

Terms and Conditions

1. Definitions

- 1.1 The following definitions shall apply whether the transaction is for the supply or for the provision of services or for both the supply of goods and the provision of services.
- 1.2 The term "seller" means Sherwood Pumps PTY Limited.
- 1.3 The term "buyer" means the party to whom this document is addressed.
- 1.4 The term "goods" means all goods of whatsoever description and includes (without limitation) all materials, plant, equipment, machinery and fittings.

2. Incorporation

- 2.1 The following conditions of trading shall be incorporated in their entirety into any contract/invoice made between the seller and the buyer.
- 2.2 If the buyer wishes to change these conditions, the changes will only be viable if are recorded in writing and the record is signed by a director of the seller and a duly authorised representative of the buyer.
- 2.3 These are the sole conditions applicable to contract/invoices made between the seller and the buyer and these exclude all other terms and conditions of trading at any time in the past or in the future put forward by or on behalf of the buyer.
- 2.4 These conditions supersede all terms and conditions put forward by or on behalf of the seller at any time in the past.
- 2.5 The buyer may give written notice within three days of receipt of these conditions that he refuses to be bound by these conditions, in which event the buyer may rescind the contract/invoice and goods dispatched by the seller shall be returned by the buyer to the seller at the buyers cost.
- 2.6 For the avoidance of doubt and without prejudice to condition 9.1, it is hereby expressly declared that in the event of the buyer rescinding the contract/invoice under condition 2.5 the risk in all goods dispatched by the seller shall rest with the buyer from the time when the buyer rescinds the contract/invoice until the time when the goods are returned to the sellers possession.

3. Reports, Recommendations, Schemes

- 3.1 The seller accepts no liability in respect of any report, recommendation or scheme which it has submitted to the buyer where no specific charge has been made for the report, recommendation or scheme.
- 3.2 Except for any representation made in a report, recommendation or scheme which it has submitted to the buyer where no specific charge has been made for the report recommendation or scheme, the buyer acknowledges that it has not relied upon any oral or written representation made to it by the seller.
- 3.3 The seller reserves the right to make reasonable deviations from any report, recommendation or scheme for which a specific charge has been made, provided such deviations do not materially affect the work which the seller shall deem it expedient to do for the proper execution of the contract/invoice work.

4. Prices

- 4.1 Prices charged shall be those prevailing at the date of the receipt of the order.
- 4.2 The seller may expressly require the buyer to pay a deposit in respect of any goods ordered. Where the seller does require the payment of a deposit this will be contained in the sellers quote. Acceptance of the quote is confirmed when the deposit is paid and/or quotation signed.
- 4.3 All quotations and sums payable unless otherwise stated are exclusive of VAT and other duties or taxes unless otherwise stated.
- 4.4 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

5. Delivery

- 5.1 If the buyer requests some form of special transport, such transport will be at the buyer's expense.
- 5.2 The seller shall use all reasonable endeavours to comply with dates given for delivery or performance. However any time or date given by the seller for delivery or performance shall be regarded as an estimate only.
- 5.3 Time for delivery shall in no circumstances be deemed to be "of the essence".
- 5.4 The seller accepts no liability for any loss or damage caused to the buyer which results from delay in delivering goods or from delay in providing goods and services under the contract/invoice.

5.5 Non-delivery of goods must be reported by the buyer within ten days of the date of the invoice. Failure to comply with this requirement will leave responsibility for non-delivery with the buyer.

6. Force Majeure

6.1 Both parties shall be released from their respective obligations in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them (such cause to include but without limitation industrial action, breakage of machinery and Act of God) renders performance of the contract/invoice impossible.

6.2 In the event of such release from their respective obligations the buyer shall pay to the seller the value of work actually executed (to include and without limitation the value for goods supplied or appropriated to the contract/invoice) and any other loss or expense caused to the seller by reason of the aforesaid release.

6.3 In the event of national emergency war prohibitive governmental regulation or of any other cause beyond reasonable control of the parties or either of them (such cause to include but without limitation, industrial action, breakage of machinery and Act of God) operating to delay performance of the contract/invoice, the period for completion of the contract/invoice shall be extended to such extent as it reasonable having regard to the circumstances.

7. Performance

7.1 The seller may sub-contract/invoice such part or parts of the contract/invoice as it thinks fit.

7.2 All samples of material submitted by the seller to the buyer must be taken only as a fair example of the bulk.

7.3 There is no guarantee that any natural materials will not change colour, size or shape within reason.

7.4 Time for performance of the contract/invoice shall in circumstances be deemed to be "of the essence".

8. Access

8.1 Where the seller is required to perform work at the buyer's premises or some other premises specified by the buyer, the seller shall be given uninterrupted access and reasonable facilities during normal working hours for performance of the contract/invoice.

8.2 The buyer shall accept delivery of, unload, provide suitable protection for and keep all goods delivered by the seller to the buyer's premises or to other premises specified by the buyer from time to time.

8.3 Any delays extra work or cost for losses caused to the seller as a consequence of the failure for any reason of the buyer to discharge these obligations shall be charged to the buyer as an addition of the contract/invoice price.

8.4 For the purpose of condition 8.3 "losses caused to the seller" is deemed to include (but without limitation) loss of the seller's time. The value of lost time shall be calculated by the seller at the seller's labour charge rate prevailing at the time when the loss was incurred.

8.5 In the event that the buyer fails to give the seller uninterrupted access and reasonable facilities during normal working hours for performance of the contract/invoice, the seller is entitled to render an invoice for payment of all sums due under the contract/invoice, which sums shall become payable under conditions 13.1, 13.2, and 13.3.

