

STANDARD TERMS AND CONDITIONS

1. INTRODUCTION

- 1.1 The "Supplier" referred to in this agreement is KAP Industrial Holdings Ltd ("KAP") and its subsidiaries as set out in annexure A hereto and its successors and/or assigns including all subsidiaries or divisions or any other company which becomes a subsidiary of KAP. This is an agreement for the supply of goods and/or services by the Supplier to the Customer.
- 1.2 Once the Application has been approved by the Supplier, the Application and the terms and conditions set out below, including all notices sent to the Customer and annexures attached hereto ("the Agreement"), shall apply to the sale of any goods or the rendering of services by the Supplier to the Customer.
- 1.3 The Customer acknowledges and agrees that the Supplier will only be able to commence with its services or deliver any goods under this Agreement, once the Supplier has approved the Customer's Application, and any further conditions imposed by law have been complied with. This Agreement is only valid and the parties are only obliged to comply with it if it is reduced to writing and signed by or on behalf of all the parties.
- 1.3.1 In this Agreement, reference to one gender includes all the genders; the singular form of a word includes the plural and the plural form of a word includes the singular; and a law or regulation is a reference to that law or regulation on the date the Customer entered into this Agreement.

2. PAYMENTS

- 2.1 **Unless otherwise agreed, the Customer must pay the Supplier in accordance with the payment terms confirmed by the Supplier as contemplated in Error! Reference source not found. of the Application ("due date").**
- 2.2 Payments may be made by way of electronic transfer or any other means acceptable to the Supplier.
- 2.3 **The Supplier shall be entitled to levy interest on all overdue amounts (i.e. amounts not paid on the due date as contemplated in 2.1 above) at a rate of 2,0% per month, or such other maximum rate that may be prescribed from time to time in terms of the National Credit Act 34 of 2005 ("NCA"). Interest shall be reckoned from the day upon which such amount becomes overdue of the amount concerned until the date of payment, both days inclusive, and shall be calculated on a compounded basis on the amount owing at the end of each month; and payable on demand.**
- 2.4 The Supplier will credit each payment made under this Agreement to the Customer on the date of receipt of the payment as follows: firstly, to satisfy any due or unpaid interest charges (if any), secondly, to satisfy any due or unpaid fees or charges (if any) and thirdly, to reduce the amount of the principal debt. The Supplier shall be entitled to apply set-off.
- 2.5 Should the Supplier at any time inform the Customer of any change to the Supplier's banking details, the Customer shall **confirm such change with the sales representative of the Customer and the Financial Director** of the Supplier before effecting any further payments.
- 2.6 Notwithstanding clause 2.5, in the event of the Customer erroneously making payment for goods or services into an incorrect banking account, the Customer shall remain liable to the Supplier for such goods or services.

3. PRICE OF GOODS AND PRICE VARIATIONS

- 3.1 The price of goods and/or services shall be as set out in the Supplier's official price list, which is available upon request or the invoice provided to the Customer.
- 3.2 The Supplier may amend the price of goods and services from time to time and will provide the Customer with reasonable prior written notice, if required.

4. DISCOUNTS

- 4.1 The price of goods and services is strictly net (i.e. exclusive of value-added tax leviable in terms of the Value-Added Tax Act 89 of 1991 ("VAT") and not subject to any deduction). These prices are not subject to any discounts, unless otherwise agreed.
- 4.2 If any discount is agreed to in writing, payment must be received on the due date as defined in clause 2.1 above and shall only apply to the actual price of the goods or the services (i.e. excluding VAT, transport costs, insurance and similar charges).

