which they were originally dispatched and prompt notification of such consignment shall be sent to the seller. Upon receipt of such returned empties in good condition the seller shall credit the purchaser (or refund the purchaser on request) with the full amount deposited or paid therefor by the purchaser. Value Added Tax will be levied unless a copy of the exemption certificate is supplied to the supplier. It is the purchaser's responsibility when placing an order to indicate whether that order is subject to the above mentioned tax or not.
- 11. WAIVER**

Any relaxation which the seller may permit on any one occasion in regard to any of the purchaser's obligations shall not prejudice or be regarded as a waiver of the seller's right to enforce those obligations on any subsequent occasion.
- 12. NON-VARIATION**

No alteration or variation of these conditions shall be of any force or effect unless it is recorded in writing and signed by or on behalf of the seller.
- 13. NEGOTIABLE INSTRUMENTS**

Any promissory note, bill of exchange or other negotiable instrument received by the seller from the purchaser shall not be a novation of the debt for which it is given and the purchaser waives presentment notice of dishonor or protest where applicable.
- 14. RETURN OF GOODS**
 - 14.1 no goods may be returned or changed without the seller's prior written consent.
 - 14.2 If the seller does consent in terms of 14.1 the purchaser shall be obliged to pay a handling fee of 10 % (ten per cent) of the invoiced price of the goods which handling fee shall form part of the selling price of the goods which price will be increased by an amount equivalent to such handling fee.
- 15. PROPER LAW**

The validity of the contract its interpretation, the respective rights and obligations of the parties and all other matters arising in any way out of it or its performance or expiration or earlier termination for any reason, shall be determined in accordance with the laws of the Republic of South Africa.
- 16. JURISDICTION**
 - 16.1 If the purchaser is resident or carries on business in the Republic of South Africa then the seller shall be entitled to institute any proceedings against the purchaser arising out of the contract in any Magistrates Court having jurisdiction over the purchaser even if the cause of action exceeds the jurisdiction.
 - 16.2 If the purchaser is not a resident of and does not carry on business in the Republic of South Africa, then the purchaser consents and submits to the jurisdiction of the Gauteng Local Division of the Supreme Court of South Africa and all Courts of Appeal therefrom for all purposes arising out of the contract.
- 17. LEGAL COSTS**

The purchaser shall pay all legal costs, on the attorney and client scale (including collection commission) incurred by the seller in the recovery from the purchaser of all or any money owing by the purchaser under contract of sale.
- 18. DOMICILIUM**

The purchaser chooses the address at which the goods are to be delivered as its domicilium citandi et executandi for all purposes under the contract.
- 19. INTERPRETATION**

The headings in these conditions are for convenience only, and not to be taken into account for the purpose of interpreting the contract.

(*n Afrikaanse afskrif van hierdie Verkoopvoorwaardes is op aanvrag beskikbaar)

