



TERMS AND CONDITIONS OF SALE : SUPPLY OF GOODS [V02]

1. DEFINITIONS

In these *Terms and Conditions of Quotations*, the following words and expressions shall have the meanings hereby assigned to them unless expressly stated otherwise :-

"*Buyer*" shall mean the company or entity requesting a quotation / issuing the purchase order

"CPA" shall mean the Consumer Protection Act 68 of 2008.

"Goods" shall mean the products to be supplied to the *Buyer* in terms of the purchase order

"HAS" shall mean the Hazardous Substances Act 15 of 1993.

"NCA" shall mean the the National Credit Act 34 of 2005.

"Party" shall mean either the *Seller* or the *Buyer* and collectively referred to as the parties.

"Principal Supplier" shall mean the manufacturer of the goods.

"RFQ" shall mean a written Request for Quotation.

"Seller" shall mean *SPEC Hardware (Pty) Ltd.*

"Stock Goods" shall mean all goods held in stock by the *Seller*.

2. QUOTATIONS

- 2.1. Quotations shall only be issued upon receipt of a written *RFQ* from the *Buyer* which clearly specifies the exact nature, specifications and volumes of the relevant goods as well as the required date of delivery; provided that no *RFQ* is required where goods are ordered from a pre-set list of goods as agreed to between the *Seller* and the *Buyer* in which instance the *Buyer* shall only issue a purchase order in terms of paragraph 3 below.
- 2.2. Quotations shall be valid for a period of thirty [30] days from date of submission to the *Buyer* unless specifically stated otherwise therein.
- 2.3. All quotations are subject to and issued in terms of the *Seller's Terms and Conditions of Sale* as applied in context which the *Buyer* agrees to by acceptance of the quotation or part thereof or by submitting a *RFQ*.
- 2.4. Delivery dates stated on quotations shall be as stated in terms of paragraph 4.1 below.
- 2.5. Quotations shall specify a description of each required product as well as the volumes, price per unit, VAT payable, total price and where applicable product certificates and costs for packaging and shipment/airfreight costs.
- 2.6. Quotations shall be submitted to the *Buyer* within 48 hours, provided that where pricing of goods involves or includes ad hoc pricing by an international *Principal Supplier*, quotations shall be submitted to the *Buyer* within 72 hours; and provided further that where pricing of goods requires manufacturing of goods whether manufacturing is done international or not or based on special designs or drawings, quotations shall state an estimated time of delivery only.

3. PURCHASE ORDERS

- 3.1. Goods shall only be supplied upon receipt of a written Purchase Order from the *Buyer* clearly stating the exact nature and specifications of the goods [or product code where ordered from a set list of goods as defined in paragraph 2.1 above], volumes of the relevant goods, the point of delivery and the *Seller's* quotation number [where applicable].
- 3.2. Purchase Orders or part thereof may not be cancelled without a written agreement between the *Buyer* and *Seller*, which agreement shall be subject to and dependent on all of the following :-
 - 3.2.1 that the *Seller* shall attempt and succeed to cancel the order or part thereof with the *Principal Supplier* [if so applicable];
 - 3.2.2 that the *Seller* shall attempt to mitigate the *Buyer's* costs where possible;
 - 3.2.3 that the *Buyer* shall pay the *Seller* for all costs attributable to the order already and reasonably incurred by the *Seller* for the order or part thereof which cannot reasonably have been avoided;

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- 3.2.4 that no order for custom manufactured goods will be cancelled unless sanctioned by the *Principal Supplier* and the *Buyer* then accepts liability for all costs the *Principal Supplier* holds the *Seller* liable for; and
- 3.2.5 that the *Buyer* shall pay the *Seller* an additional 10% handling fee on cancellation of an order on *Stock Goods* and in addition any further handling fees as might be charged by the *Principal Supplier* on imported goods [if so applicable].

4. DELIVERY

- 4.1. Subject to the *CPA* and as a general rule, delivery of *Stock Goods* shall be within five [5] working days after receipt of the *Buyer's* purchase order whereas delivery of goods to be imported from the *Primary Supplier* will be four [4] to six [6] weeks after receipt of the *Buyer's* Purchase Order, provided that in the case of hazardous goods or substances, these times shall be estimates only and although the *Seller* shall make all reasonable efforts to meet the delivery dates stated, the *Seller* shall not be liable in any way whatsoever for any delays in shipping or in the time in which shipments reach the *Buyer*, and provided further that the *Seller* shall notify the *Buyer* as soon as it becomes aware of any such delays.
- 4.2. Deliveries shall be made at the point of delivery reflected in the *Buyer's* purchase order at a time during which the *Buyer* accepts goods being delivered; provided that the *Buyer* shall be responsible for the offloading of the goods.
- 4.3. The *Seller* or party delivering the goods on the *Seller's* behalf shall furnish the *Buyer* with a delivery note and tax invoice reflecting the delivery address, particulars of the goods delivered and the *Buyer's* purchase order number; provided that if the goods or part thereof are of any hazardous nature, the packaging shall so be labelled and documentation so stated as to reflect the nature, risks involved and safety precautions in terms of *HAS*.
- 4.4. Subject to the applicable warranty on the goods, liability of the goods shall transfer to the *Buyer* upon signature for receipt thereof and the *Seller* will have the right to recover goods from the *Buyer* in the event of non-payment. Ownership of the goods shall remain vested in the *Seller* until payment for the goods have been made in full.

