

STANDARD TERMS AND CONDITIONS OF SALE – STEELPLAST CC

1. **Construction of Contract:** These conditions shall apply to all contracts between **STEELPLAST CC** (hereinafter referred to as “the Company”) and any person firm or company (hereinafter called “the Customer”) for the supply of goods or the carrying out of work by the Company. The Company contracts upon the terms of these Conditions only and any printed or other standard terms emanating from the Customer shall not apply. These conditions shall not be modified without the written agreement of the Company and in order that the contract shall be a complete statement of the agreement between the parties with regard to the supply of goods or the carrying out of work by the Company the Customer must ensure that any representation or instruction on which it wishes to rely has been accepted by the Company in writing. No order is deemed to be accepted or any contract made with the Company until an acknowledgement of such order or contract has been made by the Company.
2. **Price Variation:** Quotations given by the Company in writing remain open for acceptance by the Customer for a period of 30 days but quotations are based on the Company's current costs of production and unless agreed are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs. The Company's statement that its costs have risen or fallen in such circumstances shall be conclusive as to the existence of such rise or fall. The Company reserves the right at any time to refuse to accept any order placed as a result of any quotation.
3. **Tax:** All quotations are, unless specifically otherwise provided, exclusive of Value Added Tax and any other statutory charge as may be appropriate.
4. **Delivery**
 - a. The time for the performance of the Company's obligations under the contract shall commence from the date upon which the Company receives all the necessary information and documentation to enable it to supply the goods or carry out the work ordered by the Customer without interruption.
 - b. Once all necessary information and documentation mentioned in 4 (a) has been supplied to the Company, and the Company has incurred any costs and commenced production of the goods, the Customer cannot change their requirements, designs or specifications without reimbursing the Company for all liabilities, loss of profit and increased administration and legal costs already incurred on an indemnity basis.
 - c. Any date for delivery specified in respect of goods sold or to be sold by the Company shall be treated only as an estimate given in good faith, and such delivery is not a term of the contract and it is specifically hereby agreed that time for delivery is not of the essence. The Company shall not in any circumstances howsoever arising whether because of its own negligence or otherwise be under any liability to the Customer for any failure to deliver by or on such date and such failure shall not entitle the Customer to cancel or terminate the contract.
 - d. Any delivery time specified shall be extended by any period or periods during which the manufacture or delivery of the goods or other work by the Company in connection with the contract is delayed due to fire, explosion, flood, storm, tempest, sabotage, strikes, official and unofficial riot, invasion, acts of war (whether war be declared or not) shortage of labour power or materials, delay by the Company's suppliers or carriers, civil commotion, accidents, plant breakdown, technical difficulty, seizure, or other action by or in compliance with an order or an apparently competent authority and any other event or circumstance beyond the control of the Company. Notwithstanding such delays the Customer shall take and pay for at the rate of the contract price such of the goods as shall be tendered by the Company and be ready for delivery.
 - e. From the time of the dispatch of the goods from the Company's premises the risk of any loss of or damage to or deterioration of the goods from whatever cause whether because of the Company's negligence or otherwise shall be borne by the Customer. Goods shall be deemed to have been dispatched in full quantity and in good condition unless of the shortage or defect alleged are notified in writing by the Customer to the Company within 7 days of the date of receipt (as recorded in the delivery documentation) by the Customer of the goods.
 - f. The Company shall be entitled to charge for and be paid all delivery and insurance costs incurred and not specifically included in the contract price.
5. **Retention of Title**
 - a. Title - The title to any goods supplied by the Company to the Customer shall not pass from the Company to the Customer unless and until the Company has received payment in cash in cleared funds in full for such goods and for any work done by the Company on behalf of the Customer and for any other debts owed by the Customer to the Company on any other account whatsoever.
 - b. Storage of the Goods - Until payment for all goods supplied and for all work done has been made in full, including payment of any interest due, the Customer shall store all goods supplied by the Company in such a way as to enable them to be identified as the property of the Company and shall hold such goods as bailee for the Company. The Customer shall not dispose or part with the possession of such goods until title has passed, save that the Customer may sell the goods in the normal course of business.
 - c. Risk - The risk in any goods supplied by the Company shall pass to the Customer when they are despatched from the Company's premises either for delivery to the Customer or as a result of collection by the Customer. The Customer shall keep such goods fully insured until title has passed to the Customer.
 - d. Recovery of the Goods - If the Customer does not pay to the Company any sums due under any contract between the parties, the Company may repossess and uplift any goods supplied to the Customer and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's employees and agents to enter upon all or any of its vehicles or premises in which such goods or other products are stored with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Company thereunder or otherwise.
 - e. Recovery of Proceeds of Sale of Goods in the Event of Non-Payment - If the Customer re-sells any goods supplied by the Company, notwithstanding that payment to the Company has not been made and that title to such goods has not passed to the Customer, the proceeds of any such re-sale equivalent to all sums owing (“the Proceeds”) shall belong to the Company until payment has been received in full. The Customer will hold the Proceeds in a fiduciary capacity and keep them in a separate account, to be remitted forthwith to the Company.
 - f. Termination of Customer's Rights - The Customer's right to possession of goods owned by the Company shall cease forthwith upon the occurrence of any of the events in clause 10 of this contract.
 - g. Mitigation - All mitigation/recovery activities by the Company under the contract between the parties are agreed to be entirely without prejudice to any additional claims it may have against the Customer for any failure by the Customer to complete its obligations under the contract.
6. **Payment**
 - a. The contract price is to be paid by the Customer no later than the date for payment agreed between the Company and the Customer. The Company shall make the goods available for collection by the Customer from the Company's premises and accordingly the prices of all goods are based on delivery ex-works. If the Customer delays taking delivery of the goods beyond the agreed delivery date, the goods may be invoiced and payment due 30 days thereafter, and the Company reserves the right to charge the Customer reasonable storage or delivery costs for any goods ready for collection. Payment shall be made to the Company and the Company's official receipt shall be the only acknowledged discharge of the debt. The Customer shall not be entitled to withhold payment of any amount due to the Company because of any payment credit set off counterclaim allegation of incorrect or defective goods or work or for any reason whatsoever which the Customer may allege excuses it from performing any obligation under the contract. Interest shall accrue on any amount as remains outstanding after the period of 30 days at the rate of 1.5% per month calculated from day to day or at the rate of interest prescribed by law whichever is higher.
 - b. If the Customer does not take delivery of all the goods ordered by the Customer in a contract less than 12 months after the date of the contract, then the Company may in its sole discretion terminate such a contract immediately. On such termination, all monies payable to the Company by the Customer under such a contract will be immediately due irrespective of whether all goods ordered by the Customer in a contract have been supplied to the Customer. This clause 6 (b) shall not apply if the Customer does not receive all deliveries less than 12 months after the date of the contract due to the Company's non-compliance with the delivery date provided by the Company.
 - c. The Company and the Customer agree that the price for the goods is based on the Customer purchasing a minimum number of goods from the Company (“the Minimum Purchase Commitment”). If the Customer fails to purchase the Minimum Purchase Commitment from the Company within 12 months from the date of this contract the Customer shall pay to the Company, the difference between the total price of goods purchased by the Customer pursuant to the contract and the total sum payable under the Minimum Purchase Commitment. In such circumstances, the Company may also terminate this contract on notice with immediate effect and without liability thereof.
7. **Performance** - The Company accepts no liability for any loss or damage arising by reason of the failure of the goods to comply with any written estimate as to the performance thereof provided that the Company shall be given reasonable opportunity to remedy any defect as to estimated performance and in the event that such defect shall not be so remedied, then the Company shall without prejudice to its exclusion of liability hereunder give credit to or reimburse the Customer for the cost of the goods on the return thereof to the Company.
8. **Assignment of Rights and Obligations**
 - a. The Customer shall not assign, sub-contract, delegate, transfer, place in trust or dispose of this contract and/or any of its rights or obligations under it without the prior written consent of the Company.
 - b. The Company shall be entitled to assign, sub-contract, delegate, transfer, place in trust or dispose of this contract and/or any of its rights or obligations under it without the prior written consent of the Customer.
9. **The Company's Liability**

