

**HUBERGROUP SA (PTY) LTD**  
(Registration No. 1952/002509/07)

**STANDARD TERMS AND CONDITIONS APPLICABLE TO THE SALE OF GOODS**

The Company's quotation or tender for the sale of Products and any contract resulting therefrom shall be subject to the following terms and conditions which shall apply to the exclusion of all other terms and conditions whether express or implied, unless the Company specifically agrees in writing to accept any variation hereto. The Customer, by accepting delivery of any Product pursuant hereto, acknowledge that no terms and conditions which the Customer purports to attach to its acceptance, nor any terms and conditions which might have been attached to the Customer's order, shall be binding on the Company. The Customer agrees that all such conditions shall be deemed to have been substituted by these terms and conditions.

**SECTION A: STANDARD TERMS AND CONDITIONS APPLICABLE TO ALL TRANSACTIONS**

**1. DEFINITIONS**

- a. "Company" means Hubergroup SA (Pty) Ltd (Registration No. 1952/002509/07).
- b. "Customer" means any party with whom the Company contracts for the sale of any Product.
- c. "Product" means any goods of whatsoever nature purchased by the Customer from the Company.
- d. "Contract Price" means the price agreed between the Company and the Customer for the Product, exclusive of Value Added Tax (VAT).

**2. PAYMENT**

- 2.1 In the event the Company has granted the Customer credit facilities in writing, the Contract Price shall be paid by the Customer, without deduction or set-off of any claims of the Customer against the Company, within the granted payment terms from the date of the Company's invoice. Where no such credit facilities have been granted to the Customer the terms set out in Section B – Non-credit Transactions shall, in addition, apply.
- 2.2 The Company reserves the right to withdraw or amend any credit facilities which may have been granted to the Customer and to require the Customer to furnish guarantees and/or suretyships that are acceptable to the Company for its current or future obligations.
- 2.3 The Customer shall be liable to pay interest on any overdue amount at the First National Bank Division of FirstRand Bank Limited's prime overdraft rate, calculated from the due date. A certificate signed by any manager of the aforesaid bank (whose authority and appointment it shall not be necessary to prove) as to the prime overdraft rate prevailing from time to time shall constitute prima facie proof (sufficient evidence) of that rate.
- 2.4 Should any amount not be received by the Company on or before due date, all other amounts payable, but not yet due by the Customer to the Company, shall immediately (and without notice to the Customer) become both due and payable.
- 2.5 The Customer shall not be entitled to withhold payment of the Contract Price for any reason whatsoever notwithstanding that any dispute may be pending between the parties nor shall the Customer be entitled to make any deduction from the Contract Price or to set off any alleged claim against the amounts due by the Customer to the Company.
- 2.6 Should the Customer fail to clearly indicate to the Company which items appearing on the Company's statement it is paying, the Company reserves the right to apply such payment by the Customer to those items in respect of which payment has been overdue for the longest time.
- 2.7 A query or dispute on a particular invoice or in respect of a particular delivery of Product or Services rendered will not entitle the Customer to withhold payment for such Product.
- 2.8 The Contract Price for all Products shall be payable by the Customer to the Company at its address from time to time, in cash, cheque or electronic transfer in South African currency free of any exchange. Payments effected by mail shall be effected at the risk of the Customer.

**3. QUOTATIONS**

- 3.1 Any quotation by the Company is open for acceptance for a period of 30 days from the date appearing on the quotation, unless revoked earlier in terms of written notice to the Customer or otherwise agreed to in writing between the Company and the Customer.
- 3.2 The price quoted for the Company's Product or Services will, upon acceptance by the Customer, whether such acceptance is tacit or written, constitute the Contract Price.

**4. CERTIFICATE**

The Customer acknowledges that a certificate signed by any director of the Company (whose authority and appointment it shall not be necessary to prove) shall be *prima facie* proof (sufficient evidence) of the amount of such indebtedness to the Company. Such certificate shall be sufficient proof of the Customer's indebtedness for the purposes of provisional sentence and/or summary judgment proceedings against the Customer, or for any other purpose whatsoever.

**5. JURISDICTION**

Save in respect of disputes to which Clause 18 applies, the Customer hereby consents, in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 as amended, to the jurisdiction of the Magistrate's Court having territorial jurisdiction in respect of any action instituted against the Customer by the Company for the recovery of monies or for legal action in terms hereof. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Customer in such Magistrate's Court or any other court having jurisdiction.

