

APPLEBY INSTRUMENTATION (SA) (PTY) LTD

STANDARD TERMS & CONDITIONS OF SALE

1. DEFINITIONS

- 1.1. "the Company" means Appleby Instrumentation (SA) (Pty) Ltd.
- 1.2. "Purchaser" means the party who or which purchases the Goods from the Company, and includes the Purchaser's representatives, successors and permitted assigns.
- 1.3. "contract" means any contract or agreement arising out of the acceptance of any offer, whether that contract arises out of an offer made by the Company and accepted by the Purchaser, or an offer made by the Purchaser and accepted by the Company.
- 1.4. "the Goods" means the products of the Company which form the subject matter of a contract, including consumables and non-consumable items.

2. GENERAL

No alteration or variation of these terms and conditions shall be of any force or effect unless and until recorded in writing and signed by the Company and the Purchaser. These terms and conditions shall apply to any contract in terms of which the Company agrees to sell the Goods, irrespective of the circumstances under which the contract arose and to the exclusion of any other terms and conditions which the Purchaser may seek to make applicable.

3. QUOTATION

Quotations submitted by the Company will not be offers capable of acceptance so as to bring into existence a contract unless otherwise expressly provided in such quotations and will remain valid for a period of 30 (thirty) days only unless otherwise stated in writing. The Company's distributed publications are maintained as sources of general information and are not quotations or offers to sell.

4. ORDERS

- 4.1. All orders received will be processed in accordance with normal business practice, in terms of which acceptance by the Company of any order will be subject to authorization by the Company's credit manager.
- 4.2. If quotations include materials specified by the Purchaser, reasonable allowance shall be made for delivery of pre-paid materials to the Company, which materials must be of suitable quality to facilitate production and/or use by the Company in fulfilling its obligations.

5. ACCEPTANCE OF CONTRACT

- 5.1. A CONTRACT SHALL COME INTO EXISTENCE WHEN THE Company accepts any order for the Goods placed by a Purchaser. The Company is not bound until it accepts the Purchaser's offer.
- 5.2. The Purchaser's offer is irrevocable.
- 5.3. The Purchaser acknowledges that it is aware that the Company's dealers and salespersons have no authority to vary these terms or conditions of sale and the Company assumes no liability and shall not be bound by any statements, warranties or representations made by such dealers and/or sales persons save as expressly stated in writing and signed by a manager or director of the Company, duly authorized.
- 5.4. The Purchaser may only cancel a contract if agreed thereto by the Company in writing and upon payment of reasonable charges based upon expenses already incurred and commitments made by the Company.

6. PURCHASE PRICE & PAYMENT

- 6.1. The purchase price payable by the Purchaser for the Goods shall be the price at the date of acceptance of the order by the Company in respect of the Goods and shall be exclusive of Value-Added Tax (VAT), surcharge and delivery, unless otherwise agreed in writing.
- 6.2. The purchase price of the Goods shall be paid to the Company in full and without set-off within 30 (thirty) days of the date of invoice unless a contrary arrangement is agreed to in writing.
- 6.3. Should the Purchaser fail to make any payment on due date then all amounts owing by the Purchaser to the Company from whatsoever cause, whether or not the date for payment has arrived, will immediately become due and payable by the Purchaser and the Purchaser shall immediately forfeit all discounts of whatsoever nature granted to it by the Company.
- 6.4. Unless otherwise agreed in writing, any amount not paid on due date shall bear interest at a rate equivalent to the maximum permissible finance charge rate allowed from time to time in terms of the Usury Act of 1968, from due date until date of payment, both days included.

7. DELIVERY

- 7.1. Delivery of goods to the first carrier shall constitute delivery to the purchaser.
- 7.2. Time of delivery is not of the essence. The purchaser acknowledges that the Company relies on contracted courier services to effect delivery, that delivery dates given in advance are estimated and that deliveries will be made subject to prior orders on file with the Company. The Company shall not be liable for failure to perform or delay in performance hereunder resulting from fire, labour difficulties, transportation difficulties, delays in usual sources of supply, major changes in economic conditions or any cause beyond the Company's control.
- 7.3. Risk in and to the Goods shall pass to the Purchaser upon delivery.
- 7.4. The Purchaser shall immediately upon receipt of the Goods from the Company inspect the Goods and inform the Company of any errors, defects or shortages by way of written notice to be received by the Company within 14 (Fourteen) days of receipt of the Goods by the Purchaser. Should the Purchaser fail to notify the Company of any claim the Purchaser may have in terms hereof within the specified 14 (Fourteen) day period such failure shall constitute a complete waiver of any such claim.
- 7.5. Any of the Goods delivered to the Purchaser in error shall be considered for credit by the Company provided that such Goods are undamaged, in their original packaging, have not been unpacked or opened in part and are not defaced in any way.
- 7.6. If the Purchaser cannot accept or should it request the Company to suspend or delay delivery of Goods, the Company reserves the right to claim any additional costs involved from the Purchaser.

8. OWNERSHIP

Notwithstanding prior delivery and the passing of risk, ownership of and title to the Goods shall remain vested in the Company until the purchase price, and any other amounts owing to the Company in respect of the Goods, have been paid in full and without set-off, on which date ownership of the Goods will be deemed to be transferred to the Purchaser. Until the date of transfer or ownership, the Purchaser shall notify its Landlord (if applicable) that the Goods are owned by the Company. In addition, the Purchaser agrees that until the date of transfer of ownership it shall keep the Goods separate and identifiable from any of its other stock or assets, and that the Company may at any time enter the Purchaser's premises to remove the Goods therefrom.

