

# CFW INDUSTRIES (PTY) LTD

## STANDARD CONDITIONS OF SALE

### 1. INTERPRETATION

- 1.1 In this Agreement, unless the context indicates otherwise, –
- 1.1.1 "Agreement" means these standard conditions of sale together with the Application Form;
- 1.1.2 "Application Form" means the application form signed and attached hereto containing, *inter alia*, the details of the Purchaser;
- 1.1.3 "Business Day" means a day which is not a Saturday, Sunday or gazetted public holiday in South Africa;
- 1.1.4 "Commencement Date" means the date upon which the application as contemplated in the Application Form has been approved by the Company or in the event of a cash sale, the date upon which the first Order is made by the Purchaser;
- 1.1.5 "Company" means CFW Industries (Proprietary) Limited, registration number 1998/022124/07, a limited liability private company incorporated in South Africa, including any of its subsidiaries;
- 1.1.6 "Credit" means the deferral of the Purchaser's obligation to pay for Goods acquired;
- 1.1.7 "Goods" means the products sold to the Purchaser from time to time in terms of this Agreement;
- 1.1.8 "Invoice" means a valid tax invoice for the Goods sold by the Company and issued to the Purchaser pursuant to an Order;
- 1.1.9 "OEM" means original equipment manufacturer of any component of the Goods;
- 1.1.10 "Order" means a written acceptance of the Quotation by the Purchaser and confirmed the Company;
- 1.1.11 "Parties" means the Company and the Purchaser and "Party" shall mean any one of them as the context may indicate;
- 1.1.12 "Purchaser" means the party's whose details are set out in the Application Form or in the event of a sale of Goods for cash, the purchaser of such Goods;
- 1.1.13 "Quotation" means a quotation requested by the Purchaser reflecting, *inter alia*, the costs of the sale of Goods specified by the Purchaser;
- 1.1.14 "South Africa" means the Republic of South Africa; and
- 1.1.15 "VAT" means value-added tax in terms of the Value-Added Tax Act, No 89 of 1991, as amended.
- 1.2 Any reference to the singular includes the plural and *vice versa*.
- 1.3 Any law means the relevant law as at the Commencement Date and as judiciously interpreted, amended or re-enacted from time to time.
- 1.4 A Party shall include a reference to that Party's successors in title and assigns allowed in law.
- 1.5 The use of any expression which is relevant to a process available in South African law (including "sequestration", "liquidation", "winding up", "insolvency" and "business rescue") shall, if any party to this Agreement is subject to the laws of any other jurisdiction, be interpreted as to include any equivalent or similar process under the law of that other jurisdiction.
- 1.6 Where the signature of a Party is required in terms of this Agreement, such signature must be handwritten signature although an electronic representation of such handwritten signature may also be used.

### 2. COMMENCEMENT AND APPLICATION

- 2.1 This Agreement shall commence on the Commencement Date, unless the Purchaser has been notified that its application has been declined by the Company, and endure and apply to all transactions between the Company and the Purchaser, until all the obligations of the Purchaser in terms hereof (particularly in respect of all amounts due under outstanding Orders) have been fully discharged unless otherwise terminated in terms hereof.
- 2.2 This Agreement and particularly these terms and conditions shall apply to all transactions between the Company and the Purchaser for –
- 2.2.1 the sale and acquisition of Goods; and
- 2.2.2 the advance of Credit to the Purchaser.
- 2.3 The provisions of this Agreement and particularly these terms and conditions shall override any terms or provisions provided or imposed on the Purchaser (to the extent of any inconsistencies with these terms and conditions) when purchasing or ordering Goods from the Company, it being specifically agreed and recorded that all transactions relating to the advance of Credit and the purchase and sale of Goods shall be governed only by the terms of this Agreement.
- 2.4 The withdrawal, cancellation or termination of any particular Order, Accepted Order or Quotation shall not affect the provisions of this Agreement which will remain binding on the Parties unless otherwise agreed in writing between the Parties.
- 2.5 Notwithstanding the provisions of clause 2.1, the Company shall at any time and on 10 (ten) days' written notice to the Purchaser, be entitled to terminate this Agreement in which event the Outstanding Amount shall immediately become due and payable.