8.6 For the avoidance of doubt, it is expressly declared that the buyer shall not be entitled to any reduction or rebate in respect of work which the seller was unable to perform by reason of any failure to give the seller uninterrupted access and reasonable facilities for performance of the contract/invoice.

9. Risk

9.1 The risk in all goods which are delivered to the buyer shall pass to the buyer upon delivery and the buyer must insure accordingly.

10. Ownership

10.1 The property of all goods which are delivered to the buyer shall not pass to the buyer but shall remain with the seller unless and until the buyer makes payment in full for all goods and services provided under the contract/invoice.

10.2 If payment under the contract/invoice is overdue in whole or in part the seller may (without prejudice to any of its other rights) recover or resell the goods or any of them and may enter the buyers premises at which the goods or any of them are held for that purpose.

10.3 If any of the goods are incorporated under the contract/invoice by the seller in such a way that they become part of the fabric of the buyers premises or premises for which the buyer is responsible before payment in full has been made the property in the whole of such goods shall be and shall remain with the seller until such payment has been made, and all the sellers rights hereunder in the goods shall extend to that part of the fabric of the premises in which the goods have become incorporated.

11. Plant

11.1 Any plant or equipment provided by the seller in relation to performance of the seller's obligations hereunder is provided exclusively for use of the seller, its agents or employees, or its subcontracts.

11.2 Any person other than the seller or its agents or employees or sub-contracts who uses such plant or equipment does so at the buyer's risk.

11.3 The buyer shall indemnify the seller against any claim made in respect of the use of such plant or equipment otherwise than aforesaid.

12. Liability

12.1 The buyer shall hold the seller harmless from and indemnified against any loss or destruction of or any damage to the buyer's premises or property however caused and whether or not there be any negligence by the seller, its employees, agents or sub-contracts.

12.2 Condition 12.4 also applies in respect of which the buyer is responsible.

12.3 If contract/invoice work is to be performed in whole or in part at the buyer's premises or premises for which the buyer is responsible, the buyer shall effect all necessary insurances of such premises and property, including but not limited to public liability insurance.

12.4 Without prejudice to the provisions in the contract/invoice in which the seller's liability has been excluded, the seller shall only be liable for loss or damage howsoever arising if:

- (a) the loss or damage has been caused by circumstances within its reasonable control; and
- (b) a claim in respect of the loss or damage is made by the buyer in writing within 10 days from the date of supply of the goods or services complained of; and
- (c) where the claim relates to the supply of goods, the goods are returned to the buyer carriage paid within 10 days from the date of supply.

13. Payment

- 13.1 Subject to conditions 14.1 and 14.2 payment of accounts is to be in terms of the accepted quotation.
- 13.2 Time shall be of the essence of payment by the buyer.
- 13.3 Interest shall be payable on all overdue amounts at the rate of 2% per annum over the base rate of The Standard Bank of South Africa Limited as varied from time to time.

14. Insolvency and ancillary concerns

14.1 In the event of the buyer

(a) becoming insolvent or compounding with his creditors or being a limited company commencing to be wound up or to suffering a receiver or administrator to be appointed, or;

(b) failing to make due payment of any money owed by it to the seller under the contract/invoice and/or any other contract/invoice made between the buyer and seller, the seller shall be at liberty by notice (without prejudice to any right or remedy which shall have accrued or shall accrue thereafter) to:

- (i) treat all sums payable under the contract/invoice as due and payable forthwith; and/or
- (ii) suspend forthwith the supply of goods and services under the contract/invoice; and/or
- (iii) in so far as any goods may have already been supplied under the contract/invoice, exercise the right to recover all or any of the goods supplied under the contract/invoice pursuant to conditions 10.1.10.2, 10.3.

14.2 The buyer shall further indemnify the seller in respect of every loss and/or liability suffered or incurred by the seller in consequence of any action taken in accordance with condition 14.1.

14.3 Without prejudice to any of the aforesaid provisions the seller shall not be obliged to deliver or transfer any goods or services in accordance with the contract/invoice.

15. Extra Works

15.1 If at the request of the buyer the seller supplies any additional goods or performs any additional services in any way related to, associated with or arising from the contract/invoice these terms and conditions shall apply to the additional supplies or services as if they formed part of the contract/invoice, whether or not the contract/invoice price has been adjusted in consideration of the additional supplies or services.

16. Return of goods

16.1 The seller will in no circumstances unless expressly agreed in writing accept the return of goods sold to the buyer so long as the goods were those specified by the buyer.

16.2 All requests for the return of goods must be made in writing to the seller and if agreed the seller will carry a minimum re-handling charge of 15%.

17. Abatement

17.1 The buyer shall not be entitled to withhold payment of any sums due to under the contract/invoice by reason of any alleged effect either arising or due to faulty materials or products supplied by the seller or workmanship carried out by the seller

17.2 The buyer expressly waives and abandons any right to deduct or abate arising by operation of law to which the buyer might otherwise be entitled.

18. Set-off

18.1 The buyer shall not be entitled to deduct or set-off from any sums due under the contract/invoice for loss or expense alleged to have been incurred by the buyer by reason of any breach or failure to observe the provisions of any contract/invoice made between the buyer and the seller.

18.2 The buyer expressly waives and abandons any common law and/or equitable right of set-off to which the buyer might be otherwise entitled.

19. Notices

19.1 Any notices to be served on either party by the other shall be sent by hand delivery or registered post or by fax or by email, shall be deemed to have been recovered by the addressee within 72 hours of posting or 24 hours if sent by fax/email to the correct fax number or email address.

20. Queries

20.1 All invoicing or delivery queries must be notified in writing to the seller within 10 days of the invoice date.