

TRADING TERMS INCLUDING DEED OF CESSION AND PERSONAL SURETYSHIP

1. DEFINITIONS

- 1.1 "this Agreement" means this credit application and these trading terms including a deed of cession and personal suretyship;
1.2 "the Company" means Urethane Moulded Products (Proprietary) Limited, Registration Number 2003/026681/07, as well as any affiliated companies, successors-in-title, subsidiaries, trading divisions and assigns;
1.3 "Contract" means a contract concluded between the Customer and the Company for the supply of Goods and/or rendering of Services by the Company to the Customer;
1.4 "the Customer" means the party indicated in the credit application form and/or the Customer of the Goods supplied or the recipient of the Services rendered by the Company;
1.5 "Affiliates" means, in relation to the Company or the Customer, the entities that form part of a group structure comprising of subsidiaries, fellow subsidiaries and/or holding companies and any entity that is managed or controlled by any of the aforesaid entities;
1.6 "Goods" means the Goods supplied by the Company to the Customer;
1.7 "Services" means the Services rendered by the Company to the Customer;
1.8 "Specifications" means any one or more of technical specifications, designs, measurements, instructions, itemised details, plans, drawings and programs that have been expressly accepted by the Company in writing in respect of a Contract or project.

2. THIS AGREEMENT

- 2.1 This Agreement shall govern the supply of Goods and the rendering of Services by the Company and, where applicable, by the Company's Affiliates to the Customer and shall take precedence over any terms and conditions which may be contained in any of the Customer's documentation, including its purchase orders, and will govern all transactions between the Company, its Affiliates and the Customer. If there is a conflict between this Agreement and any of the terms and conditions contained in a Contract or the Company's or its Affiliates other documentation, the provisions of this Agreement will prevail.
2.2 The Company's acceptance of the Customer's purchase order is expressly conditional upon the Customer agreeing to the provisions of this Agreement. When the Customer places a purchase order with the Company, the Customer will be deemed to have accepted the provisions of this Agreement.
2.3 Should the Company so require, the Customer shall provide the Company with such security as the Company may in its sole discretion determine.

3. CREDIT FACILITIES

- 3.1 The Customer acknowledges that the granting of credit facilities to it is at the sole discretion of the Company.
3.2 The Company reserves the right to suspend or withdraw the Customer's credit facilities at any time if the Customer is in default under this Agreement, a Contract or any other agreement concluded with the Company or any of its Affiliates.
3.3 The Company reserves the right, to be exercised at its discretion, to reduce or increase the credit limit under the credit facilities granted to the Customer.
3.4 If the Customer exceeds its credit limit, the Company reserves the right to suspend all further deliveries of Goods or the rendering of Services until such time as the Customer brings its account within its allocated credit limit.
3.5 Whatever credit limit is granted to the Customer shall not be deemed to be a limit of the Customer's indebtedness to the Company.
3.6 Should the Company permit any credit limit to be exceeded, the liability of any surety or validity of any cession of debtors will not be limited to such credit limit.

4. ORDERS

- 4.1 The Customer's order shall constitute an irrevocable offer to purchase the Goods or contract the Services in question from the Company and shall be capable of acceptance by the Company expressly by issuing a written acceptance of order, impliedly or by the Company's conduct.
4.2 The Customer shall bear the risk of any errors or misunderstandings arising from oral orders.
4.3 No variation or withdrawal of an order made by the Customer shall be valid unless the Company specifically confirms such variation or withdrawal of the order in writing to the Customer.
4.4 If the Company, at its sole discretion, accepts the cancellation of an order, it reserves the right to charge the Customer for all the costs it has incurred up to the date of the cancellation at its prevailing prices.

5. PRICES

- 5.1 Unless the Company provides the Customer with a written quotation, which the Customer accepts within the period for which the quotation is valid, the price of the Company's Goods and/or Services will be the Company's official list price/rates ruling at the date of delivery of the Goods or the date of the rendering of the Services.
5.2 The Company reserves its right to vary any quoted price by adding thereto the increased costs to it of any Goods or Services resulting from any adverse fluctuation in the rate of exchange, or increase in surcharge, government duty, freight or other costs of importation, or increase in the costs of material, transport, labour or insurance between the date of quotation and the date of delivery of the Goods or rendering of the Services or for any change in the scope of supply subsequent to quotation.
5.3 Unless otherwise stipulated in the Contract, delivery shall be "ex the Company's works" and the price shall exclude packaging, freight and insurance during transport.