### 3. GRANTING OF CREDIT (if applicable)

- 3.1 The granting of Credit to the Purchaser in terms hereof shall be entirely in the discretion of the Company. The Company shall be entitled, at any time on written notice to the Purchaser, to withdraw any unutilized Credit made available to the Purchaser.
- 3.2 [With effect from the Commencement Date, the Purchaser shall be entitled to place Orders up to the maximum amount approved by the Company ("Credit Limit").]
- 3.3 [Subject to the provisions of clause 3.1, the Credit Limit may be reduced by either the Company or the Purchaser on written notice provided that where the Purchaser requests a decrease in the Credit Limit this will only apply to the extent that there is unutilized Credit available to the Purchaser and then only to the extent of the unutilized Credit, unless the Purchaser reduces the outstanding amount accordingly. The Company shall after the receipt of such request advise the Purchaser in writing as to the new Credit Limit and when it will take effect.]
- 3.4 [Should the Purchaser exceed the Credit Limit at any time, the Company shall at its sole discretion and without prejudice to any of its rights or remedies in terms hereof and at law,

be entitled to refuse to accept an Order, even though any amount in respect of Goods already delivered may not yet be due and payable.]

- 3.5 The outstanding amount shall bear interest as contemplated in clause 6.4 for the duration of the period that Credit is provided ("Credit Period") by the Company to the Purchaser. Subject to the provisions of clause 3.1, the Credit Period shall not exceed 30 (thirty) days.
- 3.6 The fact that the Purchaser receives Credit in terms of this Agreement does not mean and shall not be construed as obliging the Company to sell to the Purchaser, it being understood that the Company shall always be entitled to refuse to sell or deliver Goods required or ordered by the Purchaser.

### 4. QUOTATION, ORDERS AND PRICE

- 4.1 The Company shall provide the Purchaser with a Quotation when requested by the Purchaser to do so. Such Quotation shall be subject to alteration, amendment or withdrawal at the instance of the Company until such time as an Order arising from such Quotation has been accepted by the Purchaser and confirmed in writing by the Company.
- 4.2 Quotations are open for acceptance by the Purchaser within 30 (thirty) days of the date indicated on such Quotation, unless withdrawn by the Company prior to date of acceptance thereof. [Acceptance of any Quotation must be in writing addressed to the Company's Cape Town office.]
- 4.3 Orders by the Purchaser shall constitute irrevocable offers to purchase the Goods in question.
- 4.4 [Quotations for Goods stated to be for delivery from stock are subject to prior sale.]
- 4.5 Unless the contrary is stipulated in writing, all quoted prices and other amounts referred to in this Agreement are net ex-works, the cost of those inspections and tests indicated by the Company in writing, exclusive of VAT (which shall be payable by the Purchaser) as well as being exclusive of the costs pertaining to the packaging of such Goods.
- 4.6 [Further to the provisions of clause 4.5 and unless otherwise agreed upon in writing by the Parties, there shall be excluded from the purchase price of the Goods the cost of building foundations, structural alterations to buildings, repairs and strengthening of floors, other builders' work whatsoever, connecting electrical switch gear, cabling, connecting up of motors and control panels and generally anything not indicated in the Quotation.]
- 4.7 All quoted prices are based on the costs ruling at the date indicated on such Quotation. If the aforesaid costs increase between the date indicated on the Quotation provided to the Purchaser and the date of delivery of such Goods to the Purchaser in terms of an Order arising from the aforesaid Quotation, such increase shall be added to the price of such Order.
- 4.8 [Any escalations in price shall be calculated in accordance with the provisions of the Company's standard S.E.I.F.S.A. index linked escalation policy, a copy of which is available upon request.]
- 4.9 Where any of the Goods specified in the Quotation are required to be imported by the Company into South Africa, the prices quoted are based on the official rate of exchange as at the date indicated on the Quotation. Any fluctuations in the aforesaid rate of exchange between the date indicated on the Quotation and the date indicated on the Invoice will be for the Purchasers account or benefit.

### 5. ADDITIONAL CHARGES

- 5.1 The Purchaser shall pay any additional costs incurred by the Company as a result of any suspension, interruption, delay or the working of overtime resulting from circumstances, which are beyond the Company's control.
- 5.2 The Order relates only to the supply of the material and work specified in the Quotation, any additional Goods requested, delivered and/or work carried out by reason of the Purchasers' instructions or at the instance of any Government, Provincial, Municipal or other Authority during the execution of this Agreement, shall be added to the price indicated in the Quotation and/or the Order.
- 5.3 The additional Goods and/or work contemplated in clause 5.2 shall be charged at the Company's normal contract rates or, within the Company's sole discretion, at ruling market prices.

### 6. TERMS OF PAYMENT

- 6.1 Unless the Purchaser has applied for and been granted Credit by the Company as contemplated in clause 3, the terms of payment are strictly cash against delivery or completion of an Order.
- 6.2 If Credit has been granted to the Purchaser, the terms of payment are strictly within 30 (thirty) days of the date indicated on the Invoice.
- 6.3 If the period for the completion of work in respect of the Goods indicated in the Order is intended to or extends beyond two successive calendar months, the Company shall have the right, within its sole discretion, to require the Purchaser to make monthly progress payments payable in arrears on the 7<sup>th</sup> (seventh) day of each and every calendar month until the completion of the work contemplated in this clause 6.3. The aforesaid monthly progress payment shall be calculated according to the estimated amount of work done and materials supplied up to the end of the calendar month immediately preceding the calendar month in which the monthly progress payment is due and payable.
- 6.4 The Company is entitled to charge interest at the current prime overdraft rate applicable to the Company in respect of the period for which any amounts owed by the Purchaser to the Company are overdue.
- 6.5 Payment may not be withheld, set off or exchange by the Purchaser pending the settlement of any claim or dispute. Any discount granted by the Company to the Purchaser shall be forfeited if payment is not made by the Purchaser on the due date for such payment.
- 6.6 If the Purchaser causes a suspension of any work in respect of the Goods, it shall forthwith pay to the Company the value of all work done and materials supplied by the Company up to the date of such suspension and any succeeding suspension of work in respect of the Goods.

- 6.7 If payment is made in installments, a failure to pay any installment when due shall entitle the Company to declare the entire amount or the balance thereof to be immediately due and payable by the Purchaser.
- 6.8 The Company shall, at any time during the subsistence of this Agreement, have the right to demand from the Purchaser security in respect of the fulfillment of its payment obligations towards the Company. If security to the satisfaction of the Company is not offered, the Company may terminate this Agreement forthwith without prejudice to any other rights, which it may have in law.

## **7. DELIVERY, OWNERSHIP AND RISK**

- 7.1 **Ownership in the Goods shall pass to the Purchaser when the total purchase price in respect of the Goods purchased has been paid in full and received by the Company. Accordingly, ownership in and to the Goods shall remain vested in the Company until fully paid for, notwithstanding anything to the contrary herein contained or in any contract of carriage, insurance or finance.**
- 7.2 Risk in and to the Goods shall pass to the Purchaser upon delivery of such Goods, notwithstanding the provisions of clause 7.1. All such Goods whether affixed to immovable property or to other goods, shall be deemed to remain movable property and severable without injury to such immovable property or other goods.
- 7.3 The Purchaser shall notify the Company in writing of the details of the premises where the Goods are to be delivered, stored or used as well as the details of the landlord of such premises. In addition, if the Goods are located on leased premises, the Purchaser shall forthwith notify the relevant landlord of the Company's ownership and rights to the Goods in terms of clause 7.1 and this clause 7.3.
- 7.4 If the Company does not receive adequate delivery instructions in order to effect dispatch of the Goods within 14 (fourteen) days after written notification has been provided to the Purchaser that such Goods are ready for dispatch, the Goods will be invoiced and the Purchaser shall pay for such Goods in accordance with the terms of this Agreement and take delivery or arrange for storage at his own expense. In the event of the Purchaser failing to arrange storage, the Company shall attend to the necessary arrangements on the Purchasers' behalf and all charges for such storage, insurance or for demurrage shall be for the Purchasers' own account.
- 7.5 In the event that the Purchaser is in breach, as contemplated in clause 11, the Company shall be entitled to enter the premises where the Goods are located in order to exercise its rights to the Goods contemplated herein.
- 7.6 Unless otherwise stipulated, the Company will at all times endeavor to dispatch the Goods for delivery to the Purchaser as soon as practicably possible after the Company has confirmed the date of delivery of the Goods to the Purchaser. The Purchaser shall not be entitled to rely on any indication given to the Purchaser, whether indicated prior to or at the time of placing of the Order or thereafter, of the time at which delivery shall take place, which shall merely be an estimate, and the Company shall not be liable or accountable to the Purchaser for any claims, loss or damages suffered in relation thereto.
- 7.7 The Purchaser shall have no claim against the Company for any loss or damage which may be incurred by the Purchaser as a result of delays in the dispatch of Goods as a result of changes in the Purchaser's instructions or by any act or default on the part of the Purchaser or by any cause beyond the Company's control including civil unrest, strikes, war, fire, accidents, epidemics, defective material, delays in transit or *vis major*.
- 7.8 No delay (for whatsoever reason) shall give rise to the right or claim for loss, damages or cancellation of an Order or this Agreement by the Purchaser.
- 7.9 Unless otherwise specified, the price indicated on the Quotation includes delivery [F.O.R. (Free of Rail)] to Cape. The cost of the delivery of Goods via sea, air, train or road transport to any site or location at the Purchaser's request shall be for the Purchaser own account.
- 7.10 It is the responsibility of the Purchaser to arrange all risk insurance cover, at its own expense, on all Goods transported from the Company's premises irrespective of whether transport was arranged by the Company or the Purchaser as well as the means of transport of such Goods to the premises indicated by the Purchaser. The Purchaser shall receive, off-load, check, store and properly protect the Goods and shall be responsible for all loss and damage due to any cause whatsoever.
- 7.11 [Claims for shortages shall be made in writing to the within 7 (seven) days of receipt of the consignment in respect of which a shortage is alleged by the Purchaser. In the event of non-delivery of any consignment, whether by rail or road, the Purchaser shall notify the Company in writing within 21 (twenty one) days of the date of receipt by the Purchaser of a copy of the relevant railway or road consignment note.]

## **8. INTELLECTUAL PROPERTY**

- 8.1 Notwithstanding the sale and delivery of the Goods to the Purchaser, all copyright, patent rights, trademarks, registered design or any application for registration of the same, design rights, rights in trade or business, rights in trade dress, rights in inventions, rights in confidential information or know how, whether registered or unregistered, or any similar or equivalent rights in any part of the world and all other intellectual property rights in and to the content of the Goods shall, at all times remain vested in the Company.
- 8.2 Further to the provisions of clause 8.1, all drawings, plans, illustrations, written estimates and other documents submitted by the Company to the Purchaser remain the Company's property and must be returned to the Company upon receipt of a written demand to do so. The Purchaser shall be entitled to retain drawings or manuals for maintenance purposes only and shall under no circumstances whatsoever make them available to any third party.

