

## TERMS & CONDITIONS OF SALE

1. **Entire Agreement**
  - 1.1. This Agreement constitutes the entire agreement between Tema South Africa (Pty) Ltd ("Tema SA") and the Customer and no variation shall be binding upon Tema SA unless reduced to writing and signed by a director of Tema SA.
  - 1.2. All sales of goods by Tema SA are subject to these terms and conditions of sale and no other conditions shall be binding upon the parties notwithstanding that such conditions may be annexed to, contained in or incorporated by reference in any documents exchanged between Tema SA and the Customer purporting to regulate the terms of any purchase by the Customer.
  - 1.3. Tema SA shall not be bound by any oral statements, recommendations, figures, advices, specification, prices quoted, brochures, technical data or other such representations unless they are in writing and signed on behalf of Tema SA by one of its directors.
2. **Conclusion of Sale Contract**
  - 2.1. The Customer may place an order for the purchase of goods orally or in writing, and any such order shall constitute the Customers offer of purchase to Tema SA.
  - 2.2. Tema SA may accept the Customers order in whole or in part.
  - 2.3. Upon acceptance by Tema SA of the Customers order, a contract of sale shall be deemed to have been concluded between Tema SA and the Customer upon the terms and conditions set forth in these conditions of sale.
3. **Delivery**
  - 3.1. Delivery shall be expressly agreed between Tema SA and the Customer.
  - 3.2. Tema SA shall have the right to deliver goods in quantities and on as many separate occasions as it in its discretion may decide.
  - 3.3. Tema SA's delivery note signed by the Customer or any agent or employee of the Customer or any person purporting to act as an agent or employee of the Customer shall for all purposes be deemed to be accurate in all respects and binding on the Customer.
  - 3.4. Unless the Customer notifies Tema SA in writing within a reasonable time or endorses the delivery note to the effect that it has rejected the delivery, the Customer will be deemed to have accepted delivery of the goods in good order and condition.
  - 3.5. Unless agreed to in writing and signed by a director of Tema SA, time shall not be of the essence in the delivery of the goods and in the event of any delay in the delivery by Tema SA or in the event of failure by Tema SA for any reason to effect delivery then the Customer shall not be entitled to cancel this contract and the Customer shall have no claim for damages against Tema SA.
  - 3.6. Should the Customer request a postponement of delivery of the goods or if Tema SA is prevented from delivering the goods at the stipulated time as a result of the instructions, or lack thereof of the Customer, or for any reason beyond Tema SA's control, Tema SA reserves the right recover all expenses incurred in consequence, including charging a handling/storage fee calculated at a maximum of 2% (Two percent) per month on the value of the goods from the date of intended delivery until the date of actual delivery.
4. **Price and Payment**
  - 4.1. The price of the goods shall be that stated by Tema SA at the time of the conclusion of the contract.
  - 4.2. In respect of each sale contract, the price shall be payable by the Customer to Tema SA within 30 (Thirty) days from the date of the first statement of account which Tema SA shall issue to the customer. No Settlement discount shall be allowed and the Customer shall not deduct any settlement discount against payment of the invoice.
  - 4.3. In the event of Tema SA accepting any post-dated cheque, promissory note or other bill of exchange from the Customer in respect of any indebtedness of the Customer then the acceptance by Tema SA of such post-dated cheque, promissory note or bill of exchange shall be without prejudice to Tema SA's rights in terms of any sale contract.
  - 4.4. If the price of any goods is not paid on the due date by the Customer, Tema SA reserves the right to charge interest thereon at the prime overdraft rate as determined from time to time by Tema SA's bankers plus 2% (Two percent), calculated on the amount outstanding from the due date until date of payment.
  - 4.5. All payments shall be made at Tema SA's place of business.
  - 4.6. The Customer shall have no right to withhold payment for any reason whatsoever including any right of set off which the Customer may have.
  - 4.7. Where goods have been supplied in accordance with the Customers order and are returned for a credit, Tema SA reserves the right to levy a maximum 15% (fifteen percent) handling charge.
5. **Suspension of Deliveries**
  - 5.1. If any amount due and payable by the Customer to Tema SA is in arrears, Tema SA shall have the right, until such payment has been made, to suspend or withhold any delivery under any sale contract then in force between Tema SA and the Customer.
  - 5.2. Tema SA shall have the right to suspend any delivery under any sale contract at any time if in its sole discretion it considers that:
    - 5.2.1. The amount owing by the Customer (whether due to not) has reached the limit to which it is prepared to allow the customer credit, or
    - 5.2.2. If it comes to its notice that the Customers financial position has deteriorated, or
    - 5.2.3. If it no longer considers the Customer to be creditworthy, or
    - 5.2.4. The Customer does not acknowledge that any sales contract is upon the terms set forth in these conditions of sale.
6. **Passing of Ownership and Risk**
  - 6.1. Ownership of the goods shall not pass to the Customer until the full purchase price shall have been paid, whether or not such goods have been delivered and/or incorporated into any works.
  - 6.2. The Customer shall not sell or dispose of any goods not paid for without the prior consent of Tema SA.
  - 6.3. Risk in the goods shall pass to the Customer on delivery/collection thereof or on the goods being made available to the Customer's appointed haulier.

- 7. Claims against Tema SA**
- 7.1. No claim against Tema SA arising out of the sale of goods by Tema SA shall be capable of being enforced and Tema SA shall not be liable in respect of any such claim unless a written notice setting forth the nature of the claim and the amount claimed has been delivered to Tema SA within 14 (Fourteen) days of the delivery of the goods in respect of which the claim is made.
- 8. Exclusions**
- 8.1. Tema SA shall not be liable for any loss or damage of any nature, whether direct or indirect, consequential or otherwise, sustained as a result of any goods sold by it under any contract being defective or not conforming to the description thereof, or as a result of any other cause whatsoever, and Tema SA's liability in respect of any goods sold by it shall be limited to that provided in clause 8.2.
- 8.2. If any goods are latently, patently or otherwise defective and a claim liens against Tema SA in respect of such goods, the Tema SA may at its option decide to either:
- 8.2.1. Replace the defective goods, or
- 8.2.2. Reimburse the Customer in respect of the price of the goods, or
- 8.2.3. Require the Customer to accept the goods at a reduced purchase price to be agreed.
- 8.3. Any decision by Tema SA in terms of clause 8.2 shall be notified to the Customer in Writing.
- 9. Breach**
- 9.1. Tema SA shall be entitled without prior notice to the Customer to:
- 9.1.1. Cancel any sale contract and/or any part thereof subsisting with the Customer and to take possession of the goods sold thereunder, or
- 9.1.2. Claim from the Customer immediate payment of any moneys due by the Customer to Tema SA notwithstanding any earlier agreement for credit whether same is due for payment or not if:
- 9.1.2.1. The Customer fails to pay on the due date the amount due for payment under any sale contract, or
- 9.1.2.2. Any cheque, promissory note or other bill of exchange given to Tema SA in respect of any indebtedness of the Customer under any sale contract is dishonoured by non-payment, or
- 9.1.2.3. The Customer's estate is provisionally or finally sequestered or it is placed in provisional or final liquidation under provisional or final judicial management, or
- 9.1.2.4. The Customer commits and act of insolvency in terms of Section 8 of the Insolvency Act, or
- 9.1.2.5. The Customer fails to satisfy any default judgement granted against him within 7 (Seven) days after date of judgement.
- 9.2. In the event of Tema SA exercising its rights in terms of clause 9.1.1, the Customer irrevocably authorises Tema SA to enter its premises to repossess any goods delivered and indemnifies Tema SA completely against any damage relating to the repossession of the said goods.
- 9.3. If any goods supplied to the Customer have become the property of the Customer by operation of law, the Customer shall on notice of cancellation of the sale agreement by Tema SA, transfer the same quantity of goods to the ownership of Tema SA.
- 10. Notices and Jurisdiction**
- 10.1. In the event of Tema SA having to instruct its attorneys to recover money or goods from the Customer, the Customer shall be liable for and pay all costs incurred by Tema SA on the attorney and own client scale, including any collection commission and tracing fees.
- 10.2. At the option of Tema SA, any claim against the Customer may be brought in any Magistrates Court having jurisdiction notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrates Court.
- 10.3. All notices by one party to the other shall be given in writing by prepaid registered post, telegram or delivery by hand to Tema SA at its place of business and to the Customer at the physical address set out in its credit application form, which addresses the parties choose as their *domicilia citandi et executandi*.
- 10.4. The Customer agrees that in the event of any part of these terms and conditions becoming invalid for whatever reason that such part shall be severable from the rest of the terms and conditions and shall not affect their validity.
- 10.5. The Customer agrees that any purchase form Tema SA which have not yet been paid shall be subject retrospectively to these terms and conditions of sale.

The Customer hereby accepts these Terms and Conditions of Sale in respect of all sales of goods made by Tema SA to the Customer and warrants that:

- All information provided is true, accurate and complete and that Tema SA will be immediately notified of any changes in writing;
- That he/she has read and understood all there Terms and Conditions of Sale and agrees to bind the company to them; and
- That he/she has the requisite authority and obtained the necessary consent to bind the Customer to all these Terms and Conditions of Sale.

Signed at:.....on this:.....Day of:.....20.....

**Applicant:**

**Witness:**

Signature:.....

Signature:.....

Name:.....

Name:.....

Designation:.....

Designation:.....