



STANDARD TERMS AND CONDITIONS OF TENDER, CONTRACT OF SALE APPLICABLE TO THE SALE OF GOODS AND THE PROVISION OF SERVICES

**Any provision hereof which is in contra to any provision in any other agreement between
Hydro Plant and its Customer shall be subject to the provisions hereof.**

The PLANT's quotation or tender for the sale of Goods and the provision of Services 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 PLANT specifically agrees in writing to accept any variation hereto. The Customer, by accepting delivery of any goods or the rendition of any Service pursuant hereto, acknowledges 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 PLANT and the Customer agrees that all such conditions shall be deemed to have been substituted by these terms and conditions.

1. **DEFINITIONS:**

- 1.1 "the Services" means the services, including any goods, as indicated on any attached documents, any forms, price lists, quotations, delivery notes, orders or invoices of PLANT.
- 1.2 "PLANT" means HYDRO PLANT (Pty) Ltd with registration number 1983/00681/07.
- 1.3 "Current Quotation" means a quotation not older than 30 days as at the date of order received, or as specified on the quotation or tender.
- 1.4 "the Customer" means the legal entity whose name appears on the quotation, or any relevant sales transaction documentation such as on an order, invoice, or credit application.
- 1.5 "Manufacturer's Warranty" means PLANT's standard manufacturer's warranty agreement.
- 1.6 "Invoice date" means the date on which the Customer is informed that the vehicle is ready for delivery, which is also the date on which the Customer will be invoiced and the invoice despatched to the Customer.

2. **QUOTATIONS:**

- 2.1 Quotations are not offers but are invitations to the Customer to do business and PLANT may revoke these at any time or accept or reject in whole or in part any order placed upon it pursuant to the quotation.
- 2.2 A contract shall only come into force if, after receipt of the Customer's order or acceptance of the quotation, PLANT confirms that such a contract has been concluded or if PLANT supplies, or tenders to supply the Services in question to the Customer.

3. ORDERS:

- 3.1 Orders by the Customer for PLANT's Services shall be made in writing and submitted through the agreed electronic media or in physical form to such address as may be nominated by PLANT from time to time.
- 3.2 Orders shall constitute irrevocable offers to obtain PLANT's services at PLANT's usual fees and/or to purchase the goods in question at PLANT's usual prices and shall be capable of acceptance by PLANT by the delivery of the goods and/or provision of the services or by the written acceptance or confirmation of the order.
- 3.3 Oral orders shall similarly be capable of acceptance by PLANT, but PLANT will not be responsible for any errors or misunderstanding occasioned by the Customer's failure to issue orders in writing. However, delivery of goods may be delayed by PLANT until the oral order has been confirmed in writing.
- 3.4 Orders accepted by PLANT shall not be varied or cancelled by the Customer, except with the written consent of PLANT.
- 3.5 Delivery dates are projected dates and while Hydro Plant will endeavour to commit to projected dates, said dates cannot be guaranteed.
- 3.6 All orders placed with PLANT by the Customer shall be in terms of the conditions set out herein, except for specific variations, additions and/or deletions agreed to in writing by both parties. Placement of an order or the acceptance by the Customer of the goods and/or services supplied by PLANT (whatever occurs first) shall be *prima facie* proof of the Customer's acceptance of these Terms and Conditions.**

4. PRICE:

- 4.1 The price of the Services shall be the usual price current at the time of the dispatch of the goods or as otherwise specified by PLANT in writing in a current quotation or in PLANT's order confirmation.
- 4.2 PLANT price lists shall be considered as guidelines only and are subject to change or alteration without prior notification.
- 4.3 PLANT reserves the right to adjust the price of its Services and/or goods from time to time. PLANT will use its best endeavours to notify the Customer of price changes but bears no liability in this regard.
- 4.4 Prices include VAT but exclude statutory charges or duties, unless otherwise expressly stated in a prior written confirmation by a PLANT Director.
- 4.5 The amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force after the date on which any price charged is determined shall be for the Customer's account as an additional charge.