## **9. WARRANTIES**

- 9.1 The Company warrants its own manufacturing of the Goods against defects in material and workmanship, arising under normal use and maintenance of such Goods (fair wear and tear excepted) for a period of 1 (one) year from date indicated on the Invoice.
- 9.2 In the event of any of the Goods consisting of components which are not manufactured by the Company, such components shall be subject to the OEM warranties as provided to the Company by the relevant OEM. A copy of the OEM warranties shall be provided to the Purchaser upon request in writing. For the avoidance of doubt, the Company's obligation under this Agreement and in particular these warranties does not extend to any components not manufactured by it.
- 9.3 The Purchaser shall return the defective part, at its own cost, to the Company for repair or replacement.

- 9.4 Upon the repair of any Goods or component of any Goods, the warranty contemplated herein shall apply to such Goods or component for a further period of three months from the date upon which the repair was effected.
- 9.5 It is recorded that no warranty, guarantee or representation other than those contemplated herein have been provided by the Company, its officers, or employees to the Purchaser.

## **10. LIMITATION OF LIABILITY**

- 10.1 The Company shall have no liability to the Purchaser for:
- 10.1.1 consequential or special loss or damages incurred by or for any claim made by a third party in connection with any contract made by the Company or the use of Goods sold by the Company, whether due to delay, defects, negligence or otherwise; and/or
- 10.1.2 any claim not expressly defined and provided for in the contract with the Purchaser.
- 10.2 All materials supplied by the Purchaser shall be clearly marked with the Purchasers name, order number and the Company's Quotation reference number or job number. The Company shall not be held liable for loss of or damage to material not marked in the prescribed manner nor for the resultant delay in the execution of the Order.
- 10.3 The Company accepts no liability in respect of designs, estimates or performance data and the Purchaser is required to ensure before the Company commences work on the Goods that the Goods to be manufactured and the work to be done by the Company will upon completion meet with the Purchaser's requirements. The Company gives no warranties and makes no representations as to the suitability of the Goods for any specific purpose
- 10.4 Illustrations, drawings, dimensions or statement of mass supplied by the Company to the Purchaser are approximates only, unless specifically warranted for their accuracy. Accordingly, the Company shall not be held liable for any loss or damage incurred by the Purchaser as a result of the inaccuracy of any of the aforesaid information.
- 10.5 The Company accepts no responsibility for the condition of any existing machinery plant or fittings, which may be set to work in conjunction with the machinery or plant to be supplied by it. Unless otherwise stated in writing the cost of repairing or reconditioning such plant or fittings is excluded from the contract price and shall be for the separate account of the Purchaser.

## **11. BREACH**

- Upon the Purchaser being in breach, or should the Company be otherwise entitled in law, the Company shall, without prejudice to any other rights that it may have at law or in terms of this Agreement be entitled to –
- 11.1 suspend or termination the Credit or the provision of Goods to the Purchaser;
- 11.2 cancel this Agreement or any particular Order on written notice to the Purchaser and in its discretion reclaim possession of the Goods forming the subject matter of the Orders or to claim specific performance in terms of this Agreement for that/those Order/s and for any obligation owed by the Purchaser to the Company in terms of this Agreement; and
- 11.3 claim damages from the Purchaser.

## **12. CERTIFICATE OF INDEBTEDNESS**

- A certificate signed by any director or manager (whose appointment, authority or qualification need not be proved) for the time being of the Company shall be –
- 12.1 prima facie proof of the quantum of the Outstanding Amount; and
- 12.2 valid, together with, for any purpose and as a liquid document (alternatively as proof of a liquidated amount) in any court or forum of competent jurisdiction for the purpose of obtaining provisional sentence, summary judgment or any other judgment against the Purchaser,
- and the Purchaser acknowledges its indebtedness in respect of any amount so certified.

