

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. Application

- 1.1. The customer acknowledges and agrees that these standard terms and conditions of sale ("**Terms**") shall apply to the sale by the Company of all goods and materials ("**Goods**"), and the rendering by the Company of all services ("**Services**"), to the customer, to the exclusion of all other terms and conditions, including those of the customer.

### 2. Duration

- 2.1. Either party may at any time, on written notice to the other party, immediately terminate its arrangement as regulated by these Terms.
- 2.2. In the event of such termination, subject to the Company's rights under 15, the parties shall be obliged to discharge their respective obligations outstanding at the date of termination.

### 3. Orders

- 3.1. An order submitted by the customer to the Company to purchase any Goods or Services ("**Order**") shall be in writing, and shall not be binding on the Company until a duly authorised Company representative has accepted such order in writing ("**Order Acceptance**").
- 3.2. Upon the issuing of an Order Acceptance, each Order shall constitute a separate contract between the Company and the customer, governed by these Terms.
- 3.3. The Order Acceptance shall be binding on the parties in respect of the type, quantity and price of Goods or Services ordered.
- 3.4. Order Acceptances shall be issued in the sole discretion of the Company and the customer shall have no expectation that the Company shall accept any particular Order.

### 4. Prices

- 4.1. The Company shall from time to time issue price lists in respect of the Goods and Services, which may be revised by the Company on written notice to the customer. The Company shall provide the prevailing price list to the customer on request.
- 4.2. All quotations issued by the Company:
  - 4.2.1.1. shall remain valid until the earlier of: (i) the expiry of a period of 30 days; or (ii) the effective date of a new price list;
  - 4.2.1.2. are subject to the availability of the Goods at the time of Order; and
  - 4.2.1.3. are based on the prevailing exchange rate (of the country of residence of the Company and that of the customer) on the day on which the quotation is issued.
- 4.3. All prices quoted by the Company are exclusive of value-added tax levied in terms of the Value-added Tax Act, 89 of 1991, as amended.
- 4.4. Notwithstanding the prices set out in the quote or the prevailing price list, the purchase prices payable in respect of particular Goods and/or Services shall be set by the Company in the relevant Order Acceptance. However, in the event that the prices set in the relevant Order Acceptance exceed those set out in the related quote or the prevailing price list, the Company shall inform the customer thereof and the customer shall have the right to cancel that Order

## 5. Payment

- 5.1. Unless the related Order is cancelled, payment for Goods shall be due and payable upon the issue by the Company of the Order Acceptance, and payment for Services rendered shall be due and payable upon completion thereof, in cash.
- 5.2. In the event that the Company has, in writing, extended credit to the customer, the credit limit granted by the Company may from time to time be revised, or revoked, by the Company in its discretion. Payment for Goods and/or Services on credit shall be due and payable within 30 days from the date of statement.
- 5.3. The customer agrees that if the National Credit Act applies to these Terms, interest shall be levied at the maximum legal rate prescribed in terms of the National Credit Act on all overdue payments (at date of signature, 2% per month), calculated daily and compounded monthly in arrears, from the date on which payment was due to the date of actual payment.

## 6. Delivery

- 6.1. Delivery date(s) for Goods and completion date(s) for Services quoted in an Order Acceptance are estimates and are not binding on the Company. Time shall not be of the essence to any sale by the Company of Goods or Services.
- 6.2. Unless otherwise agreed in writing, delivery of the Goods will be CIP (Incoterms 2000) place of destination, as provided in the Order Acceptance. This means that the Company will be responsible for carriage and insurance to the place of destination.
- 6.3. Any delivery note or waybill (copy or original) signed by the customer (or by a third party engaged to transport the Goods) shall constitute prima facie proof of delivery to the customer of the Goods and/or completion of the Services reflected therein.
- 6.4. On delivery of Goods to the customer, the customer shall inspect the Goods to ensure they comply with the Order Acceptance as to type and quantity. The customer shall advise the Company of any discrepancies as soon as possible and, if applicable, return the relevant Goods to the Company at the Company's cost. Thereafter, the Company shall, at its cost, rectify any such discrepancies.

## 7. Title, Risk

- 7.1. All Goods supplied by the Company remain the property of the Company until such time as payment for the Goods, including interest thereon, if applicable, has been received by the Company in full.
- 7.2. The risk of damage to, destruction or theft of the Goods shall pass to the customer in accordance with CIP (Incoterms 2000) place of destination, as provided in the Order Acceptance. This means that risk will pass to the customer when the Goods are delivered to the third party engaged to transport the Goods.

