



# Trading Terms and Conditions

## TRADING TERMS AND CONDITIONS

1. These terms and conditions apply to each order for products placed by the customer whose details appear in the Credit Application Form ("Customer") with TWSSA GROUP (Proprietary) Limited ("TWSSA"), collectively referred to as "the Parties", whether or not that order is in writing.
- 1.1. The Customer agrees that all goods supplied and/or services rendered by TWSSA are sold and/or provided subject to the TRADING TERMS AND CONDITIONS contained herein. These TRADING TERMS AND CONDITIONS apply between the Customer and TWSSA.
- 1.2. No variation or alteration of such conditions shall be effective unless reduced to writing and signed by a duly authorised representative of TWSSA. No indulgence granted by TWSSA shall constitute a waiver of any of TWSSA's rights.

### 2. PAYMENT TERMS

- 2.1. Unless otherwise stated in writing by TWSSA, the Customer shall pay the amount reflected on the Tax or Commercial Invoice at the offices of TWSSA either on order, or, if the Customer is a credit approved Customer, within thirty (30) days from the end of the month in which a Tax or Commercial Invoice is issued by TWSSA to the Customer.
- 2.2. Interest on overdue accounts shall be charged at the prime rate charged by TWSSA's bankers from time to time, plus 3%, calculated from the due date referred to in paragraph 2.1 above until the date of payment in full by the Customer.
- 2.3. The Customer is not entitled to set off any amount due by the Customer to TWSSA against any amount that the Customer contends is due by TWSSA to the Customer, without first having obtained TWSSA's prior written consent.
- 2.4. The Customer agrees that the amount due and payable to TWSSA, including interest may be determined and proven by a Certificate issued and signed by a director of TWSSA, which Certificate shall be prima facie proof of the Customer's indebtedness to TWSSA.
- 2.5. Should the Customer have a valid reason to dispute an entry raised on the Tax or Commercial Invoice, it shall do so within 14 (fourteen) days of the date of TWSSA's invoice to the Customer, failing which such entry shall be deemed to be correct and payable in terms of paragraph 2.1 above.
- 2.6. The granting by TWSSA of any trade discount to the Customer is conditional upon the Customer making payment in full for the Goods supplied under any invoice on or before the due date for payment (regardless of whether such discount is reflected on TWSSA's invoices from time to time).

### 3. ORDERS

All orders or variations to order, whether oral or in writing, shall be binding on the Customer and subject to these terms and conditions and the Customer shall be estopped from denying the validity of such order notwithstanding that it may have been given or signed by a person not authorised by the Customer.

### 4. QUOTED PRICES

- 4.1. All prices quoted by TWSSA are subject to any increase in the cost price, including currency fluctuations, before dispatch of the goods by TWSSA to the Customer.
- 4.2. In the event of a dispute as to the price increase, the amount thereof shall be certified by any of TWSSA's senior or financial managers and such Certificate shall be final and binding on the Customer.

### 5. DELIVERY

- 5.1. In all instances, unless otherwise agreed to in writing by TWSSA-
  - 5.1.1. Delivery to the customer takes TWSSA and prima facie proof of delivery to the Customer can be by means of an original/copy of TWSSA's delivery note signed by the Customer, or proof of delivery to any transporter if the goods are railed or transported to the Customer.
  - 5.1.2. In the case of 5.1.1 above, the transporter is deemed to be the Customer's agent and the Customer authorises TWSSA to engage such third party to transport the goods to the Customer on such terms as TWSSA deems fit and the Customer indemnifies TWSSA against any claims that may arise from such agreement with such third party.
  - 5.1.3. All deliveries are subject to the availability of the goods and TWSSA shall be entitled, in its sole discretion, to split delivery of the goods ordered by the Customer in the quantities and on the dates it decides and to invoice them separately to the Customer, excluding export deliveries.
  - 5.1.4. Any date indicated by TWSSA for delivery of the goods shall be regarded as an estimated date of delivery and does not constitute contractual obligations. TWSSA shall not be liable for any loss or damage of whatsoever nature incurred or suffered by the Customer as a result of or in connection with any late, incorrect, partial or non-delivery. TWSSA will make delivery endeavour to deliver timeously but the Customer shall not be entitled to cancel or repudiate this agreement or claim damages for consequential loss or otherwise or to refuse to accept delivery or part delivery on the grounds of delay in the delivery of the order or any part thereof for any cause whatsoever.

5.1.5. TWSSA shall have the right to cancel a Customer's order where TWSSA is unable to supply and deliver the goods due to force majeure from any cause beyond the control of TWSSA including, but not limited to, inability to secure labour, power, materials or supplies, or by reason of an act of God, or civil disturbance, not state of emergency, strike, lockout, labour disputes, fire, flood, drought or legislation.