6. PAYMENT

- 6.1 The Customer shall effect payment to the Company on or before the last working day of the month in which the Goods were delivered or the Services supplied. No discounts may be claimed or taken unless the Company has agreed to such discount in writing and the Customer has effected payment within the payment period allowed for such discount.
6.2 The Customer carries any risk associated with or arising from the method or manner elected to effect payment to the Company. The Customer shall only be regarded as having effected payment to the Company once the payment has been received in the Company's bank account and cleared by its bankers.
6.3 If any payments due to the Company are subject to withholding tax, the Customer shall pay the Company an additional amount so that the Company receives the full payment that is due to it. The Customer shall only be exempted from this provision if it provides the Company with an exemption certificate or other documentation acceptable to the taxing authorities.
6.4 Unless otherwise expressly agreed in writing, all payments are to be in South African Rand.
6.5 The Customer shall not be entitled, for any cause whatsoever, to withhold, deduct from or defer any amount due by it to the Company. All payments shall be free of exchange and set off.
6.6 The Company may appropriate all payments from the Customer to any such outstanding amounts as it deems fit.
6.7 The Company reserves the right to levy interest on all overdue amounts at 3% (three percent) above the then current commercial bank prime overdraft rate as quoted by ABSA Bank Limited from time to time.
6.8 The Customer must notify the Company of any error in any invoice and/or statement submitted to it by the Company within 14 (fourteen) days from the date of the invoice and/or statement concerned, failing which the invoice and/or statement will be deemed to be free of any errors.

7. DELIVERY OF GOODS AND COMPLETION OF SERVICES

- 7.1 The date of delivery of the Goods will be deemed to be the date when the Goods are delivered to the Customer's nominated delivery address or the date on which the Company notifies the Customer that the Goods are available for collection. Any third party who collects the Goods from the Company will be deemed to be the Customer's agent. The Company may effect delivery in one or more instalments and each instalment shall be treated as a separate transaction.
7.2 The date of completion of the Services will be deemed to be the date on which the Goods to which the Services relate are ready to be used and a certificate issued by the Company's engineer/project manager or their assistant shall be *prima facie* proof of this fact. The Customer undertakes to grant the Company or its subcontractors access to the site/s where the Services are to be rendered and neither the Company nor its subcontractors shall be liable for any loss and/or damage caused to any person and/or property as a result of the entry and/or activities of the Company or its subcontractors in rendering the Services.
7.3 The Customer warrants that the signatory to any tax invoice, delivery note or any other documentation of the Company made out in the name of the Customer is duly authorised to bind the Customer in relation to the transaction and shall also constitute *prima facie* proof of the proper delivery of the Goods or rendering of the Services to the Customer.
7.4 Time shall not be of the essence in respect of any Contracts. The Customer shall not be entitled to cancel any order or Contract by reason of any delay and the Company shall not be liable for any damages for failure to timeously effect delivery of the Goods or to complete the Services by a specific date for any reason.

8. DISCREPANCIES

- 8.1 Unless the Customer notifies the Company in writing within 7 (seven) days of the date of delivery that the Goods delivered are defective, short delivered, damaged or not in accordance with the order, the Company shall not be liable for any of the aforesaid discrepancies, provided that the Customer's notification shall have no probative value.
8.2 Once the Company has satisfied itself of the validity of the Customer's complaint, the Company will determine, in its absolute discretion, the manner in which it resolves such complaint.

9. SPECIFICATIONS

- 9.1 The company's obligations are to supply the Goods per the Customer's order and to render the Services in accordance with the Specifications, alternatively the terms of the order, whichever is applicable.
9.2 Notwithstanding the above, the Company shall not shall be responsible for the adequacy of the Specifications or for any foundations or supporting structures or other work as may have been provided, prepared or specified by or on behalf of the Customer.
9.3 If any Goods or Services are to be supplied in accordance with Specifications furnished by the Customer, the Customer shall not have any claim of any nature whatsoever against the Company for any loss or damage sustained by the Customer or any third party as a result of any error, discrepancy or defect in those Specifications or if the Goods in question are not suitable for the purpose for which they are required, whether that purpose was known to the Company or not.

10. VARIATIONS

- 10.1 The Company shall supply the Goods and/or render the Services strictly in accordance with the terms of the Contract.
10.2 In addition to clause 5 (*PRICES*) above, should the Customer require variations to the Goods, including the quantities thereof, or the Services or should the Company be hindered, delayed or prevented from supplying the Goods or rendering the Services or be exposed to extra costs due to extensions of or omissions from any order/Contract, deviations from the Specifications, late, defective or non-receipt of information or by any other act, default or omission by or on behalf of the Customer, the Company shall be entitled to an appropriate variation to the price relating to the Goods or Services in question or any other obligation of the Company.