## 8. Intellectual Property

- 8.1. The customer acknowledges that the Company is the proprietor, or licensee, of all intellectual property rights in and to the Goods and Services including, but not limited to, any patents, designs, copyright and trade marks ("**Intellectual Property**"). The customer further acknowledges that it has no claim of ownership in and to the Intellectual Property. The customer shall not, at any time, during or after termination or cancellation of these Terms, dispute the validity or enforceability of the Intellectual Property or cause to be done any act or thing contesting or in any way impairing or intending to impair any part of those rights, and shall not counsel or assist any other person to do so.
- 8.2. The customer shall not remove or tamper with the trade marks, including the logos and slogans, of the Company as applied to the Goods and/or packaging.
- 8.3. The customer shall not in any way represent that it has any right of any nature in the Intellectual Property. The customer may only use the Intellectual Property as authorised by the Company and any such use will inure to the benefit of the Company.

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## 9. Confidential information

- 9.1. The customer hereby consents to the Company continuing to retain its Credit Reference Data beyond it being necessary for performance under its arrangement with the customer as regulated by these Terms, and after the termination of such arrangement as regulated by these Terms. The customer hereby consents to the disclosure of its Credit Reference Data to credit reference agencies, and that no further specific consent needs to be obtained for the disclosure of such data to credit reference agencies. The customer agrees that the Company will not be liable for the good faith disclosure of its Credit Reference Data to credit reference agencies.
- 9.2. The customer also hereby consents to his consumer credit information being forwarded to the National Register of credit agreements, any credit bureau or other third party as permitted or required in terms of applicable legislation, including any third party to whom the Company has ceded and assigned its rights and obligations in terms of this agreement. Consumer credit information includes, but is not limited to, information about this application, information regarding these Terms including the customer's personal information, as well as information on non-compliance with these Terms.
- 9.3. The customer shall keep confidential any information of or relating to the Company or its operations or affairs which it has acquired or may acquire, save for any information:
- 9.3.1.1. which becomes publicly available through no act or default of the customer; or
  - 9.3.1.2. which was in the possession of the customer prior to its disclosure otherwise than as a result of any breach by the customer of any obligation of confidentiality owed to the Company pursuant to these Terms; or
  - 9.3.1.3. which is disclosed to the customer by a person which person did not acquire the information under an obligation of confidentiality; or
  - 9.3.1.4. which is independently acquired by a the customer as a result of work carried out by a person to whom no disclosure of such information has been made,

and the customer shall not use or disclose such information except with the prior written consent of the Company or in accordance with an order of a court of competent jurisdiction, or in order to comply with any law or governmental regulations by which either party concerned is bound, or as may be lawfully requested in writing by any governmental authority.

## 10. Prohibition on reselling

- 10.1. The customer is prohibited from reselling any Goods in respect of which ownership has not yet passed to the customer under any circumstances to any third party without the Company's prior written consent.

## 11. Compliance with laws

- 11.1. The customer must, at all times:
- 11.1.1.1. comply with all relevant laws, regulations and standards relating to the goods, including but not limited to the loading, storage, stacking, handling and use thereof;
  - 11.1.1.2. comply with the instructions provided by the Company in relation to the goods and the handling and use thereof;
  - 11.1.1.3. take proper notice of the warnings provided by the Company in relation to any hazards associated with the goods or the handling or use thereof;
  - 11.1.1.4. communicate the items listed in 11.1.1.1 to 11.1.1.3 above to all persons to whom the customer supplies the goods; and
  - 11.1.1.5. ensure that the persons referred to in 11.1.1.4 above undertake to communicate the items listed in 11.1.1.1 to 11.1.1.3 above to all persons to whom they supply the goods, and so on down the supply chain until the goods reach the end user.

***The above constitutes an assumption of risk, liability or both by the customer because the customer's rights and***

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***remedies against the Company may be limited or excluded if it does not fulfil the obligations set out above. This means that the customer may bear its own losses in these circumstances.***

11.2. Where the Company is required by the customer to perform any Services, the customer shall ensure that adequate and safe facilities exist at its premises.