9. GUARANTEE

- 9.1. The Company gives only the following warranties/guarantees in respect of the Goods:
 - 9.1.1. It has title to the Goods and has the unencumbered right to sell the Goods; and
 - 9.1.2. Unless otherwise agreed in writing, the Company will at its sole discretion and at its expense replace or repair any non-consumable Goods which are returned to it by the Purchaser within 12 (twelve) months from the date of delivery, if such Goods are determined by the Company on a *bona fide* inspection thereof, to be defective in respect of materials and/or workmanship. The Company will not be liable to compensate the Purchaser for any damages sustained by the Purchaser whilst the Goods are being repaired, nor shall it be liable for any other damages, including consequential damages, relating to the replacement or repair of the Goods by the Company.

- 9.2. Notwithstanding the provisions of clause 9.1.2 above, if any defect relates to components of the Goods which are not manufactured by the Company or its holding company, the Company will grant only such warranty as may be granted to it by the supplier of the relevant component/s.

10. REPAIRS

Other than as set out in clause 9.1.2 above, the Company is under no obligation to accept liability for repairs in respect of the Goods. Notwithstanding the foregoing, if the Purchaser returns any non-consumable Goods which are not under guarantee to the Company for repair, such Goods must be accompanied by a legible letter detailing the required repairs and the sender's name and address. The sending of such Goods will constitute an offer by the sender to the Company, for the Company to repair the specified defect at its standard rate for repairs which rate may vary from time to time without notice and the Company shall not be obliged to furnish a quote in respect of such repairs. If the Company accepts such offer, it shall notify the sender thereof, subject to the provision of sufficient contact details by the sender. The Company shall retain a lien in respect of any Goods sent to it for repair, until such time as its invoice in respect of such repairs has been settled by the sender, and the Company reserves the right to invoice the sender for time involved in the preparatory examination of such Goods even if no repairs are effected thereto. The cost of delivery of the Goods to the Company, and by the Company to the sender, shall be borne by the sender, and such repairs are subject to the same exclusions as are set out in clause 9.1.2 above regarding damages which may be suffered by the Purchaser.

11. EXPORT

In the event that the Purchaser is located outside of the Republic of South Africa, when making an offer or placing an order for the Goods, the Purchaser shall furnish the Company with such bank guarantee or letter of credit in respect of the purchase price, as may be acceptable to the Company. In addition, the Purchaser will be entirely responsible for ensuring that any Exchange Control, import or other regulations of the country to which the Goods are to be exported, are complied with. The Purchaser indemnifies the Company in respect of any liability which may result in the event that the Purchaser fails to comply with the aforementioned obligations. Notwithstanding the foregoing, in the event that any such regulations prevent either party from complying with its obligations in terms hereof, or in terms of a contract, then this agreement may be terminated at the discretion of the Company.

12. LIMITATIONS

- 12.1. The Company shall not be liable for any loss of profit or any other loss or damage, direct or indirect, consequential or otherwise, sustained by the Purchaser or its officers, employees, customers, agents or affiliates arising from any cause whatsoever, excluding gross negligence and wilful or fraudulent misconduct, and the Purchaser indemnifies the Company in respect of any such liability.
- 12.2. Notwithstanding the provisions set out in clause 12.1 above, in the event that the Purchaser requests the Company's advice regarding the application of the Goods, the liability of the Company in respect of the non-suitability of the Goods for the purpose for which they are used will be limited to the selling price of those Goods.
- 12.3. Save for the guarantees/warranties set out in clause 9 above, the Goods are sold *voetstoots* and as is, the Company makes no warranties or representations in respect of the Goods and the parties agree that no other terms or conditions whether, express, tacit or implied shall apply hereto or to a contract. Without limiting the generality of the foregoing, the parties specifically agree that no implied warranties of whatsoever nature, including the warranty *spendet penitiam artis*, shall apply in respect of the Goods.

13. DEFAULT

- 13.1. Should the Purchaser fail to make payment upon due date of any amount due and owing or commit any other breach of the terms of a contract, the Company shall be entitled, at its option without notice and without prejudice to any other right which it may have, including the right to claim damages arising out of the breach or the termination of the contract, to cancel such contract forthwith, and/or to declare all amounts owing by the Purchaser to be immediately due and payable; and/or to suspend the carrying out of any of its then uncompleted obligations until payment is made; and/or to terminate any credit facilities granted to the Purchaser.
- 13.2. No relaxation which the company may have permitted on any occasion in regard to carrying out of the Purchaser's obligations shall prejudice or be regarded as a waiver of the Company's rights to enforce those obligations on any subsequent occasion.

14. ASSIGNMENT

The Purchaser may not actually or purportedly cede, assign or otherwise alienate any rights or obligations which it may have in terms hereof or in terms of any contract with the Company, unless otherwise agreed in writing.

15. NOTICES AND DOMICILIUM

- 15.1. The parties hereto select as *domicilium citandi et executandi* the addresses set out in any order contemplated in terms hereof.
- 15.2. Any written notices in respect of this contract shall be sent by telefax or delivered by hand and shall be deemed to have been received on the day of transmission or delivery, whichever is applicable.

16. GOVERNING LAW & JURISDICTION

- 16.1. This agreement and any contract shall be subject to the laws of the Republic of South Africa.
- 16.2. In terms of Section 45 of the Magistrates Court Act of 1944, as amended, the Purchaser hereby consents to the jurisdiction of the Magistrates Court having jurisdiction in terms of Section 28 of the said Act in respect of any action to be instituted against the Purchaser by the Company in terms of the contract. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Purchaser in such Magistrates Court or any other court having jurisdiction.
- 16.3. In the event of the Purchaser committing any breach of contract or in the event of the Company being required to take any legal action, the Purchaser agrees and undertakes to pay the Company's legal costs as between attorney and own client including collection commission, tracing fees, valuation charges, transport costs and other expenses in connection therewith.