**6. VARIATION**

- 6.1 No variation, alteration, cancellation of or addition to these terms will bind the Company unless reduced to writing and signed by an authorised representative of the Company.
- 6.2 No indulgences of any description, extension of time for making payment, or forbearance to sue granted by the Company to the Customer will be deemed to be a waiver of any of the Company's rights in terms hereof and will be without prejudice to such rights.

**7. FINANCIAL CENTRE INTELLIGENCE ACT**

The Customer acknowledges that Section 29 (1) of the Financial Centre Intelligence Act, No 38 of 2001 requires that businesses report to the statutory Centre any suspicious or unusual transaction or series of transactions and in particular where the Company has received, or is about to receive, the proceeds of suspected unlawful activities in payment of the Customer's indebtedness to the Company.

**8. COSTS AND DOMICILIUM**

- 8.1 In the event of proceedings being instituted by the Company against the Customer for the recovery of any amount, the Customer agrees to effect payment of the Company's legal costs on the scale as between attorney and own client.
- 8.2 The Customer nominates its physical address as reflected on the Company's credit application forms as its *domicilium citandi et executandi* (physical address) for service upon it of all notices and process, whether in connection with any claim for any sum due to the Company or otherwise. The Customer undertakes to notify the Company expeditiously of any change to its address.

**9. CESSION AND ASSIGNMENT**

The Customer shall not be entitled to cede or assign any of its rights or obligations under the contract without the prior written consent of the Company.

**10. APPLICABLE LAW**

These terms and conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa in all respects.

**11. SAFEKEEPING OF CUSTOMER'S ORDERS**

The Customer accepts responsibility for the safekeeping and issue of its orders and agrees to pay for orders that are duly authorised and purport to be issued on its behalf and given effect to in good faith by the Company.

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## SECTION B: CONDITIONS APPLICABLE TO NON-CREDIT SALES OF PRODUCT

**NB: The terms and conditions set out hereunder are in addition to the "Standard Terms and Conditions Applicable to both Sales transactions" set out in Section A.**

### 12. PAYMENT TERMS FOR NON-CREDIT SALES

- 12.1 The Contract Price shall be paid in cash or, electronic fund transfer or, at the sole discretion of the Company, by bank guaranteed cheque, without deduction or set-off, prior to dispatch or collection of the Product or rendering of the Service.
- 12.2 Contract Prices are subject to adjustment for any increases in the cost of production and/or delivery that may arise between the date of quotation and the delivery of the Product, arising directly or indirectly from any cause whatsoever, whether statutory or otherwise.

## SECTION C: CONDITIONS APPLICABLE TO THE SALE OF PRODUCT

**NB: The terms and conditions set out hereunder are in addition to the "Standard Terms and Conditions Applicable to both Sales transactions" set out in Sections A and B.**

### 13. PRICE

- 13.1 Unless otherwise agreed in writing, the Products will be supplied at the Contract Price ruling on the date of dispatch from the factory.
- 13.2 Contract Prices are subject to adjustment for any increases in the cost of production and/or delivery that may arise between the date of quotation and the delivery of the Product, arising directly or indirectly from any cause whatsoever, whether statutory or otherwise.

