

TRADING TERMS AND CONDITIONS

MALVERN ENGINEERING WORKS PROPRIETARY LIMITED ("the Company")

Document Number: MSF-155 Rev 0



PLEASE PAY SPECIAL ATTENTION
TO CLAUSES MARKED
AND INITIAL TO CONFIRM



1. Application of Conditions

The Customer agrees that all goods supplied by the Company and/or services rendered by the Company are subject to the conditions contained herein and such other conditions, which may appear on the Tax or Commercial Invoice and/or Waybill of the Company. No variation or alteration of such conditions shall be effective unless reduced to writing and signed by a duly authorised director or manager of the Company. No indulgence granted by the Company shall constitute a waiver of any of the Company's rights. The "Applicant" who makes application for credit facilities to the Company is referred to in these terms and conditions as the "Customer".

2. Payment Terms

- 2.1. Unless otherwise stated in writing by the Company, the Customer shall pay the amount reflected on the Tax or Commercial Invoice by way of electronic transfer of funds, either on order, or, if the Customer is a credit approved customer, within **30 DAYS** from the date of statement of account of the Tax or Commercial Invoice by the Company to the Customer. The granting of credit (if any) is entirely discretionary to the Company. Any credit granted by the Company may be withdrawn by the Company at any time without prior notice to the Customer, and the Company reserves the right to review the extent, nature and duration of such credit at any time.
- 2.2. Interest on overdue accounts shall be charged at the **prime rate plus 2% as charged by the Company's bankers** from time to time, from the due date for such payment until the date of payment by the Customer. The provisions of clause 2.2 are not applicable to:
 - 2.2.1. Customers that are natural persons; 
 - 2.2.2. Customers that are juristic persons with both an asset value and an annual turnover below R1 Million, in both instances, as at the signature date of this agreement.
- 2.3. The Customer is not entitled to set off any amount due by the Customer to the Company against any amount that the Customer contends is due by the Company to the Customer, without first having obtained the Company's prior written consent.
- 2.4. Payment will only be credited to the Customer's account once the amount is cleared into the Company's bank account. Any payments made into an incorrect bank account, will not discharge the Customer's liability.
- 2.5. The Customer agrees that the amount due and payable to the Company, including interest thereon may be determined and proved by a Certificate issued and signed by a director of the Company (whose authority it shall not be necessary to prove), which Certificate shall be *prima facie* proof of the Customer's indebtedness to the Company.
- 2.6. Should the Customer have a valid reason to dispute an entry raised on any Tax or Commercial Invoice issued by the Company, it shall do so within **14 DAYS** of the date of the Company's invoice to the Customer, failing which such entry shall be deemed to be correct and payable in terms of Clause 2.1 above. 

3. Orders

- 3.1. All orders or variations to orders, whether oral or in writing, shall be binding on the Customer and subject to these terms and conditions and the Customer shall be estopped from denying the validity of such order, notwithstanding that it may have been given or signed by a person that is not authorised by the Customer.
- 3.2. Any order is subject to acceptance by the Company, and the Company shall have the right to accept such order either in whole, or in part thereof only. All orders accepted by the Company will be binding on the Customer and may not be cancelled without obtaining the Company's consent in writing.

4. Quoted Prices

- 4.1. All prices quoted by the Company are subject to any increase in the quoted price, including increases pursuant to currency fluctuations, freight charges, insurance, railage, costs of labour, material, import duty, taxes and other charges occurring before dispatch of the goods by the Company to the Customer.
- 4.2. The quoted price does not include charges for delivery or off-loading of the goods, unless otherwise stated.