- a. The Company warrants any goods of its manufacture to be free from defects caused by faulty material or poor workmanship but gives no warranty or makes no representation whether express or implied as to any other matters whatsoever including without limitation conditions as to merchantability or fitness for purpose or performance. Such warranty is limited to a period of 6 months from the sooner of the date of delivery or the date that the Customer was notified that the goods were available for delivery and is expressly conditional upon the Company being promptly notified in writing upon discovery of any such defects, the Customer forthwith ceasing to use the defective goods unless otherwise authorized by the Company in writing and the defective item immediately being returned to the Company, transportation charges being prepaid by the Customer. All warranties, terms, conditions, and duties implied by law relating to fitness, quality or adequacy are excluded fully permitted by law.
- b. The Company's liability in respect of the contract for defective goods shall solely be limited to replacing, repairing or issuing credit at its option for any goods returned by the Customer within the aforesaid period which the Company, in its sole discretion, considers to be defective.
- c. The Company shall have no liability to the Customer for any:
 - i. loss of profits and/or damage to goodwill;
 - ii. pure economic and/or other similar losses;
 - iii. special damages;
 - iv. aggravated, punitive and/or exemplary damages;
 - v. consequential losses and/or indirect losses;
 - vi. business interruption, loss of business, loss of contracts, loss of opportunity and/or production.
- d. The Company's total aggregate liability to the Customer about this contract shall not exceed 125% of the contract price payable by the Customer to the Company under this contract.
- e. The Company shall be entitled without any liability of whatever nature to cancel any contract with the Customer at any time should the Company not be able to obtain a credit reference in respect of the Customer which in the opinion of the Company, in its sole absolute and unfettered discretion it regards as an acceptable credit reference. Following such cancellation, the Company shall be entitled to payment for all works carried out by the Company to the date of such cancellation and if such works only compromise a part of the contract then an appropriate part of the contract price as reflects their worth.
- f. Each of the limitations and/or exclusions in this contract shall be deemed to be repeated and apply as a separate provision for each of:
 - i. liability in contract (including fundamental breach);
 - ii. liability in tort (including negligence);
 - iii. liability for breach of statutory duty; and
 - iv. liability for breach of common law and/or under any other legal basis; except that the clauses above placing financial caps on the Company's liability shall apply once in respect of all the said types of liability.
- g. Nothing in this contract shall exclude or limit the Company's liability for death or personal injury due to its negligence or any liability which is due to its fraud or any other liability which it is not permitted to exclude or limit as a matter of law.