5. WARRANTIES

- 5.1. Subject to par. 5.3 to 5.5 below, the *Seller* warrants for a period of twelve [12] months from date of delivery that all goods are free from defects in design, material and workmanship.
- 5.2. Notwithstanding the aforementioned warranty or anything contained herein stating or implying the contrary, the following shall apply to *Chesterton/Ceramic Polymer* products only -
- 5.2.1 Mechanical Sealing Devices and EPS Products are, subject to paragraph 5.1.4 below warranted for a period of twelve [12] months from date of installation/first use or eighteen months from the original date of shipment, whichever occurs first;
- 5.2.2 ARC, Ceramic Polymer and IL/MRO products have a shelf life of two [2] years from date of manufacture, unless otherwise stated in the product-specific technical data sheet and are subject to paragraph 5.1.4 below warranted during its shelf life free of defect in design, material and workmanship;
- 5.2.3 Mechanical Packing, Gasketing & Live Loading Products, but excluding the products listed below are warranted for a period of twelve [12] months from date of installation/first use or eighteen months from the original date of shipment, whichever occurs first. The products excluded and listed below carries product-specific warranties which can be obtained from the *Seller* –
- 1622 Low E Valve Packing
 - 1724 Low E Valve Packing
 - 5300 Steam Valve Packing
 - 1600 Steam Valve Packing
 - 1601 Steam Valve Packing
 - 5800 Low E Packing
- 5.2.4 The warranty on the products mentioned in paragraphs 5.1.1, 5.1.2 and 5.1.3 does not apply to any custom solution products and is exclusive and in lieu of all other warranties by the *Principal Supplier* express or implied and all implied warranties including but not limited to warranties of merchantability and fitness for a particular purpose are hereby expressly excluded.
- 5.3. Latent damaged goods not reasonably noted at time of delivery should be reported within three [3] working days of time of delivery, provided that, subject to paragraph 5.4 below, the warranty remedy for damaged goods is at the *Seller's* discretion to either repair or replace the product or to refund the purchase price of that product.
- 5.4. Defective products or potentially defective products should be reported to the *Seller* within the warranty period and should the *Principal Supplier* determine such product to be defective, the *Seller* in liaison with the *Principal Supplier* will at its option either repair, replace or refund the purchase price of that product, provided that, subject to paragraph 5.4 below, the warranty remedy for a defective product is at the *Seller's* discretion to either repair or replace the product or to refund the purchase price of that product.
- 5.5. The warranty remedies shall be the sole and exclusive remedies for damaged and defective products and the *Seller* nor the *Primary Supplier* shall be liable for any other costs, losses, expenses, damages or consequential damages.

6. PAYMENTS

- 6.1. Payments are to be made within thirty (30) days from date of the *Seller's* statement unless stated differently on the tax invoice or unless specifically agreed to by the Director of the *Seller*.
- 6.2. The *Seller* reserves the right to hold orders when the *Buyer's* account is past due until such time as the account balance is within the agreed terms.
- 6.3. Unless agreed to in writing between the *Seller* and the *Buyer*, the pricing for all goods sold shall be as per the *Seller's* original quotation.
- 6.4. The *Buyer* carries any risk associated with or arising from the method elected to effect payment to the *Seller*.
- 6.5. Interest at a rate of 2% above the prime overdraft rate charged by *the Seller's* bankers from time to time shall be levied on all overdue amounts.

7. CREDIT FACILITIES

- 7.1. Notwithstanding the conditions of the NCA or a *Party's* exclusion or partial exclusion thereof or any condition herein stating or implying the contrary, the *Seller* requires sufficient information to determine the *Buyer's* creditworthiness, monthly credit limit etc. which shall be a precondition for the supply of any goods, hence will require the information as stated below by completion and submission of the BUYER INFORMATION document prior to any purchase order being submitted to the *Seller*. The information stated in A is compulsory and must be supplied once off when trading with the *Seller* commences for the first time or should the *Seller* request it later to be updated. The information required in B is to be supplied only upon the *Seller's* request :-

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|--------------------------------|---|
| [A] Compulsory : | <ol style="list-style-type: none"> (i) Particulars of Business and (ii) Monthly Credit Limit required (iii) Names and contact details of 3 trade references (iv) Valid Tax Clearance/Compliance Certificate and VAT registration number (v) Address chosen as it's <i>domicilium citandi et executandi</i> |
| [B] Upon Request Only : | <ol style="list-style-type: none"> (i) Audited Financial Statements for the previous financial year (ii) A signed Suretyship and/or Cession of Claims as per paragraph 8 below. |

- 7.2. The information required above is for the sole purposes of assessing the *Buyer's* credit facilities and the *Seller* undertakes to ensure that it is treated as strictly confidential at all times and not to divulge the information or the *Buyer's* operations or affairs to any third parties.
- 7.3. By submitting the information in terms of this paragraph, the *Buyer* confirms that the information supplied is accurate and complete and also undertakes to inform the *Seller* in writing within 48 hours should any content or part thereof changes in content or legal status.
- 7.4. Notwithstanding anything stated or implied herein to the contrary, the NCA and CPA shall apply to any supply of goods on credit to the extent that the aforementioned Acts are applicable to the respective *Parties*.

8. SURETYSHIP AND SESSION OF CLAIMS

Notwithstanding anything stated or implied herein to the contrary, the *Seller* reserves the right to require the *Buyer* to sign a suretyship and/or session of claims prior to providing a quotation or executing a purchase order; provided that the *Seller* shall notify the *Buyer* should this be required for purpose of supplying goods on credit.

9. BREACH AND TERMINATION

Notwithstanding anything herein stating or implying the contrary, the *Seller* reserves the right to refuse, cancel or terminate the execution of any purchase order for any reason it deems fit, including but not limited to the *Buyer* breaching or not adhering to any provision of these Terms and Conditions of Sale, or failing to pay any amount on its due date, or suffering any civil or criminal judgement being taken or entered against it or committing an act of insolvency or dishonesty, in terms of the Insolvency Act 24 of 1936, as amended or being placed under sequestration, liquidation or judicial management, whether provisional or final, or entering onto a compromise with its creditors and the *Seller* shall without prejudice to any other remedies that it has available to it in terms of law, repossess any goods which have not been paid for, and/or claim specific performance of all the *Buyer's* obligations whether or not such obligations have fallen due for performance or not without prejudice to the *Seller's* right to claim damages.

10. FORCE MAJEURE

- 10.1. Force majeure shall mean any circumstances beyond the reasonable control of the *party* concerned and shall include, but not limited to war, revolution, riots, epidemic, quarantine, strike or lockout, industrial action by workers or employees, earthquakes, flood, fire or other natural physical disaster and breakdown of machinery or facilities where such are not under the *Seller's* control.
- 10.2. If any of the parties are delayed or prevented from performing it's obligations by a force majeure event, then such party shall notify the other party of the circumstances within 24 hours, provided that should the force majeure circumstances last for longer than one calendar month, either party

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may terminate future obligations, but provided further that the Buyer shall remain liable to the Seller for any amounts payable for goods already delivered.

- 10.3. Subject to the conditions of this clause, neither part shall have a claim of any nature against the other party for delayed performance as a result of a force majeure event.

11. LEGAL PROCEEDINGS

- 11.1. The laws of the Republic of South Africa will be applied in the resolution of any dispute or litigation arising from these Terms and Conditions of Sale between the *Seller* and the *Buyer*.
- 11.2. The *Seller's* physical address being 8 Makepeace Crescent, Perseverance, Port Elizabeth shall constitute its chosen *domicilium citandi et executandi* for all purposes of these Terms and Conditions of Sale.
- 11.3. The *Buyer* shall be liable for the *Seller's* legal fees in the event of the Company enforcing its rights hereunder on an attorney and own client scale, including counsel's fees on brief, tracing agents fees and collection charges.

12. GENERAL

- 12.1. No amendment, omission and/or cancellation of any of these Terms and Conditions of Sale shall be of any force or effect unless reduced to writing and signed by a duly authorised representatives of the *Seller*.
- 12.2. The *Buyer* shall notify the *Seller* in writing should any of its terms of sale changes
- 12.3. No relaxation or indulgence which the *Seller* may give at any time in regards to these Terms and Conditions of Sale shall prejudice or deemed to be a waiver of any of the *Seller's* rights hereunder.
- 12.4. Each clause in these Terms and Conditions of Sale is severable one from the other and if any clause is found by any competent court to be defective or unenforceable for whatsoever reason, the remaining clauses shall be and continue to be of full force and effect.
- 12.5. The Rule of Construction that these Terms and Conditions of Sale shall be interpreted against the party responsible for drafting it shall not apply.
- 12.6. The *Buyer* shall not be entitled to cede its rights or assign its obligations under these Terms and Conditions of Sale.

END

Note : Should credit facilities be required, the information as stated in clause 7 should be submitted to the Seller subject to the terms stated in that clause. The "BUYER INFORMATION" document should be completed for that purpose and submitted to the Seller together with the relevant documentation.