11. RISK & OWNERSHIP

- 11.1 Risk in the Goods will pass to the Customer on the date of delivery but ownership in the Goods shall remain vested in the Company until the full purchase price for such Goods is paid to the Company.
11.2 If the Customer delays or fails to accept delivery of the Goods in any manner, the risk in such Goods shall pass to the Customer as soon as the Company attempts to deliver same to the Customer.
11.3 While any amount is owed by the Customer to the Company in respect of any Goods, the Customer shall be obliged to keep the Goods concerned free of any lien, hypothec, encumbrance and/or attachment and shall ensure that the goods do not accede to any property, whether movable or immovable.
11.4 The Customer shall take all such steps as may be necessary to notify interested third parties and inform the owner / landlord of the premises at which the Goods are kept of the Company's ownership of such Goods.
11.5 The Customer shall fully insure the Goods against loss or damage until it has paid the full purchase price to the Company. All benefits in terms of such insurance policy shall be ceded to the Company.

- 11.6 The Company is entitled to enter the Customer's premises during working hours to remove the Goods supplied to the Customer should the latter fail to effect payment therefor without Court order.
- 12 **LIEN**
- 12.1 Unless the Company has received full payment in respect of the Services, it shall be entitled to exercise a lien over the Goods in respect of which the Services were rendered, irrespective of whether or not the Customer has paid the Company for the Goods concerned, until the Customer settles all amounts due in respect of the Services.
- 12.2 The Company shall also be entitled to exercise a lien over the Goods in respect of which the Services were rendered as security for any amounts owed by the Customer to any of the Company's Affiliates.
- 13 **RETURNS**
- 13.1 Goods sold by the Company are sold *voetstoots* and are not returnable save with the written consent of the Company.
- 13.2 Should the Company in its absolute discretion elect to accept the return of any Goods, it will furnish the Customer with written notification and the Goods must be immediately returned to the Company, at the Customer's cost, with the corresponding invoice and they must be undamaged and saleable. The risk in the Goods shall remain with the Customer until the Goods are received by the Company.
- 13.3 The Company reserves the right to levy a handling charge of 15% (fifteen percent) in respect of any such returned Goods.
- 14 **WARRANTIES**
- 14.1 The Company only extends a suppliers warranty in respect of the Goods to the Customer and no more. Furthermore, any defect or problem with the Goods must be notified to the Company within 7 (seven) days from the date of delivery, failing which the warranty will not be honoured.
- 14.2 Subject to paragraph 14.1 above, the Company's obligations under the above warranty are strictly limited to the repair or replacement of the defective Goods or the correction of any defective Services or a credit of the invoiced value of the defective Goods. The Company will give effect to the warranty, at its sole discretion, provided that the Customer notifies the Company of the defect in writing before the expiry of the warranty period.
- 14.3 The above warranty does not apply to Goods used other than for the intended purpose, or for defects arising through fair wear and tear or neglect or to Goods that have been damaged or rendered defective through incorrect application or installation by a third party, misuse or abuse, improper storage, impact, attempted repairs by the Customer without the Company's prior written approval, breakdown caused by another product or the negligence or fault of the Customer or a third party.
- 14.4 Save for the above, the Company gives no warranties of whatsoever nature, whether express or implied, in respect of the Goods or Services.
- 15 **LIMITATION OF LIABILITY AND INDEMNITY**
- 15.1 Any liability of the Company for direct loss or damage arising from a breach of a Contract or this Agreement shall not exceed the total price paid or due to be paid by the Customer for the Goods or Services that form the subject matter of such claim. Under no circumstances will the Company be liable for any indirect, consequential, special or delictual loss or damage of any nature and howsoever arising which may be suffered by the Customer or any third party as a result of or in connection with the Goods and/or Services or any transaction contemplated herein.
- 15.2 In addition to the above, the Customer hereby indemnifies the Company for and holds it harmless against any claim, damage, loss, cost or expense, of whatever nature, made against the Company by any third party arising from or associated with the Goods or the Services, the Customer's use, installation, operation or storage of the Goods, the Customer's representations to third parties in respect of the Goods or the Services or any third party's use of the Goods or any other matter for which the Company would not be liable to the Customer under this Agreement.
- 16 **BREACH**
- 16.1 If the Customer fails to pay any amount on its due date, or suffers any civil judgment being taken or entered against it, or commits an act of insolvency, or is placed under sequestration, liquidation or judicial management (whether provisional or final, voluntary or compulsory), or makes or attempts to make any general offer of compromise with any of its creditors or sells its business or changes the structure of its ownership, the Company shall, without prejudice to any other remedies that it has available to it, be entitled to:-
- 16.1.1 suspend or cease performance of its obligations to the Customer until the Customer's breach has been remedied; and/or
- 16.1.2 summarily cancel a Contract; and/or
- 16.1.3 repossess any Goods which have not been paid for; and/or
- 16.1.4 exercise its lien over any Goods or any of the Customer's property in its possession or under its control; and/or
- 16.1.5 summarily cancel this Contract or claim specific performance of all of the Customer's obligations whether or not such obligations have fallen due for performance, in all events without prejudice to the Company's right to claim damages.
- 16.2 If the Customer or any of its Affiliates have failed to timeously effect payment of an amount owed to the Company or any of its Affiliates on its due date or the Customer or any of its Affiliates breaches any provision of an agreement concluded between it and the Company or any of its Affiliates, same will be regarded as a breach of this Agreement enabling the Company to exercise any of the rights recorded in clause 16.1 above.
- 17 **FORCE MAJEURE**
- 17.1 The Company will not be liable to the Customer for failing to perform its obligations in terms of this Agreement as a result of an act of God or any cause beyond its control.
- 17.2 If the *force majeure* event continues for a period longer than 90 (ninety) days, either party may terminate the Customer's outstanding orders in writing and the Customer shall pay the Company for the Services rendered and Goods delivered prior to such termination and all reasonable expenses incurred by the Company prior to such termination.
- 18 **INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION**
- 18.1 The Company shall retain ownership of its confidential information and all of the intellectual property rights in respect of the Goods, whether same have been registered or not.
- 18.2 Without limiting the above, the Customer shall not, directly or indirectly and whether for reward or not, at any time use, exploit or disclose any of the Company's confidential information as to the methods of manufacture, plans, drawings, price lists, documents or any other information relating to the Goods or Services to a third party. The Customer hereby indemnifies the Company against any loss suffered by the Company as a result of the Customer breaching this clause.
- 18.3 The Customer hereby indemnifies and holds the Company harmless against all claims and expenses of whatever nature and description arising from the alleged or actual infringement of any third party's intellectual property rights occasioned by the Company's performance of any Contract.
- 19 **CESSION AND ASSIGNMENT**
- 19.1 The Customer shall not be entitled to cede its rights or assign its obligations under this Agreement.
- 19.2 The Company shall be entitled to cede its rights or assign its obligations under this Agreement and such cessionary shall be entitled to enforce its rights hereunder and in terms of any security furnished by the Customer to the Company against the Customer and/or the party that provided such security in respect of the Goods and/or Services supplied and/or rendered by the Company and the Goods and/or Services supplied and/or rendered to the Customer.
- 19.3 The Company may subcontract its obligations hereunder without the Customer's consent.
- 20 **LEGAL PROVISIONS**
- 20.1 This Agreement and all transactions between the Customer and the Company shall be governed by and decided upon in accordance with the laws of the Republic of South Africa.
- 20.2 The Company shall, at its option, be entitled to institute action in the Magistrate's Court, notwithstanding that the amount of its claim exceeds the jurisdiction of such Court. This provision shall not preclude the Company from instituting action against the Customer in any other competent court with jurisdiction.
- 20.3 A certificate issued by any director or manager of the Company, whose authority, appointment and signature it shall not be necessary to prove, that purports to certify any indebtedness of the Customer to the Company, delivery of the Goods to the Customer, rendering of the Services to the Customer or any other fact shall constitute *prima facie* proof of such indebtedness or delivery or rendering of Services or any other fact.
- 20.4 The Customer shall be liable for the Company's legal fees in the event of the Company enforcing or defending its rights hereunder on an attorney and own client scale, including Counsel's fees on brief, tracing agent's fees and collection charges.
- 21 **DOMICILIUM**
- 21.1 The parties' physical addresses as set out in the application section of this Agreement will constitute their chosen *domicilium citandi et executandi*.
- 21.2 A party may change its *domicilium* by furnishing the other party with 7 (seven) days written notice of its new physical address.
- 22 **WARRANTY**
- The Company gives no warranty in respect of Goods sold and delivered to the Customer apart from the manufacturer's warranty which is to be honoured by the manufacturer as an entity separate from the Company.
- 23 **GENERAL**
- 23.1 This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. No party shall be entitled to rely upon any term, warranty, guarantee, condition or representation, unless it is contained herein.
- 23.2 No amendment of this Agreement and no extension of time, waiver or relaxation of any of the provisions of this Agreement shall be binding, unless recorded in a single document signed by both of the parties.
- 23.3 No relaxation or indulgence shall prejudice or be deemed to be a waiver of any of the Company's rights hereunder.
- 23.4 Each provision of this Agreement is severable, the one from the other. If any provision is found to be defective, unlawful or unenforceable for any reason, the remaining provisions shall continue to be of full force and effect.
- 23.5 The rule of construction that this Agreement be interpreted against the party responsible for drafting this document shall not apply.
- 24 **DISCLOSURE OF INFORMATION**
- 24.1 The Customer hereby consents and grants authority to the Company to conduct credit checks, searches and the like with any credit agency or party which the Company may at its discretion consider expedient or necessary, *inter alia*, for the purpose of ascertaining the credit worthiness of the Customer or in order to trace the Customer or any of its assets.
- 24.2 The Company shall be entitled to record any adverse credit report with any agency or person. The Customer acknowledges that the application for and existence of any account with the Company may be recorded by credit agencies and details of the conduct of the account may be given to and duly recorded by and shared with other persons for various reasons.
- 24.3 The Customer hereby waives any claim and indemnifies and holds the Company harmless against any claim for any nature and howsoever arising from the aforesaid instances.
- 25 **ARBITRATION**
- 25.1 The Company has the sole option to refer any dispute arising hereunder in connection with any agreement to arbitration, which arbitration shall bind both the Company and the Customer.
- 25.2 The arbitrator must be a person agreed upon by the parties or, failing agreement, an arbitrator must be appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of Southern Africa.