5. Delivery

- 5.1. In the case of the export of goods to customers outside the Republic of South Africa, delivery and risk shall be governed by the Incoterms specified on the Commercial invoice of the Company.
- 5.2. In all other instances, unless otherwise agreed to in writing by the Company delivery to the Customer takes place at the place of business of the Company, and *prima facie* proof of delivery to the Customer can be by means of an original/copy of:
 - 5.2.1. the Company's delivery note signed by the Customer; or
 - 5.2.2. proof of delivery to any transporter if the goods are railed or transported to the Customer by a third party.
- 5.3. In the case of 5.2.2 above, the transporter is deemed to be the Customer's agent and the Customer authorises the Company to engage such third party to transport the goods to the Customer on such terms as the Company deems fit. The Customer hereby indemnifies the Company against any claims that may arise from such agreement with the third-party transporter.
- 5.4. All deliveries are subject to the availability of the goods and the Company shall be entitled, in its sole discretion, to split delivery of the goods, if applicable, ordered by the Customer in the quantities and on the dates that it decides and to invoice them separately to the Customer.
- 5.5. Any date indicated by the Company for delivery of the goods shall be regarded as an estimated date of delivery and does not constitute a binding contractual obligation. The Company shall not be liable for any loss or damage of whatsoever nature incurred or connection with any late, incorrect, partial or non-delivery. The Company will make every endeavor to deliver timeously but the Customer shall not be entitled to cancel or repudiate this agreement (or the applicable order) or claim damages for consequential loss or otherwise or refuse to accept delivery or part delivery on the grounds of delay in the delivery of the order, or any part thereof, for any cause whatsoever.
- 5.6. Delivery of the goods shall be subject to the terms and conditions outlined in the quotation provided. This includes, but is not limited to, the Customer's approval of commercial and technical details, as well as adherence to any applicable payment milestones. Compliance with the quotation terms will trigger the commencement of the manufacturing process, if applicable, and delivery in accordance with the specifications outlined in the quotation.
- 5.7. The Company shall have the right to cancel a Customer's order where the Company is unable to supply and deliver the goods due to *force majeure* from any cause beyond the control of the Company, including, but not limited to, inability to secure labour, power, materials or supplies, or by reason of an act of God, or civil disturbance, riot, state of emergency, strike, lockout, labour disputes, local and global pandemics, fire, flood, drought or legislation.

6. Risk

Risk in the goods shall pass to the Customer on delivery of the goods to the Customer as defined in Clause 5, but ownership in the goods shall remain vested in the Company until the purchase price has been paid in full. The Company reserves the right to inform the end user or the owner of the premises in which the goods are situated of its claim to ownership. The Customer undertakes to insure the goods until fully paid for.

7. Guarantees, Warranties, Damaged Goods and Incorrect Deliveries

- 7.1. To be valid, any claims under the Manufacturer's guarantee or for damaged goods or incorrect deliveries shall be supported by the original Tax/Commercial Invoice or export documents (where applicable).
- 7.2. Subject to Clause 7.1 above, claims in respect of incorrect deliveries or damaged goods will only be considered if made in writing within **14 DAYS** of the date of delivery of the goods, after which time the Customer shall be deemed to have received and accepted the goods in good order and in full compliance with the orders placed.

Warranty for New Equipment

- 7.3. The goods are warranted against defects in workmanship and materials for a period of 12 (twelve) months from the date of commissioning or 18 (eighteen) months from the date of delivery (as contemplated by Clause 5). The warranty applies under normal use, installation, and maintenance in accordance with the instructions provided. This warranty excludes damage resulting from misuse, neglect, or improper operation, as well as wear and tear caused by abrasion or other external factors.
- 7.4. The Company is not liable to the Customer for any damage caused by any goods that are used for any purposes other than those specified by the manufacturer thereof, or for any damage (of whatsoever nature) caused to any person or property in consequence (directly or indirectly) of the use of the goods in any manner other than in accordance with the express instructions issued by the manufacturer of the goods in relation to its use and / or application.
- 7.5. This warranty applies exclusively to the goods manufactured by the Company and does not extend to other goods included in the Company's scope of supply. Such other goods are covered only by the warranty provided by its respective manufacturer. Repairs or alterations are excluded from this warranty unless approved in writing by the Company.
- 7.6. In the event of a claim under this warranty the Company shall replace or repair only the defective parts of the goods at the Company's premises.
- 7.7. The Customer is responsible and liable for all transportation and packaging costs of the goods, associated with the claim in relation to the warranty.
- 7.8. This warranty is void if the goods have been improperly maintained, installed, or operated, or if they have been altered, modified, used with non-OEM parts, or misused in a way that adversely affects its performance or intended use.