***The above constitutes an assumption of risk, liability or both by the customer because the Company and/or its employees and/or sub-contractors may have claims or other rights against the customer if the customer does not provide adequate and safe facilities at its premises. This means that the customer may assume financial and other risks.***

## **12. Liability and Indemnity**

12.1. Subject to 12.2, the Company will not be liable to the customer under any circumstances for any damages whatsoever:

12.1.1.1. where such damages relate to the Goods and/or Services, the transaction between the Company and the customer, and/or these Terms;

12.1.1.2. howsoever the damages are caused; and

12.1.1.3. howsoever the damages arise, be it in contract, delict, common law, breach of duty or otherwise.

***The above constitutes an assumption of risk and/or liability by the customer and excludes the customer's rights and remedies against the Company. This means that the customer will bear the financial responsibility for any damages or losses he/it may suffer.***

12.2. The limitation of the Company's liability in 12.1 does not purport to limit the Company's liability where it would be:

12.2.1.1. contrary to, or prohibited by, the CPA for the Company to do so, or

12.2.1.2. unlawful for the Company to attempt to do so.

## **13. Force Majeure**

13.1. Neither party shall be liable for the non-performance of any of his/its obligations to the extent such performance is prevented due to an impediment beyond his/its control, including without limitation inability to secure labour, power, materials or supplies, machinery breakdown, war, civil disturbance, riot, acts of sabotage, states of emergency, strikes, lockouts, go-slows and other labour disputes, natural disasters, explosions, fires, floods, droughts and acts of authority (whether lawful or unlawful).

13.2. Such an impediment shall relieve the affected party from damages, penalties and other contractual sanctions, and postpone the time for performance, as long as and to the extent that the impediment subsists.

13.3. If the impediment subsists for more than 30 days, either party shall be entitled to terminate this agreement on written notice.

## **14. Business Rescue**

14.1. If the customer is a company, it shall notify the Company in writing within 2 days of the occurrence of the following events:

14.1.1.1. when the board of the customer becomes aware that the customer is Financially Distressed;

14.1.1.2. when the board of the customer contemplates, considers, discusses or agrees to any Business Rescue of the customer;

14.1.1.3. when the customer becomes aware of any person proposing to take, or taking, any step to apply to court for the Business Rescue of the customer.

14.2. The written notice shall set out the full details of the Financial Distress or the actual or proposed activity contemplated in clause 14.1.1.2 and/or 14.1.1.3 above, as the case may be.

14.3. For the purposes of these Terms, "Business Rescue" shall bear the meaning assigned to it in section 128(1)(b) of the

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Companies Act, 71 of 2008, and "Financially Distressed" shall bear the meaning assigned to it in section 128(1)(f) of that Act.

## **15. Default**

### **15.1. Should:**

- 15.1.1.1. the customer take any steps to be deregistered;
- 15.1.1.2. the customer be, or take any steps to be, wound-up or liquidated, whether provisionally or finally and whether compulsorily or voluntarily;
- 15.1.1.3. a judgment be recorded against the customer or any of its principals;
- 15.1.1.4. the customer enter into a compromise with its creditors generally, or offer to do so;
- 15.1.1.5. a written notice referred to in clause 14.1 be received by the Company; and/or
- 15.1.1.6. the Company become aware that the customer is Financially Distressed or of any actual or proposed activity contemplated in clauses 14.1.1.2 or 14.1.1.3 above,

The Company shall be entitled, without prejudice to its rights, to cancel any Order, withdraw any Order Acceptance, refuse to accept further Orders and/or take such steps permitted by law to recover the amount owing from the customer.

15.2. If a party commits a breach of any provision of these Terms and fail to remedy such breach to the reasonable satisfaction of the other party within 7 days of receipt of notice in writing from the other party requiring it to do so, the other party may, without prejudice to its rights and remedies at law:

- 15.2.1.1. claim specific performance of any of the defaulting party's obligations under these terms; or
- 15.2.1.2. suspend or terminate the arrangement between the parties under these terms; and in either event
- 15.2.1.3. claim such damages as he/it may have suffered.

15.3. In addition to the Company's rights under 15.2, where the customer is the defaulting party, the Company may cancel any Order, withdraw any Order Acceptance, refuse to accept further Orders and/or take such steps by law permitted by law to recover the amount owing from the customer.

## **16. Governing law and dispute resolution**

16.1. These Terms are to be governed, interpreted and implemented in accordance with South African law and the customer consents to the non-exclusive jurisdiction of the High Court of South Africa for any proceedings arising from these Terms.