5. PAYMENT AND DEFAULT:

- 5.1 Payment shall be cash on collection of the equipment or products or as otherwise specified by PLANT in writing. No rebates or discounts may be claimed or taken unless specifically agreed upon in writing by PLANT.
- 5.2 Deliveries in instalments shall be deemed to be independent transactions if invoiced separately, payable upon each delivery, in which case payment shall not be postponed until such time as all the Services/goods ordered have been delivered, unless otherwise agreed upon in writing.
- 5.3 In all cases where the Customer uses a postal, banking, electronic or similar such service to effect payment, such services shall be deemed to be the agent of the Customer.
- 5.4 In the event of non-payment by the Customer on due date or defaulting on any other term of this Agreement, all of which are deemed to be material:

- 5.4.1 The whole amount in respect of all purchases by the Customer (whether or not then due and payable) shall become due, owing and payable; and
- 5.4.2 The Customer shall be liable to pay interest in respect of amounts unpaid at the compound rate of 2% per annum above the prime overdraft lending rate of PLANT's bank from due date until date of payment, calculated daily and payable monthly in arrear and should the said interest not be paid in full as aforesaid, the same shall be added to the principal sum, and the total shall form the principal debt which shall then bear interest in the manner as set out above; and
- 5.4.3 PLANT shall have the right to suspend credit and/or deliveries and to exercise its rights in terms of this agreement.
- 5.5 The Customer shall not be entitled to claim set-off or deduction in respect of any payment due by the Customer to PLANT for goods and/or Services supplied.
- 5.6 PLANT may appropriate all payments made by the Customer to such accounts of the Customer as it will in its sole and absolute discretion decide, in reduction of the Customer's indebtedness towards PLANT.
- 5.7 The Customer shall not be entitled to counter claim against PLANT for a debatement of account to frustrate making payment to PLANT. Furthermore, the Customer undertakes to keep a comprehensive set of books at all material times from which it will be able to ascertain its liability to PLANT without the need for any debatement.
- 5.8 Acceptance of a negotiable instrument by PLANT shall not be deemed to be a waiver of PLANT's rights under this agreement. In relation to cheques furnished by the Customer to PLANT, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonoured.

6. CREDIT FACILITIES:

- 6.1 The Customer agrees that the decision to grant credit facilities to the Customer is at the sole discretion of PLANT.
- 6.2 PLANT reserves the right to withdraw any credit facility at any time without prior notice and the nature and extent of said facility shall at all times be in PLANT's sole discretion.
- 6.3 Despite the fact that PLANT may grant the Customer a credit limit or a credit facility up to a certain amount, PLANT reserves the right to increase or decrease this amount at its sole discretion. The credit limit shall not be deemed to be the limit of a Customer's indebtedness to PLANT.

7. LIEN:

All goods, products or equipment of the Customer as well as refunds, repayments, claims and recoveries shall be subject to a special and general lien and pledge for monies due in respect of such goods, products or equipment, or for services provided in respect thereof, or for other monies due to PLANT by the Customer. If monies due to PLANT are not paid within 14 days after notice has been given, these may be sold by auction or otherwise or in some other way be disposed of for value at the sole discretion of PLANT and at the expense of the Customer, and the nett proceeds applied towards satisfaction of the Customer's indebtedness to PLANT.

8. DELIVERY AND RISK:

- 8.1 The risk in and to the goods purchased shall pass to the Customer upon collection by the Customer or upon delivery thereof to the Customer's premises or to an address nominated by the Customer, or to the carrier service transporting the goods for the Customer.

- 8.2 Delivery is deemed to take place upon notification that the product or equipment is ready for dispatch or collection. The beforementioned date of notification shall also be the invoice date. If the Customer fails to collect the goods ordered within a reasonable time period, or in any way delays the delivery of goods ordered, then the risk in the goods shall immediately pass to the Customer and the Customer shall be liable to pay PLANT the reasonable costs of storing, insuring, and handling the goods, until delivery takes place.
- 8.3 The signature of an employee, agent or representative of the Customer or of the carrier service on a delivery note shall be *prima facie* proof that the goods indicated on the document have been properly delivered to and/or received by the Customer, in good order and condition and quantity.
- 8.4 The Customer shall be barred from lodging any claim in respect of the condition of the goods received, shortages in delivery or failure of the goods to comply with the Customer's specifications, unless any defect or discrepancy is so indicated on the delivery note.
- 8.5 Where delivery to the Customer occurs by carrier the carrier shall be the Customer's agent and delivery to the carrier service is deemed to be a delivery to the Customer. PLANT may engage the carrier on such terms and conditions as it deems fit, unless otherwise agreed upon in writing and the Customer shall be liable for payment of all fees, charges, expenses and the like due to the said carrier in respect of the transport of the goods and indemnifies PLANT against all demands and claims which may be made against it by the carrier so engaged and all liability which PLANT may incur towards the carrier arising out of the transportation of the goods.
- 8.6 Delivery of goods to any delivery address selected by the Customer shall constitute proper delivery of the goods, despite the fact that such address may not have been the address or premises of the Customer.
- 8.7 Whilst every effort will be made to dispatch goods as advised, PLANT does not guarantee dispatch on any specific date and shall, notwithstanding any contrary provision in the agreement, not be liable for any damages or penalties for failure to effect delivery/despatch timeously for any reason beyond PLANT's reasonable control, including but not limited to inability to secure transport, factory workload, labour, power, materials, equipment or supplies or by reason of an act of God, war, civil disturbance, riot state or emergency, strike, lockout or other labour disputes, fire, flood, drought, legislation, international shipping schedules and Port or Custom delays. The Customer shall not be entitled to cancel any order by reason of such delay.
- 8.8 If delivery is effected in instalments each instalment shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery of any instalment shall not affect the contracts in respect of the other instalments or entitle the Customer to cancel the other contracts relating to such instalments.