Warranty for Repaired or Refurbished Equipment

- 7.9. Repaired or refurbished goods are warranted against defects in workmanship or materials for a period of 6 (six) months from the date of delivery of the repaired or refurbished goods to the Customer. The warranty applies under normal use, installation, and maintenance in accordance with the instructions provided. This warranty excludes damage resulting from misuse, neglect, or improper operation, as well as wear and tear caused by abrasion or other external factors.
- 7.10. The Company is not liable to the Customer for any damage caused by any goods that are used for any purposes other than those specified by the manufacturer thereof, or for any damage (of whatsoever nature) caused to any person or property in consequence (directly or indirectly) of the use of the goods in any manner other than in accordance with the express instructions issued by the manufacturer of the goods in relation to its use and / or application.
- 7.11. In the event of a claim under this warranty the Company shall replace or repair only the defective parts of the goods at the Company's premises.
- 7.12. The Customer is responsible and liable for all transportation and packaging costs of the of the goods, associated with the claim in relation to the warranty.
- 7.13. This warranty is void if the goods have been improperly maintained, installed, or operated, or if they have been altered, modified, used with non-OEM parts, or misused in a way that adversely affects its performance or intended use.
- 7.14. The warranty is limited to repairing the equipment to its original standards at the Company's premises and excludes special packaging or transport costs.
- 7.15. Any warranty as to quality or freedom from latent defects of the goods sold or fitness for any particular purpose or otherwise is hereby excluded. The Company shall not be under any liability whether in contract, delict or otherwise, in respect of defects in the goods delivered or for any injury, damage or loss resulting from such defects or from any misuse or abuse of the goods.
- 7.16. The Company shall not be liable to the Customer for consequential losses, howsoever arising.

8. Services Rendered

- 8.1. All services that may be rendered by the Company (either directly or through its service providers) shall be rendered subject to these terms and conditions.
- 8.2. In the absence of any agreement in writing between the parties to the contrary, the price payable for all services rendered will be at the Company's prevailing price list in relation to the services concerned.

9. Breach

- 9.1. Should the Customer fail to make payment on due date in terms of Clause 2.1 above, or should the Customer commit any other breach of its obligations hereunder, then the Company shall have the option to either:
- 9.1.1. Claim from the Customer all sums owing to the Company, whether then due and payable or not, which sums will then immediately become due and payable, the Customer forfeiting all discounts on the goods sold and/or services rendered; or
- 9.1.2. Without prejudice to any other remedy that the Company may have in terms of these terms and conditions, or by law, to cancel the contract with the Customer, retake possession of the goods supplied and not paid for and recover all amounts already due by the Customer as well as damages it may have suffered by reason of the Customer's breach. To give effect thereto, the Customer irrevocably authorises the Company to enter its premises to repossess its goods supplied and not paid for.
- 9.2. Subject to the provisions of Clause 9.1, if execution is levied upon the Customer's assets or should the Customer make any offer of compromise with its creditors or commit any act of insolvency, or if it is a limited liability Company or Close Corporation, an application for the Customer's liquidation is made, the Company shall have the right to forthwith terminate the contract with the Customer without prejudice to any claim and remedies the Company might have against the Customer for payment of the amounts already due prior to cancellation and damages suffered by the Company by virtue of the Customer's breach.

10. General

- 10.1. The Customer hereby consents to the Company:
- 10.1.1. performing a credit search on the Customer's record, as well as the record of its directors and/or its owners, with one or more of the registered Credit Bureau when assessing the Customer's Application for Credit (and at any other time in the Company's discretion);
- 10.1.2. recording the existence of the Customer's account with any Credit Bureau; and
- 10.1.3. recording and transmit details of how the Customer has performed, and how the account is conducted by the Customer in meeting its obligations on the account.
- 10.2. The Customer acknowledges and agrees that any information regarding its credit worthiness, defaults in payment to the Company, and details of its account with the Company is conducted may be disclosed to any other creditor of the Customer or any registered Credit Bureau, after 21 (twenty-one) days' notice having been given to the Customer.
- 10.3. In the event that there is a change of the legal entity or the name or ownership under which the account and credit facilities are being used, the Customer undertakes to notify the Company in writing thereof by e-mail not later than 7 (seven) days before the date when the change is intended to take effect. In the event that any third party that acquires the business of the Customer continues to utilise the Customer's account without the aforesaid written notice having been provided to the Company, the Customer indemnifies the Company against any non-payment by such purchaser.