5. DELIVERY

- 5.1 The Customer may request the Supplier to engage a carrier to transport the goods for the Customer. The Customer hereby authorises the Supplier to engage a carrier on such terms and conditions as it deems fit.
- 5.2 **The Supplier shall not be liable for any loss suffered by the Customer as a result of the transportation of the goods by the carrier engaged by the Supplier at the request of the Customer.**
- 5.3 If a carrier has been engaged to transport the goods as contemplated in 5.1, the goods will be deemed to have been duly delivered to the Customer when the goods are delivered to the carrier.
- 5.4 Goods will be delivered to the address chosen by the Customer for purposes of delivery. If no such address has been specified, then the agreed place of delivery is the Supplier's place of business.
- 5.5 Goods to be delivered remain at the Supplier's risk until such goods have been delivered to the Customer in terms of 5.3.
- 5.6 The Supplier will do all that it reasonably can to meet the stipulated dates and time for delivery of goods and services. **The Supplier cannot be responsible for failure to perform or to deliver or delays in performance or delivery due to circumstances beyond the Supplier's control, such as adverse weather conditions, unpredictable delays caused by traffic congestion, diversions or road works, the unavailability of raw materials, strikes, power outages, industrial disputes and regulatory interference ("force majeure events"). The Supplier will not be liable to the Customer for any loss arising from any failure or delay in performance or providing services and/or goods resulting from force majeure events.** The Supplier will use reasonable endeavours to continue to perform in terms of this Agreement as soon as performance becomes possible. The Supplier may contact the Customer to agree on alternative dates for delivery, but will not require the Customer to accept delivery at an unreasonable time.
- 5.7 If the Supplier is unable to provide the services or the goods, the Supplier will inform the Customer immediately and refund any payment made within 30 (thirty) days of this notice.

6. OWNERSHIP

Notwithstanding the delivery of any goods supplied or delivered by the Supplier to the Customer, the Customer shall not become the owner until the Supplier has received payment of the full contract price and/or amounts payable in respect thereof under this Agreement.

7. TRANSFERRING RIGHTS OR OBLIGATIONS

- 7.1 The Customer may not transfer any of the Customer's rights or obligations under this Agreement to anyone else without the Supplier's prior written consent.
- 7.2 The Supplier may transfer all or some of the Supplier's rights and obligations under this Agreement to any other person without the Customer's consent, provided that the transfer is not to the Customer's detriment.

8. THE CUSTOMER'S RIGHT TO TERMINATE

- 8.1 The Customer may cancel or terminate this Agreement at any time by paying an amount ("settlement amount") equal to the aggregate of –
- 8.1.1 the unpaid balance of the outstanding amount on the Customer's account(s) with the Supplier as at that date ("settlement date"); and
- 8.1.2 all unpaid interest and all other fees and charges due or payable by the Customer in terms of this Agreement up to and including the settlement date.
- 8.2 The Customer may demand to be furnished with a statement specifying the settlement amount, in which event the Supplier will be obliged to provide such statement, in writing, within 5 (five) business days of the Customer's request.
- 8.3 The statement reflected in clause 8.2 above will only be binding for the date stated and will not include any transactions effected or processed on or after this date and for which the Customer will also be liable.
- 8.4 This clause 8 only applies if the NCA applies to the Agreement.

9. DECLARATIONS AND WARRANTIES BY THE CUSTOMER

- 9.1 **In addition to the declarations and warranties set out in section 5 of the Application, the Customer warrants and declares that:**
- 9.1.1 **the Customer has been given an adequate opportunity to read and understand the terms and conditions of this Agreement and is aware of all the terms thereof, particularly those printed in bold. The Customer understands and accepts its risks and costs as well as its rights and obligations under this Agreement;**
- 9.1.2 **the Customer has full power and authorisation to enter into this agreement and to effect and carry out the obligations in terms of this Agreement and, if the Customer is a corporate entity, association, partnership or a trust, that all necessary corporate and/or other actions were taken to authorise the execution of this Agreement and the Customer will provide the Supplier with the originals or certified copies of all documents confirming such authorisation;**
- 9.1.3 **the Customer has fully and truthfully answered all and any requests for information addressed to it by or on behalf of the Supplier and provided to the Supplier in connection with the conclusion of this Agreement. The Customer is not aware of any material facts or circumstances not disclosed to the Supplier which, if disclosed, may adversely affect the decision to enter into this Agreement;**
- 9.1.4 **no default event specified below in clause 12 has occurred or is occurring;**
- 9.1.5 **the Supplier did not make an offer to the Customer which would automatically have resulted in an agreement if the Customer had not declined the offer;**
- 9.1.6 **the Supplier has not induced, harassed or forced the Customer to enter into this Agreement; and**
- 9.1.7 **the Customer will immediately notify the Supplier in writing of any change in the Customer, including change of ownership of the Customer's business and change in shareholding or membership, if the Customer is a company or close corporation.**