### 14. DELIVERY OF PRODUCT

- 14.1 Deliveries of Product will take place between the hours of 07h00 to 16h30 Monday to Friday, excluding public holidays. Deliveries outside normal working hours will be subject to an extra charge.
- 14.2 The Company shall endeavour to effect delivery of the Product on the agreed date and time to the Customer at the Customer's premises or the Customer's nominated delivery site address, provided that:
  - 14.3 the Company receives a minimum of 24 hours' notice of the intended delivery date if the date agreed upon has changed or if no date has been previously agreed.
- 14.4 The Company shall not be responsible for delays in delivery or non-delivery of Product whatsoever due to causes beyond the Company's control (eg. adverse weather conditions, road congestion, labour-related actions, shortage of stock, delays on the part of subcontracted transport services), nor will the Company accept liability for damages or for any loss the Customer may suffer pursuant thereto, of whatsoever nature arising from the late delivery or non-delivery of Product. Furthermore, the Customer shall not be entitled to cancel or repudiate any order/s and/or purchase/s and/or refuse delivery and/or claim damages and/or set-off payment from the Company due to late and/or defective delivery. The Company's responsibility shall be to notify the Customer expeditiously of the events giving rise to the delay in delivery or non-delivery in circumstances where such delay of delivery or non-delivery is expected to be extending beyond one day after the time/date of the agreed delivery schedule.
- 14.5 Should adverse weather conditions or site problems necessitate a change in the agreed delivery date of the Product, the Customer shall advise the Company as soon as possible thereof. The Customer shall, in any event, be liable for the Contract Price of any Product already batched prior to notification of the delay.
- 14.6 The Customer accepts responsibility for whatever means or method it chooses to adopt for the handling, placing, storage and consolidation of the Product after discharge from the delivery vehicle. Furthermore, the Customer accepts responsibility for any lack of quality, fault or failure of the Product resulting from such handling, placing, storage or consolidation of the Product.
- 14.7 The Customer shall ensure that routes to and from the points of delivery of Product on site are safe and suitable, and that full and free access is available for the Company's or its contracted carrier's delivery vehicles.
- 14.8 The Customer shall ensure that the Company's or its contracted carrier's delivery vehicles are offloaded at the Customer's desired point on the site. In the event of the Product being offloaded at an incorrect point, the Company shall not be liable for any loss arising therefrom, whether direct, consequential, special or general.
- 14.9 The Customer bears the sole and absolute risk for any loss or damage, whether direct or consequential, to the Company's or its contracted carrier's delivery vehicles and/or the Company's machinery and equipment brought onto the Customer's delivery site.
- 14.10 The Customer hereby indemnifies the Company its agents and employees and holds them harmless against any loss, damage or liability sustained or incurred by the Company, its agents or employees arising from any cause whatsoever while the Company's vehicles are on the Customer's site.
- 14.11 The Customer, its employees or agents shall sign the Company's delivery note and this shall constitute *prima facie* proof (sufficient evidence) that the type and quantity of Product recorded thereon was delivered and was accepted by the Customer. In the event of a dispute regarding the delivery of the Product and/or the quantity or quality, the onus of proving that the Product was not delivered and/or that the quantity or quality thereof was not in accordance with the Customer's order, shall rest with the Customer.
- 14.12 If the Company has any reason in its absolute discretion to be concerned about the credit worthiness of the Customer, the Company shall have the right to suspend and/or withhold deliveries of Product.

### 15. SHORT DELIVERY / INCORRECT DELIVERY OF PRODUCT

- 15.1 The Company shall not be liable for any claim for short or incorrect delivery of Product unless the Customer verbally notifies the Company within 24 hours of delivery of its claim, and the Company's representative is given every reasonable opportunity and assistance to satisfy himself that such short or incorrect delivery has, in fact, taken place.
- 15.2 The Company's liability for short or incorrect delivery shall be limited, at the Company's option, to either replacement of the Product short or incorrectly delivered or an adjustment of the Contract Price or the giving of credit for the cost thereof.

### 16. OWNERSHIP AND RISK

- 16.1 Notwithstanding the delivery of any Product to the Customer, ownership of the Product shall not pass until the Company has received payment in full in respect of the Contract Price of such Product. In the event of payment not being timeously effected, the Company reserves the right to recover possession of such Product immediately, without notice and without the necessity to first cancel the contract of sale in respect of such Product.
- 16.2 Risk in the Product shall pass to the Customer at the point of delivery of the Product, i.e. where signed acceptance of the Product takes place, or in the case of collection of the Product, on despatch from the Company's premises.
- 16.3 Where the Customer has appointed its own transport contractor to effect delivery of the Product, the Company's responsibility for providing proof of delivery of Product will be limited to proving that the Product was accepted by a person purporting to be the transport contractor. In this case, risk shall pass to the Customer on delivery of the Product to the transport contractor.
- 16.4 Until the Contract Price of the Product sold and delivered has been paid, the Customer shall ensure that the Product is adequately insured against all appropriate risks.

### 17. WARRANTY

- 17.1 The Company warrants that the Product delivered complies with the details shown on the delivery note and complies with the Company's standard specification or strength mix for such Product.
- 17.2 The onus shall be on the Customer to ensure by examination before use that the Product delivered is within specification.
- 17.3 Liability for breach of the warranty set out in clauses 17.1 and 17.2 shall only arise where the Customer has established, in addition to any other proof required by law, that:
  - 17.3.1 The Customer has inspected the Product before use;
  - 17.3.2 The Product has not been worked or processed since delivery;
  - 17.3.3 Inspection, sampling methods and interpretation of test results were done in strict compliance with the specifications therefor, these being no less stringent than those prescribed by the South African Bureau of Standards;
  - 17.3.4 The Customer notified the Company verbally within 48 hours of its tests having revealed an alleged non-conformity with specification, provided that written notification shall be given by the Customer within a maximum of 7 days from date of delivery;

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- 17.3.5 The Company was afforded every reasonable opportunity to inspect the Product or any sample taken therefrom, and to submit the Product or sample to its own examination and testing;
- 17.3.6 All records of handling, sampling, curing and testing and the interpretation of any tests were made available to the Company for inspection;
- 17.3.7 The Product was not misused, neglected, contaminated, improperly handled or altered in any way and that no foreign material was added to the Product.

- 17.4 Save as set out in 17.6 below, the Company shall not under any circumstances be liable for any loss or damage, whether special or general, direct or consequential, arising out of the sale of the Product by the Company to the Customer, or from any other cause whatsoever. The Customer hereby indemnifies the Company against all claims of whatsoever nature that may be made against the Company arising from the use by any person of the Product supplied by the Company.
- 17.5 The Company offers no other warranty, whether express or implied, in respect of the Product, the colour consistency, or the suitability of such Product for a particular purpose, even if such purpose is communicated to the Company, save that it will be manufactured in accordance with the specifications therefor.
- 17.6 The Company's sole liability in respect of defective Product shall, in the Company's sole discretion, be to replace such Product or to refund to the Customer the Contract Price of such defective Product.

### 18. RESOLUTION OF TECHNICAL DISPUTES

- 18.1 In the event of a dispute arising between the Company and the Customer, the basis of which dispute is the quality, quantity or performance of the Product supplied by the Company, such dispute shall initially be referred to the Company's Technical Manager and the Customer's Production Manager, who shall, within 7 days after such referral, meet and use commercially reasonable endeavours to resolve such dispute.
- 18.2 If they are unable to resolve the dispute then the matter shall be referred to the Company's and the Customer's General Managers, who shall likewise meet within 7 days after such referral and use commercially reasonable endeavours to resolve the dispute.
- 18.3 If the dispute is still not resolved, then the matter shall be referred, at the Company's election, to:
  - 18.3.1 Arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa; or
  - 18.3.2 Proceed directly to the jurisdiction of the Courts in terms of Clause 5
- 18.4 Neither the Company nor the Customer may resort to the jurisdiction of the Courts in terms of Clause 5 without first following the procedure in Clauses 18.1 and 18.2.

### 19. SERVICES WARRANTIES

The Company shall not, under any circumstances, be liable for any loss or damage, whether special or general, direct or consequential, arising out of the rendering of the Services by the Company to the Customer. The Customer hereby indemnifies the Company against all claims of whatsoever nature that may be made against the Company arising from the Services rendered by the Company

### 20. PRODUCT ADVICE

Should a Customer request assistance or advice from a representative of the Company on the application and use of the Company's Products, any such advice given to the Customer by the Company or its representatives is given in good faith and to the best of the Company's ability. However, under no circumstances will the Company be liable to the Customer for damages of whatsoever nature sustained by the Customer and/or any third party arising from any advice that may transpire to have been incorrect.

### 21. NATIONAL CREDIT ACT/CONSUMER PROTECTION ACT

In the event that the National Credit Act 34 of 2005 and/or Consumer Protection Act 68 of 2005 applies to this agreement, any provision of this agreement in conflict with these Acts shall be deemed to be deleted and/or null and void.

### 22. PROTECTION OF PERSONAL INFORMATION

- 22.1 The Customer acknowledges and agrees that the personal information supplied by the Customer is necessary and required for the successful conclusion of the transaction entered into between the parties, the enforcement of rights and performance of obligations arising therefrom as well as the rendering of services in terms thereof and that the information will not be disclosed to any unauthorised parties;
- 22.2 Accordingly, the Customer consents to the processing of the data by the Company or any entity duly authorised thereto by the Company, in accordance with the prevailing data privacy and consumer protection legislation. Such processing shall include, but not be limited to, the collection, handling, management, storage, safeguarding and sharing of the data with other Group entities, and the trans-border flow of such data across South African borders if necessary.