## **13. DOMICILIUM AND INFORMATION**

- 13.1 The Purchaser hereby chooses as its *domicilium citandi et executandi* for all purposes under or arising from this Agreement its street address provided to the Company in the Application Form or in writing.
- 13.2 Any notices sent by facsimile or email shall be deemed to have been received on the date of transmission provided that the transmission or receipt report does not indicate otherwise and if posted by secured mail, on the 14<sup>th</sup> (fourteenth) day after posting.
- 13.3 Any Party shall notify the other Party in writing on 10 (ten) Business Days' notice of a change of address, provided that no address may be changed to a post office box or poste restante.
- 13.4 The Purchaser shall notify the Company in writing of any changes in the information provided to the Company in the Application Form or in writing. The Company shall not be liable for any damages, loss or expenses suffered or incurred by the Purchaser as a result of the non-compliance with this clause 13.4.

## **14. LEGAL COSTS**

- In the event of a breach by the Purchaser under this Agreement, the Purchaser will be liable for all legal costs, which will include but not be limited to –
- 14.1 legal costs on the scale as to attorney and own client, including all costs of an advocate instructed by the attorney;
- 14.2 collection charges and tracing fees;
- 14.3 VAT added thereon; and
- 14.4 where appropriate, the cost of an arbitration, including the costs of the arbitrator/s.

## **15. APPLICABLE LAW AND JURISDICTION**

- 15.1 This Agreement will in all respects be governed by and construed under the laws of South Africa.
- 15.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the Western Cape High Court (Cape Town) in any dispute arising from or in connection with this Agreement.

## **16. CANCELLATION**

- Notwithstanding anything to the contrary contemplated herein, no Order may be cancelled without the Company's prior written consent thereto and it shall be an implied condition of such cancellation that the Purchaser indemnifies the Company against all loss, damages and expenses incurred in respect of such cancellation. Goods returned (for reasons other than repair or replacement as contemplated in clause 9) without the consent of the Company will not be accepted and all risk in and liability therein shall remain with the Purchaser.

**17. RETURNS POLICY**

- 17.1 CFW strives to provide the best possible service to our customers by ensuring, through training of our sales staff, that the product/s that we offer are well matched to the application in which it/they will be utilized. Should you wish to return a product:
  - 17.1.1 It must be returned within three months from the date of purchase
  - 17.1.2 The return must be approved in writing by CFW prior to delivering the goods to our premises
  - 17.1.3 The product/s must be in brand new condition in the original unbroken packaging.
  - 17.1.4 A 15% handling fee/restocking fee will be deducted from the original purchase price, including taxes
  - 17.1.5 The original invoice must accompany the goods and the refund will be made once the goods have been inspected and approved by our Quality Assurance processes.
- 17.2 Shipping is not refundable and return shipping is the responsibility of the purchaser.
- 17.3 Manufactured-to-order and specially procured equipment is not returnable.
- 17.4 Standard outsourced equipment is subject to the supplier's returns policy.

**18. GENERAL**

- 18.1 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 18.2 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 18.3 If any definition contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement, notwithstanding that it is only in the interpretation clause.
- 18.4 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.
- 18.5 This Agreement shall be governed by and construed and interpreted in accordance with the law of South Africa.
- 18.6 The Purchaser acknowledges that at the time of signing the Application Form, the said form was completed fully and the particulars set forth therein are true and correct.
- 18.7 If any provisions of this Agreement are found to be unlawful, unenforceable or invalid, it shall be deemed to be separate and severable from the remaining provisions of this Agreement and to the extent that same is unlawful, unenforceable or invalid, be deemed to be *pro non scripto*.
- 18.8 No extension of time or other indulgences granted by the Company to the Purchaser in respect of its obligations will constitute a waiver or novation of or otherwise affect any of Company's rights to enforce strict compliance with the terms of this Agreement.
- 18.9 The Purchaser shall not be entitled to cede, assign or delegate any of its rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the Company first being had and obtained.
- 18.10 No alteration, consensual cancellation, novation or variation of, or addition to this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representatives.
- 18.11 This Agreement constitutes the whole agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties and promises or the like not recorded herein.

Dated at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Designation