10. ADDRESSES FOR NOTICES

- 10.1 The Customer hereby chooses as the Customer's *domicilium citandi et executandi* ("domicile address") for all purposes the physical address as set out in **Error! Reference source not found.** of the Application. The Customer authorises the Supplier to deliver notices, statements or invoices by hand, e-mail, facsimile or registered post to the addresses provided in Section 1 of the Application.
- 10.2 For purposes of this Agreement all notices shall be in writing. Any notice given by either party to the other (the addressee) which is delivered by hand shall be presumed to have been received at the time of delivery, if transmitted by fax, one hour after the time of transmission, if sent by e-mail, on the date received by the addressee's server or if sent by pre-paid registered post, 7 days after the date of posting. A notice actually received by a party shall be an adequate notice to it notwithstanding that it was not delivered to its domicile address.
- 10.3 The parties may at any time by written notice vary their domicile addresses to any address within the Republic of South Africa.

11. THE CUSTOMER'S RIGHTS TO RETURN GOODS

- 11.1 If the Consumer Protection Act 68 of 2008 ("CPA") applies to the Agreement because the Customer is either a natural person or a juristic person (i.e. a company, close corporation, association, partnership or trust) and the asset value or annual turnover of the juristic person does not exceed the threshold set in terms of the CPA, the terms and conditions of this clause 11 will apply to the Agreement with the Customer.
- 11.2 The Customer has the right to rescind any transaction or agreement resulting from direct marketing without reason or penalty by written notice to the Supplier within 5 (five) business days after the later of the date on which the Agreement was concluded or the goods were delivered to the Customer. If the Customer chooses to terminate the Agreement, the Customer must comply with 8 above, if applicable.
- 11.3 When the goods are delivered to the Customer, the Customer may request a reasonable opportunity to examine those goods for the purpose of ascertaining whether the Customer is satisfied that the goods -
- 11.3.1 are in accordance with the type and quality ordered by the Customer;
- 11.3.2 the goods correspond in all material respects and characteristics with samples and/or description;
- 11.3.3 in the case of a special order, reasonably conform to the material specifications of the special order; or
- 11.3.4 are suitable for the purpose for which they have been bought.
- 11.4 If the Customer returns the goods for any lawful reason other than a product failure or defect, the Customer must do so within 10 (ten) business days after the goods have been delivered to the Customer, together with proof of payment. Subject to applicable law, the Supplier retains the right to charge the Customer a reasonable amount for use of the goods during the time they were in the Customer's possession, for any consumption or depletion of the goods and for necessary restoration costs to render the goods fit for re-stocking. The Customer will not be entitled to return the goods and receive a refund if –
- 11.4.1 for reasons of public health or otherwise, a public regulation prohibits the return of those goods; or
- 11.4.2 after having been supplied to the Customer, the goods have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.
- 11.5 If the Customer returns the goods due to a product failure or defect, the Customer should do so within 6 (six) months after the goods have been delivered to the Customer, provided that the Customer is able to provide proof of payment. The Supplier will, at the Customer's direction repair or replace the goods, or refund the amount paid for the goods. The Customer will not be able to return the goods if the product failure or defect is attributable to non-compliance by the Customer with the instructions provided by the Supplier.

