

EQUIVEST TRADING
REGISTRATION NUMBER: 2018/240368/07
STANDARD TERMS AND CONDITIONS

Definitions

The following terms shall have the meanings assigned to them hereunder

Company (referred to as either "the Company", "We", "Us" or "Our" in this Agreement) refers to Equivest Trading.

Service means those activities and services of any kind provided by the Company including, but not restricted to, any products sold or purchased, the carriage, storage, handling, packing, warehousing or distribution of goods as well as the giving of advice and information relating thereto.

Terms and Conditions (also referred as "Terms") mean these Terms and Conditions that form the entire agreement between You and the Company regarding the use of the Service. This Terms and Conditions agreement has been created with the help of the Terms and Conditions Generator.

Applicant/Customer means the individual accessing or using the Service, or the company, or other legal entity on behalf of which such individual is accessing or using the Service, as applicable.

Goods means any goods of whatsoever nature handled, transported or dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents.

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 an 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 at the offices of the Company either on order, or, if the Customer is a credit approved customer, within **Agreed Payment Terms** from the end of the month in which a Tax or Commercial Invoice is issued by the Company to the Customer.
- 2.2. Interest on overdue accounts shall be charged at **2%** per annum from the due date until the date of payment.
- 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, or any cheques that are lost in the post, will not discharge the Customer's liability.
- 2.5. The Customer agrees that the amount due and payable to the Company, including interest may be determined and proven by a Certificate issued and signed by a director of the Company, 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 the Tax or Commercial Invoice, it shall do so within 14 (fourteen) 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

Initial

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 not authorised by the Customer.

4. **Quoted Prices**

All prices quoted by the Company are subject to any increase in the cost price, including increases pursuant to currency fluctuations occurring before dispatch of the goods by the Company to the Customer.

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:

5.2.1. 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:

5.2.1.1. the Company's delivery note signed by the Customer; or

5.2.1.2. proof of delivery to any transporter if the goods are railed or transported to the Customer by a third party.

5.2.2. In the case of 5.2.1.2 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 indemnifies the Company against any claims that may arise from such agreement with the third party transporter.

5.2.3. 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 ordered by the Customer in the quantities and on the dates it decides and to invoice them separately to the Customer.

5.2.4. 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 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 endeavour to deliver timeously but the Customer shall not be entitled to cancel or repudiate this agreement 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.

5.2.5. 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, 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 7 (seven) days 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.

- 7.3. 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 goods delivered or for any injury, damage or loss resulting from such defects or from any misuse or abuse of the goods.
- 7.4. The Company shall not be liable to the Customer for consequential losses, howsoever arising.

8. Breach

- 8.1. Should the Customer fail to make payment on due date in terms of Clause 2 hereof, or should the Customer commit any other breach of its obligations hereunder, then the Company shall have the option to either:
 - 8.1.1. 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; or
 - 8.1.2. Without prejudice to any other remedy the Company may have in terms of these 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.
- 8.2. Subject to the provisions of Clause 8.1, 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.

9. General

- 9.1. In the event that the Company renders any services to the Customer, these terms and conditions shall also regulate the provision of such services by the Company to the Customer.
- 9.2. The Customer hereby consents to the Company:
 - 9.2.1. 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 Bureaux when assessing the Customer's Application for Credit (and at any other time in the Company's discretion);
 - 9.2.2. recording the existence of the Customer's account with any Credit Bureau; and/or
 - 9.2.3. 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.
- 9.3. 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 Bureaux, after 21 (twenty one) days' notice having been given to the Customer.
- 9.4. 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 registered post within 7 (seven) days from the date when the change takes effect. In the event that any 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.
- 9.5. 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.

- 9.6. 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, validation fees and stamp duties on any form of security the Company may require from the Customer.
- 9.7. The Customer shall notify the Company in writing by registered post within fourteen days of any changes of any of the information set out in the Application for Credit Facilities.
- 9.8. 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.
- 9.9. 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.
- 9.10. 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.
- 9.11. 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.
- 9.12. 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 has not made any application to be placed under business rescue. Furthermore, the Customer warrants that it does not have any intention of making an 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.
- 9.13. 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.
- 9.14. 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.
- 9.15. The Company has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party web sites or services. You further acknowledge and agree that the Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such web sites or services.