26 **CESSION OF BOOK DEBT**

- 26.1 The Customer hereby irrevocably cedes, assigns, transfers and makes over unto and in favour of the Company all of its right, title, interest, claim and demand in and to all claims of whatever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations and other legal persona whomsoever ("the Debtors") without exception as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter be or become owing by the Customer to the Company or to any of the Company's Affiliates.
- 26.2 Should it transpire that the Customer at any time entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customer's reversionary rights.
- 26.3 The Customer hereby grants the Company full power and authority to recover in its name from all or any of the Debtors all amounts and all goods which the Customer may be entitled to recover and/or repossess, and if so determined by the Company, to institute action in the Customer's name against all or any of the Debtors for the purpose of the said recovery and to retain the proceeds recovered in the exercise of such powers on account of and in reduction of the Customer's indebtedness to the Company, including all costs and expenses of whatsoever nature together with legal costs as between attorney and own client incurred in the exercise of any such power.
- 26.4 Notwithstanding the terms of the foregoing cession, the Customer shall be entitled to institute action against any of the Debtors provided that all sums of money which the Customer collects from the Debtors shall be collected on the Company's behalf and provided further that the Company shall at any time be entitled to terminate the Customer's right to collect such monies/debts.
- 26.5 The Customer undertakes on a quarterly basis, commencing on the first day of the month following its signature of this Agreement, to deliver to the Company its current age analysis reflecting all monies owed to the Customer by the Debtors and on demand to deliver all relevant information in documentary form or otherwise to the Company to enable the Company to claim monies owed to the Customer from the Debtors. However the Company's failure to enforce its rights under this sub-clause shall not affect the Company's rights under this cession or the enforceability of this cession.
- 26.6 Without detracting from the above, should any amount be owed to the Customer by any third party in relation to the Goods, and should the Customer not have made payment to the Company in terms hereof, the Customer hereby cedes all of its right, title, interest, claim and demand in and to such payment from the third party to the Company and hereby undertakes to advise the third party accordingly and sign all and any documentation to give effect to such cession and the Company hereby accepts such cession.

27 **SURETYSHIP**

The signatory to this Agreement ("the surety") binds himself/herself in his/her private and individual capacity as surety for and co-principal debtor with the Customer in favour of the Company for the due performance of any obligation of the Customer and for the payment to the Company by the Customer of any amount which may now or at any time be or become owing to the Company by the Customer. The surety's liability to the Company shall not be limited by any credit limit granted by the Company to the Customer. This suretyship shall remain in full force and effect for so long as any amounts shall remain owing by the Customer to the Company and notwithstanding the temporary extinction of the Customer's indebtedness to the Company. The surety waives and renounces the legal benefits of excussion (*the right to require the Company to first proceed against the Customer for payment of any debt owing to the Company before proceeding against the surety*), cession of action (*the right to require the Company to give cession of the action for payment of debts to the surety before any action against the surety may be taken*), the benefit of simultaneous citation and division of debt (*the right of a co-surety to be liable only for his pro rata share of the principal debt*) and the right to an accounting from the Company. The surety further undertakes to be bound by the remaining provisions of this Agreement *mutatis mutandis* and chooses their *domicilium* address as the Customer's physical address set out in the application section of this Agreement.