10. Cancellation

- a. If the Customer:
 - i. fails to make any payment when due;
 - ii. breaches the terms of this contract (and if remediable the breach has not been remedied within 14 days of receiving notice requiring it to be remedied);
 - iii. persistently breaches any one or more terms of this contract;
 - iv. ceases or threatens to cease to carry on business;
 - v. is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, has any execution or distress levied against its assets, fails to satisfy a judgement debt against it, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances
 - vi. If the Company terminates this contract pursuant to clause 10(a) then;
 - vii. all costs, expenses, overheads and loss of profits incurred by the Company in connection with the contract shall forthwith become payable by the Customer as a debt due from the Customer to the Company;
 - viii. the Customer shall cease to sell goods belonging to the Company in the normal course of the Customer's business;
 - ix. any goods of the Company kept by the Customer shall forthwith be delivered up by the Customer to the Company or to the Company's nominee who shall be given access to the goods in order to remove the same; and
 - x. the price of any goods delivered by the Company to the Customer or any goods ordered by the Customer in respect of which the Company has notified the Customer that such goods are available for delivery to the Customer shall become due and payable forthwith.

11. **Disputes** - The parties shall endeavour in good faith to settle any dispute, which may arise between them. Should they be unable so to settle any such dispute, that dispute shall be submitted to arbitration in accordance with the provisions of The Arbitration Act 42 of 1965, as amended, or any statutory modification or substitution thereof; provided that the arbitration shall take place in Johannesburg and the arbitrator shall be an independent.

12. **Domicilium and Notices** - For all purposes, including but not only by way of limitation, the giving of any notice, the making of any communication and the serving of any process, the company and the customer respectively choose domicilium citandi et executandi ("domicilium") at their respective addresses appearing on the face hereof. Each of the company and the customer shall be entitled from time to time by written notice to the other to vary its domicilium to any other address in the Republic of South Africa not being a post office box or poste restante. Any notice which either party may give to the other which is posted by prepaid registered post to a party's domicilium for the time being shall be presumed, unless the contrary is proved by the party to whom it is addressed, to have been received by that party on the fourth day after the date of posting, shall be sent by prepaid registered post to the addressee's domicilium for the time being.

13. General

- a. No variation of these conditions shall be of any force or effect unless it is recorded in writing and signed by the company's authorised officer for the time being.
- b. No representatives, agent or salesman has any authority to waive or vary any of these conditions or make any representations whatever on behalf of the company.
- c. No indulgence, extensions of time, relaxation or latitude which the company may permit at any time in regard to the carrying out of any of the customer's obligations shall prejudice the company in any manner whatever or be a waiver by the company of any of its rights against the customer.
- d. The customer consents to the company instituting proceedings arising out of this contract in any magistrate's court having jurisdiction over the customer, irrespective of the amount of the claim.
- e. All contracts of sales concluded between the company and the customer shall be deemed to have been concluded at the place from which the company despatches the goods concerned, or where no goods are despatched, at Airport.
- f. The customer shall not be entitled to cede or assign any rights or delegate any obligations under these conditions of sales and/or any contract of sale concluded between it and the company without prior written consent of the company.
- g. Should any provision in these conditions of sale be or become wholly or partly void or unenforceable, the validity and enforceability of the remaining provisions shall not be affected.