9. OWNERSHIP:

- 9.1 Notwithstanding that all risk in and to all goods sold by PLANT to the Customer shall pass on delivery, ownership in all goods sold and delivered shall remain vested in PLANT until the full purchase price in respect thereof and interest (if any) accrued thereon have been paid. In the event of a breach of these terms and conditions by the Customer, or if the Customer is placed under business rescue, sequestrated or placed under provisional or final liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgement granted against it within 7 days of the date of judgement or changes the structure of its ownership, PLANT shall be entitled to take possession of the goods without prejudice to any further rights vested in PLANT, and is hereby irrevocably authorised to enter upon the Customer's premises to take possession of such goods without a Court order.
- 9.2 If the Customer obstructs PLANT in the process of removing its goods, necessitating the obtaining of a Court order, PLANT shall be entitled to obtain an award of costs against the Customer on an attorney and own client scale.
- 9.3 Furthermore, the Customer shall have no claim against PLANT for damages caused due to loss of profits or otherwise occasioned by the removal of goods from the Customer's premises as aforesaid notwithstanding that such removal was effected without a Court order.
- 9.4 Goods in the possession of the Customer bearing the PLANT name, trademark and/or label shall be deemed to be those for which payment has not yet been made, and may be repossessed by PLANT in terms of paragraph 9.1.

PLANT shall be entitled to identify its goods merely by way of packaging and other distinguishing marks and shall not be obliged to identify it by way of serial numbers or any other form of intricate identification. It shall not be necessary for PLANT to prove either to the Customer or the Customer's liquidator or trustees which goods in the possession of PLANT have actually been paid for and which have not been paid for.

9.5 If, after reconciliation, the Customer is due a credit, such credit shall be passed or the goods equal to the value of the credit due shall be returned, at PLANT's discretion.

9.6 The Customer shall fully insure the goods purchased from PLANT against loss or damage, until the full purchase price therefor has been paid to PLANT, which insurance policy will be exhibited to PLANT upon request. Pending payment to PLANT, all benefits in terms of the insurance policy relating to such goods are ceded to PLANT.

10. LEGAL PROCEEDINGS, MEDIATION AND ARBITRATION:

10.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, these terms and conditions and all modifications and amendments hereof shall be governed by and decided upon and construed under and in accordance with the laws of the Republic of South Africa.

10.2 Under no circumstances shall mediation and arbitration be allowed. Any disputes that cannot be settled in an amicable manner will be referred to the Magistrates Court or High Court of South Africa.

10.3 PLANT shall, at its option and notwithstanding that the amount of its claim exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such court.

10.4 A certificate issued and signed by any director of PLANT, whose status and authority need not be proven, shall be *prima facie* proof of the amount of the Customer's indebtedness to PLANT or in respect of any other fact, including the fact that such goods were sold and delivered, for purposes of obtaining judgement, provisional sentence, summary judgement or any other relief against the Customer.

10.5 The Customer's address as reflected on its letterhead or as indicated in any PLANT quotation or order form shall be recognised as the Customer's *domicilium citandi et executandi* (domicilium) for all purposes in terms of this agreement, whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature.

10.6 The Customer shall pay all legal costs, including attorney and own client costs, tracing agent's fees and collection charges which PLANT may incur in taking any steps pursuant to any breach or enforcement of these terms and conditions by the Customer.

11. RETURNED GOODS:

Goods sold by PLANT are not returnable save at the option of PLANT, or if subject to a valid warranty claim or as otherwise required by law. Should PLANT in its discretion elect to accept the return of any goods, the following shall apply:-

11.1 All goods returned must be complete, clean and undamaged.

11.2 The value of credit for goods returned will be calculated at the invoice value when the goods were purchased, less 15 % handling and re-stocking fee.

11.4 All goods are to be returned at the Customer's expense and the risk in the goods remains with the Customer until the goods are received by PLANT.