- 10.4. Should the Customer be domiciled outside the republic of South Africa, this Agreement and all contracts of sale between the Customer and the Company shall be governed and interpreted in accordance with the laws of the Republic of South Africa and the South African Courts shall have sole jurisdiction in respect thereof.
- 10.5. In the event of it being necessary for the Company to instruct its attorneys as a result of any breach of these conditions by the Customer or to recover any amounts owing by the Customer to the Company, the Customer agrees to pay for all legal costs on the attorney and client scale inclusive of collection commission, tracing charges and other charges the Company may require from the Customer.
- 10.6. The Customer shall notify the Company in writing by e-mail within fourteen days of any changes of any of the information set out in the Business Application.
- 10.7. The granting, continuation and termination of the credit facilities if any, shall be within the sole discretion of the Company. The Company furthermore reserves the right to suspend deliveries, to cancel any undelivered portion of any order or to impose such other conditions as to security and terms of payment as it deems fit.
- 10.8. The Customer chooses its business address appearing in the Application for Credit Facilities as its chosen *domicilium citandi et executandi*. The Customer hereby consents to the receipt of any notices that may be sent by email, at the email address inserted on the front page of this Application.
- 10.9. In these terms and conditions, unless the context otherwise requires, words importing the masculine gender shall include the feminine gender and words importing to the singular shall include the plural and *vice versa*.
- 10.10. The invalidity of any clause or part thereof of these terms and conditions will not affect the validity of the rest of the terms and conditions.
- 10.11. The Customer warrants that, as at the signature date of this application, it is not in business rescue in terms of Chapter 6 of the Companies Act 2008 ("business rescue") and that it has not made any application to be placed under business rescue. Furthermore, the Customer warrants that it does not have any intention of making application for business rescue and is not aware of any current or pending circumstances relating to the business that could give rise to an application for business rescue.
- 10.12. The Customer agrees that in the event that the Customer is placed under business rescue the conclusion of any compromise of the debt under such approved business rescue plan will not reduce the liability of any person or entity that has signed surety for the debts due by the Customer to the Company and such surety shall remain liable for the full amount of the debt that was due before such compromise, notwithstanding that it is acknowledged, agreed and understood by the Customer that the surety may be entitled to have recourse against the Customer for amounts paid by the surety to the Company pursuant to such suretyship.
- 10.13. It shall be within the discretion of the Company as to whether to proceed against the Customer in the Magistrates Court or the High Court, having regard to the following in terms of Section 45 of the Magistrate's Court Act 1944, as amended, the Customer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction in terms of Section 28 of the said Act in respect of any action to be instituted against it by the Company in terms hereof.
- 10.14. To the extent that the Customer is either a natural person or a juristic person with both an asset value and a turnover that is less than the threshold and a credit facility is granted by the Company to the Customer of less than R250,000.00, then the provisions of Clause 2.2 of these terms and conditions will not be of application to such Customer.

AGREEMENT REGULATING ACCESS, PROCESSING & STORAGE PERSONAL INFORMATION IN TERMS OF THE PROTECTION OF PERSONAL INFORMATION ACT ("POPIA")

CUSTOMER NAME: _____

CUSTOMER REGISTRATION NUMBER: _____
"the Customer"

MALVERN ENGINEERING WORKS PROPRIETARY LIMITED Registration Number **1982/005672/07** ("the Company") is committed to compliance with the Protection of Personal Information Act. No. 4 2013 ("POPIA").

In this agreement, the following words bear the meanings associated with them below:

"Personal Information" means information relating to an identifiable, living, natural person, including:

- 1) Financial information related to a person, including information provided by the Customer, or information obtained from a Credit Bureau or from CIPC (the Companies and Intellectual Property Commission);
- 2) Any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person; and/or
- 3) The name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about that person.