## **6. RISK**

6.1. Risk in the goods shall pass to the Customer on delivery of the goods to the Customer as defined in paragraph 5, but ownership in the goods shall remain vested in TWSSA until the purchase price has been paid in full. TWSSA reserves the right to inform the end user or the owner of the premises in which the goods are situated of its claim to ownership. The Customer undertakes to insure the goods until fully paid for.

6.2. TWSSA's equipment are marked with serial numbers. In the event that TWSSA is required to repossess the products following non-payment by the Customer, the Customer undertakes, on demand, to remove the Equipment from any vehicle on which they are installed and to return them to TWSSA, at the Customer's cost.

## **7. BREACH**

7.1. Should the Customer fail to make payment on due date in terms of paragraph 2 hereof, or should the Customer commit any other breach of its obligations hereunder, then TWSSA shall have the option to claim from the Customer all sums owing to TWSSA, whether then due and payable or not, which sums will then immediately become due and payable, the Customer forfeiting all discount on the goods sold; alternatively.

7.2. Without prejudice to any other remedy TWSSA may have in terms of these conditions, or by law, to cancel the contract with the Customer and recover all amounts already due by the Customer as well as damages it may have suffered by reason of the Customer's breach.

## **8. SERVICES RENDERED**

8.1. All services that may be rendered by TWSSA (either directly or through its service providers) shall be rendered subject to these terms and conditions.

8.2. In the absence of any agreement in writing between the parties to the contrary, the price payable for all services rendered will be at TWSSA's prevailing price list in relation to the services concerned.

## **9. GENERAL**

9.1. TWSSA is not liable for consequential losses, howsoever arising, and including without limitation any claims that arise out of the negligence of TWSSA, its employees or agents.

9.2. Should the Customer be domiciled outside the Republic of South Africa, this Agreement and all contracts of sale between the Customer and TWSSA shall be governed and interpreted in accordance with the laws of the Republic of South Africa and the South African Courts shall have sole jurisdiction in respect thereof.

9.3. In the event of it being necessary for TWSSA to instruct its attorneys as a result of any breach of these conditions by the Customer or to recover any amounts owing by the Customer to TWSSA, the Customer agrees to pay for all legal costs on the attorney and client scale inclusive of collection commission, tracing charges, validation fees and stamp duties on any form of security TWSSA may require from the Customer.

9.4. The Customer shall notify TWSSA in writing by registered post within fourteen days of any changes of any of the information set out in the Application for Credit Facilities.

9.5. The granting, continuation and termination of the credit facilities if any, shall be within the sole discretion of TWSSA. TWSSA furthermore reserves the right to suspend the services and to suspend the sale of goods, to cancel any orders, or to impose such other conditions as to security and terms of payment as it deems fit.

9.6. The Customer chooses its physical address appearing in the Application for Credit Facilities as its domicilium citandi et executandi.

9.7. In these terms and conditions, unless the context otherwise requires, words importing the masculine gender shall include the feminine gender and words importing to the singular shall include the plural and vice versa.

9.8. The invalidity of any clause or part thereof of these terms and conditions will not effect the validity of the rest of the terms and conditions.

9.9. The provisions of clauses 2.2, 5.1.2 and 6.1 above:

9.9.1. do not apply to any agreement that is concluded between TWSSA and a person that is either a natural person or a trust that has less than two trustees; and

9.9.2. apply to a juristic person (as defined in the National Credit Act, 2005 ("NCA")) who:

9.9.2.1. has either an asset value or turnover, on the date of signature of the agreement, or at any relevant time, that exceeds the threshold determined by the Minister in terms of section 7(1) of the NCA; or

9.9.2.2. has declared on the application for credit facilities that either its asset value or its turnover, on the date of signature of the agreement, exceed the threshold determined by the Minister in terms of section 7(1) of the NCA; or

9.9.2.3. has declared on the application for credit facilities that neither its asset value nor its turnover, on the date of signature of this agreement, exceed the threshold determined by the Minister in terms of section 7(1) of the NCA, provided that the said clauses apply only if the agreement between the customer and TWSSA constitutes a "large agreement" in terms of section 9 of the NCA (otherwise, they are not of application to the agreement between TWSSA and the customer).

I hereby acknowledge that I have read and understood the terms and conditions of this Agreement and accept them as binding on the Customer. I further warrant that I am duly authorised to contract on the Customer's behalf.

Full Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Designation: \_\_\_\_\_ Date: \_\_\_\_\_