12. WARRANTIES, INDEMNITY AND LIMITATION OF LIABILITY:

- 12.1 Warranty on the goods is limited to the Manufacturer's Warranty, a copy of which is available upon request. All other warranties express or implied are excluded. PLANT's liability for any breach of warranty shall be limited to and fully discharged by PLANT when it supplies, free of charge, goods replacing those found to be defective. PLANT's decision as to whether goods are defective or not shall be binding on the Customer and any end-user or purchaser thereof.
- 12.2 PLANT shall not be liable for any loss or damages whether direct, indirect, consequential or otherwise (including, without limitation, loss of profits and loss of use) suffered by the Customer or any third party as a result of any cause arising in connection with any dealings between PLANT and the Customer (including, without limitation the execution of the order, the supply of the goods, the goods, the use of the goods, late completion and any cause arising from anything done or not done pursuant to the contract) whether such loss or damages results from breach of contract (whether fundamental/material or otherwise), delict, negligence or any other cause without limitation.
- 12.3 If, despite the limitations contained herein or elsewhere, PLANT is found liable for breach of contract or otherwise, such liabilities will not exceed in the aggregate the amount of R5 million (five million rand)
- 12.4 PLANT gives no warranty, express or implied, nor any representation that the goods sold by PLANT are suitable for purposes and/or conditions for which they are not generally intended.
- 12.5 Any advice or opinion given by PLANT's employees is for the Customer's benefit only and PLANT accepts no responsibility for any damages that the Customer may incur as a result of the Customer relying upon such advice.

13. SECURITY FOR OBLIGATIONS:

PLANT reserves the right to require satisfactory security from the Customer for the due performance of any of the Customer's obligations, including but not limited to the payment of the purchase price. PLANT may require that the Customer shall deliver, at its own cost, confirmed irrevocable letters of credit or guarantees by financial institutions acceptable to PLANT and upon terms acceptable to PLANT. If such security or guarantees or letters of credit are not furnished within 7 days after any such demand, PLANT shall be entitled to withdraw from the contract in whole or in part.

14. INTELLECTUAL PROPERTY:

Ownership in and to all intellectual property in connection with the design, development, conversion and manufacture of the vehicles/goods or equipment shall at all times before, during and after the termination of this Agreement, remain vested in PLANT and shall only be used by the Customer upon the express written instructions of PLANT.

15. GENERAL:

- 15.1 PLANT reserves the right to vary or amend these terms and conditions from time to time.
- 15.2 This contract represents the entire agreement between PLANT and the Customer and shall govern all future contractual relationships between PLANT and the Customer and shall also be applicable to all debts which the Customer may owe to PLANT prior to the Customer's signature hereto.
- 15.3 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of PLANT. No agreement, whether consensual or unilateral or bilateral, purporting to obligate PLANT to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of PLANT.
- 15.4 No warranties, representations or guarantees have been made by PLANT or on its behalf which may have induced the Customer to accept this document.

- 15.5 No relaxation or indulgence which PLANT may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of PLANT's rights in terms of any contract.
- 15.6 The Customer shall not cede its rights nor assign its obligations in respect of any of its contractual relationships with PLANT.
- 15.7 PLANT shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of any of its contractual relationships with the Customer to any third party without prior notice to the Customer.
- 15.8 The Customer undertakes to notify PLANT within a period of 7 (seven) days of any change of address or any changes in the information as set out in this agreement.
- 15.9 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement.
- 15.10 Each of the terms herein shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 15.11 Provided that they do not conflict with any of the terms and conditions contained herein, such general practices, term and conditions applicable to the industry or profession in which PLANT conducts business shall be applicable to all dealings between PLANT and the Customer.

16. DISCLOSURE OF PERSONAL INFORMATION:

- 16.1 The Customer agrees to update its company information and contact details, as and when it changes, in order to ensure the accuracy and completeness of the information, failing which PLANT will not be liable for any inaccuracies or lack of completeness of information.
- 16.2 PLANT has the Customer's consent at all times to contact and request information from any person, credit bureau or business, including those mentioned in the application form and to obtain any information relevant to the Customer's credit assessment, including but not limited to, information regarding the history and value of purchases from suppliers, type of goods or services purchased and manner and time of payment.
- 16.3 The Customer agrees and understands that information given in confidence to PLANT by a third party regarding the Customer will not be disclosed to the Customer.
- 16.4 The Customer hereby consents to and authorises PLANT to furnish information concerning the Customer's history and transactions with PLANT to a credit bureau and to any third party seeking a trade reference in respect of the Customer.

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