12. DEFAULT, IMPLICATIONS OF DEFAULT AND PROCESS TO BE FOLLOWED

- 12.1 **If the Customer is in default, the full amount owing by the Customer in terms of this Agreement will immediately become due and payable notwithstanding the fact that a portion of the amount would not yet be due in accordance with the agreed terms of payment.**
- 12.2 The Customer will be in default of this Agreement if –
- 12.2.1 the Customer does not pay any amount payable to the Supplier under this Agreement on the due date as contemplated in 2.1 above;
- 12.2.2 the Customer breaches any of the terms and conditions of this Agreement or any agreement in terms of which the Customer provided security to the Supplier, and the Customer fails to remedy the breach within (7) seven days of receiving written notice to do so;
- 12.2.3 any representation or warranty made in connection with this Agreement or any other documents supplied by the Customer is materially incorrect or false;
- 12.2.4 any person who furnished security to the Supplier in respect of this Agreement (e.g. as surety, guarantor or pledgor), commits any breach of its obligations to the Supplier in terms of that agreement;
- 12.2.5 the Customer or any person who furnished security in respect of this Agreement –
- 12.2.5.1 being an individual publishes notice of the voluntary surrender of his estate or dies or is placed under administration or commits an act of insolvency as defined in the Insolvency Act 24 of 1936 or has any application or other proceedings brought against or in respect of him in terms of which he is sought to be sequestrated or placed under curatorship, in any event whether provisionally or finally and whether voluntarily or compulsory;
- 12.2.5.2 not being an individual –
- 12.2.5.2.1 is wound up, liquidated, dissolved or deregistered, in any event whether provisionally or finally and whether voluntarily or compulsory, or passes a resolution providing for any such event;
- 12.2.5.2.2 is deemed to be unable to pay its debts;
- 12.2.5.2.3 resolves that it voluntarily begin business rescue proceedings or has any business rescue proceedings commenced against it, as contemplated in section 132(1) of the Companies Act 71 of 2008;
- 12.2.5.2.4 has a judgment of a competent court against the Customer or any person who has furnished security for the Customer for the attachment of assets or for payment of any amount is not satisfied for more than seven (7) days after the date on which it is issued; or
- 12.2.5.2.5 compromises or attempts to compromise with the Customer's creditors generally or defer payment of debts owing by the Customer to the Customer's creditors.
- 12.3 If the Customer is in default and this Agreement is subject to the NCA, the Supplier may –
- 12.3.1 give the Customer written notice of such default and may propose that the Customer refer this Agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under this Agreement or develop and agree on a plan to bring repayments up to date;
- 12.3.2 commence legal proceedings to enforce this Agreement including exercising its rights in terms of any of the securities and recover collection costs and default administration charges as defined in the NCA if –
- 12.3.2.1 it has given the Customer notice as referred to in clause 12.3.1 above or it has given notice to terminate any debt review process under section 86 of the NCA which may then be underway in respect of this Agreement;
- 12.3.2.2 the Customer is and has been in default under this Agreement for at least 20 (twenty) business days; and
- 12.3.2.3 at least 10 (ten) business days have elapsed since the Supplier delivered the notice contemplated in clause 12.3.2.1; and
- 12.3.2.4 in the case of a notice in terms of clause 12.3.1, the Customer has not responded to that notice; or responded to the notice by rejecting the Supplier's proposal.
- 12.4 If the Customer is in default of this Agreement and this Agreement is not subject to the NCA the Supplier may exercise its rights, as may be permissible in law and without prejudice to any of the Supplier's other rights, which include any one or more of the following –
- 12.4.1 suspending the delivery and provision of goods and services;
- 12.4.2 demanding immediate payment of all outstanding amounts;
- 12.4.3 terminating of this Agreement; and
- 12.4.4 enforcing any security furnished in respect of the Agreement.
- 12.5 **The Customer will be liable for all legal costs, as may be permissible in law, in recovering any amount that the Customer owes the Supplier. If the NCA or CPA does not apply, the Customer shall be liable for costs on the attorney and own client scale.**
- 12.6 A certificate signed by a manager, director, CFO or CEO of the Supplier, specifying the amount owing by the Customer and further stating that such amount is due, owing and payable by the Customer, shall be sufficient (*prima facie*) proof of the amount thereof and of the fact that such amount is so due, owing and payable for the purpose of obtaining provisional sentence or other judgment against the Customer in any competent court. It shall not be necessary to prove the appointment of the person signing any such certificate.
13. **LIMITATION OF LIABILITY**
- To the extent permissible in law, neither party shall, in any circumstances, be liable to the other party for any indirect or consequential loss or damages, including without limitation, loss of business or profit.**
14. **GENERAL**
- 14.1 This Agreement is in all respects governed by the laws of the Republic of South Africa.
- 14.2 In terms of section 45 of the Magistrates' Courts Act 32 of 1944, the Customer consents to the jurisdiction of any Magistrates' Court in the area in which the Customer resides or works, notwithstanding the amount involved. This does not prevent the Supplier from bringing legal proceedings in a High Court that has jurisdiction.
- 14.3 No indulgence, latitude or extension of time which the Supplier may allow the Customer, shall be regarded to be a waiver of rights by the Supplier or a novation of the Customer's liabilities under this Agreement.
- 14.4 If any term or condition of this Agreement becomes unenforceable for any reason whatsoever, that term or condition is severable from and shall not affect the validity of any other term or condition in this Agreement.
- 14.5 The terms and conditions of this Agreement may not be amended, changed or cancelled unless it is reduced to writing and signed by both parties.