16.2. The Company shall have the right, at its election, to institute proceedings in the Magistrate's Court having jurisdiction, notwithstanding that the amount claimed by the Company might exceed the jurisdiction of the Magistrate's Court.

## **17. General**

17.1. No extension or indulgence granted by either party will constitute a waiver by that party in respect of any of his/its rights herein, or prevent or adversely affect the exercise by that party of any of his/its existing or future rights.

17.2. The customer agrees that these Terms represent the entire agreement between the customer and the Company in respect of the subject matter hereof and supersede and novate in their entirety any previous understandings between the parties in respect thereof. No contract varying, adding to, deleting from or cancelling these Terms, may be effected unless reduced to writing and signed by a duly authorised representative of both the customer and the Company.

17.3. Neither party may cede all or any of his/its rights or delegate all or any of his/its obligation in terms of these Terms to any party without the prior written consent of the other party.

17.4. If there is any conflict between these Terms and the terms and conditions of any offer, Order or other communication received from the customer, these Terms shall prevail.

17.5. If the Company institutes legal proceedings against the customer pursuant to these Terms, and succeeds in such legal proceedings, the customer shall pay all costs incurred by the Company in doing so, including but not limited to collection costs, tracing fees, and legal fees.

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- 17.6. The customer chooses the address for delivery of the Goods nominated in the credit application form, and the Company chooses the following address, as their respective addresses for the service of legal documents or processes (ie its domicilium citandi et executandi):
- Building 2-17 Galaxy Road, Galaxy Park, Sandton 2065, South Africa
- 17.7. The customer chooses the postal address nominated in the credit application form, and the Company chooses the following address, as their respective addresses for the delivery of any written notification:
- P.O. Box 6883, Greenstone 1616, South Africa
- 17.8. A notice shall be deemed to have been duly given 7 days after posting, if posted by prepaid registered post to the party's nominated postal address, unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee. A party may change that party's address(es) for this purpose by 7 days' notice in writing to the other party. Notwithstanding any provision to the contrary, a written notice or communication actually received by a party shall be an adequate written notice or communication notwithstanding that it was not sent to or delivered at that party's chosen address.
- 17.9. If any provision of these Terms which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## **18. POPIA PRIVACY STATEMENT - June 2021**

To conduct business with the AECI Group, it is necessary for us to collect and process the personal information (PI) fields in this form. The manner in which the AECI Group processes PI is set out in the AECI Privacy Policy available at <https://investor.aeciworld.com/governance>.

The primary purpose/s of collection and processing of the PI on this form is/are:

- Occupational health and safety activities;
- Procurement and vendor management and supply chain activities;
- Corporate administration;
- Property management and security services;
- Stake-holder relations and engagement activities.

Further information on data-subject rights is available at <https://www.justice.gov.za/infoereg/>.

By completing this form you acknowledge that have been notified of our processing of PI in accordance with the AECI Privacy Policy. Amendments to the Privacy Policy will be notified to you via updates on our website.

**19. Consent to Share Information**

I hereby confirm that [Enter legal entity], registration number [Enter number], referred to as THE APPLICANT below, has applied for credit and consent to the following:

For the purposes of making credit risk management decisions and preventing fraud, THE APPLICANT hereby warrants that AECI Food & Beverage has consent to:

- 1.1. Carry out a credit enquiry on THE APPLICANT and the Directors/Members/Partners/Trustees/ Principals of THE APPLICANT from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors (trade references) of THE APPLICANT in terms of this agreement.
- 1.2. AECI Food & Beverage may transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT'S of how THE APPLICANT has performed in meeting his/her/its obligations in terms of this agreement.
- 1.3. If THE APPLICANT fails to meet his/her/its commitments to AECI Food & Beverage, AECI Food & Beverage may record THE APPLICANT'S non-performance with credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT.
2. Such information shall be retained for periods as stipulated in any applicable law, but no longer than the duration of the validity of this agreement. Where THE APPLICANT has not used a facility under this agreement for 12 months, THE APPLICANT will be required to re-apply for such a facility.
3. AECI Food & Beverage is required to collect, process, and share THE APPLICANT'S personal information. THE APPLICANT'S personal information is collected and processed by AECI Food & Beverage's staff, representatives, and sub-contractors and AECI Food & Beverage makes every effort to protect and secure THE APPLICANT'S personal information. THE APPLICANT is entitled at any time to request access to the information AECI Food & Beverage has collected, processed, and shared.