"Data Subject" means the Customer that is an individual or natural person (sole trader or in a partnership), including each director and shareholder of a Company or member of a close corporation, whose personal information is being processed.

WHEREAS:

In the course of the Company's Customer verification and credit vetting processes, the Company will collect and process Personal Information related to the Data Subject. The Company may also share such information, *inter alia*, with third parties that provide credit insurance, credit vetting services, collection services and finance.

The Company is committed to ensuring that any processing of Personal Information related to the Data Subject is limited to the express purposes of opening and management of an account for the Customer and that such processing is compliant with POPIA.

IT IS HEREBY AGREED THAT:

1. The Customer consents to the Company:
 - a. performing a credit search on the Customer's record, as well as the record of the Data Subject, with one or more of the registered Credit Bureaux when assessing the Customer's Application for Credit (and at any other time in the Company's discretion);
 - b. recording the existence of the Customer's account with any Credit Bureau;
 - c. transmitting any information pertaining to the Company and to any Data Subject to: (a) any third party that provides credit vetting services, (b) credit guarantee insurance providers and brokers, (c) collection service providers; and (d) entities that provide financing to the Company, (hereinafter referred to as "**Approved Third Parties**"), and to any such Approved Third Party in turn conducting its own Credit Bureau and other credit vetting and debt collection processes; and/or
 - d. recording and transmitting details of how the Customer has performed and how the account is conducted by the Customer in meeting its obligations on the account, including to a Credit Bureau and the Company's credit insurers.
2. The Customer acknowledges and agrees that any information regarding its credit worthiness, defaults in payment to the Company, and details of its account with the Company is conducted may be disclosed to any other creditor of the Customer, to Approved Third Parties, and, to any registered Credit Bureau after 21 (twenty-one) days' notice having been given to the Customer.
3. The Customer consents to the collection, processing and storage of Personal Information by the Company related to the Data Subject, for the purposes of both the opening and ongoing management of a customer account.
4. The Customer warrants and represents that:
 - a. it has concluded a contract with each Data Subject; and that in terms of such contract, the Customer has obtained the consent from such person to the processing of Personal Information by suppliers and Approved Third Parties, in the credit vetting process; and
 - b. the processing of Personal Information by the Company is necessary for the legitimate interests of the Company *inter alia* in the Company's credit vetting, credit management and funding processes.
5. The Customer warrants that all Personal Information supplied to the Company is accurate, up to date, is not misleading and that it is complete in all respects.

6.

The Customer undertakes to immediately advise the Company of any changes to the relevant Personal Information of a Data Subject, but not limited to, a change of ownership or control in the Customer.
7.

The Company undertakes:

a.

to act in accordance with POPIA in relation to the collection, processing and storing of Personal Information related to the Customer. The processing of Personal Information by the Company will be limited to the purposes set out herein and will not be excessive;

b.

not to disclose the Customer’s Personal Information unless: (a) it is legally or contractually required or for its legitimate business purposes, or (b) permitted in terms of this agreement, including to Approved Third Parties; and

c.

to use reasonable efforts in order to ensure that Personal Information related to Data Subjects in its possession or processed on its behalf is:

i.

kept confidential;

ii.

stored in a secure manner; and

iii.

processed in terms of the provisions of POPIA, and, for the purposes for which the Company has been authorized;

d.

to take reasonable steps to identify risks associated with the processing of the Customer’s information and establish safeguards against any such identified risks; and

e.

to take reasonable steps to ensure that the Customer is notified in the event of a breach of the confidentiality of the Customers Personal Information.
8.

The Customer has a right to lodge a complaint with the Information Regulator if the Customer if it is of the view that its rights in terms of POPIA have been breached. The contact details of the information Regulator are:

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Telephone Number: 010 023 5241/42

•

Address: JD House, 27 Stiemens Street, Braamfontein, Johannesburg, 2001

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E-mail Address: POPIAComplaints@inforegulator.org.za

Signed for the Customer

Signature:

Full Name:

Signed for the Company

Signature:

Full Name: