

# TERMS AND CONDITIONS



## 1. General

These General Terms and Conditions of Sale may not be amended or varied except with the agreement of Sugarequip (Pty) Ltd ('SE') in writing. Any reference to goods supplied by SE shall include any services provided by SE.

## 2. Pro-Forma Invoices/Quotations

Any pro-forma issued is to be taken only as referring to the goods or services specified in the pro-forma and is valid only for 30 days from the date of issue unless specified otherwise on the pro-forma.

## 3. Orders

No order placed by the customer shall become binding on the company until it has been accepted by a duly authorised representative of the company at the company's offices which shall be deemed to be the place at which all contracts are concluded.

## 4. Orders

Payment shall be made to SE in the currency specified in the pro-forma within 30 days of the date of statement unless otherwise specified in the pro-forma. Payment shall not be withheld pending settlement of any dispute. In default of payment within the time stipulated, SE shall have the right to levy a surcharge to the customer on all overdue payments. All bank charges associated with the making of the payment to SE shall be for the account of the customer.

If any payment is in arrears, the company shall have the option to suspend further deliveries until full payment is received, whether such deliveries form part of the same order or other orders, without prejudice to the company's right to recover from the customer all outstanding payments for goods delivered and /or to cancel the remainder of the order or orders.

## 5. Risk and Property

The risk in the goods shall pass to the customer on delivery but legal and beneficial ownership is retained by SE until payment in full is made of all amounts due from the customer.

## 6. Breach

If the customer commits any breach of the terms of the contract or cannot pay its debts as and when due because of financial difficulty, then SE shall be entitled in its absolute discretion to terminate further contracts of sale or suspend its performance, and all sums in respect of goods delivered to the customer shall become payable forthwith.

All contracts or orders placed are binding and cannot be cancelled or deferred unless agreed to in writing upon such terms as the company may decide. Terms will include payment to the company of reasonable compensation on a pro-rata basis for the loss of profit plus all costs of labour, material, technical and administrative services incurred.

## **7. Delivery**

Delivery dates are given in good faith but shall not be binding on the company. Late delivery shall not invalidate any contract of sale between the parties nor render the company liable for damages whatsoever.

Delivery shall be deemed to have taken place when the goods have been offered for delivery in accordance with the terms of the order.

For the purpose of this Clause 7, any delivery terms shall be defined in accordance with INCOTERMS 2010.

Where applicable SE shall be entitled to produce a certificate of insurance rather than an insurance policy.

Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by SE to deliver any one or more of the instalments in accordance with these Conditions or any claim by the customer in respect of any one or more instalments shall not entitle the customer to treat the contract as a whole as repudiated.

If SE fails to deliver the goods for any reason as a result of its own fault, then the liability is limited to the excess (if any) of the cost to the customer of replacing the goods on the most economical available market over the price of the goods charged by SE.

If the customer fails to take delivery of the goods or fails to give SE adequate delivery instructions at the time stated for delivery (otherwise than by reason or any cause beyond the customer's reasonable control or by reason of SE's fault) then without prejudice to any other right or remedy available to SE, SE may at its sole discretion store the goods until actual delivery and charge the customer for the reasonable costs (including insurance) of storage.

## **8. Force Majeure**

Neither party shall be liable for any failure to perform any part of the Contract if performance has been delayed, hindered or prevented by any circumstances whatsoever which are not within the control of that party and are not preventable by reasonable diligence on its part.

## **9. Specification**

SE reserves the right to change the specifications of the goods without notice to the customer provided that such change does not affect the overall quality of the goods or fitness for the purpose provided.

In the event of the customer instructing SE to vary the original specifications of the goods, the customer will be responsible for any reasonable increase in price due to such alterations.

Unless otherwise agreed in writing it is the customer's responsibility to secure any licences or permissions (including payment for duties or taxes) in connection with import or use of the goods.

No goods will be accepted by the company for credit without the company's written consent having first been obtained by the customer. The customer will in any event be obliged to pay the transport costs back to our stores plus a handling charge amounting to 10% of the purchase price.

## **10. Warranties and Liability**

Unless otherwise agreed in writing and signed by a Director of SE, SE shall not be liable for any recommendations, advice, opinion or statement given or made by SE, its agents or representatives.

Any warranties given by SE or required by law are subject to the following conditions;

Where the customer provides a drawing, design or specification, SE shall be under no liability in respect of the goods save to provide goods conforming to the drawing design or specification.

SE shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, neglect of normal working conditions, failure to observe SE's instructions (whether oral or in writing), misuse or alteration or repair of goods without SE's approval.

The above conditions do not extend to parts, materials or equipment, not manufactured by SE in respect of which the customer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to SE.

Unless otherwise stated SE does not warrant that the goods hereby sold are suitable for the purpose for which they are purchased.

Where any claim in respect of the goods is deemed to be valid by SE, SE shall be entitled to replace the goods (or the part in question) free of charge or, at SE's sole discretion, refund to the customer the price of the goods (or a proportionate part of the price). However SE shall have no further liability to the customer and specifically SE shall have no liability in respect of any indirect or consequential loss except in the case of death or personal injury caused by SE's negligence. Any claims made against SE shall be lodged in writing within one month from date of delivery of the goods. SE shall accept no liability for goods which have been subject to any process after receipt by the customer.

## **11. Claims**

Any claim by the customer shall be notified to SE within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 14 days after the date when the customer became aware or should have become aware of the defect.

Any allegedly defective or damaged goods shall be retained by the customer properly stored and protected and insured until inspection by SE. For the purpose of such inspection, the customer shall afford SE full access to the goods and provide all details as to the alleged defect or loss.

Failure to observe any of the above requirements shall be an absolute bar to any claim by the customer.

## **12. Law Applicable**

These General Terms and Conditions of Sale shall be subject to the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the courts of the Republic of South Africa.