

STANDARD TERMS AND CONDITIONS OF SALE: TRADEMORE (PTY) LTD

- 1 The following terms apply to all contracts, including but not limited to Credit Agreements and Cash-On-Delivery Client Agreements, entered into by the trading divisions of Trademore (Proprietary) Limited (here in after referred to as the " company") for the supply of goods and/or services to any of its customers (here in after referred to as " the customer").
- 2 These terms of sale shall override all terms and conditions contained in any order placed upon the company by the customer save for the Sales Confirmation which shall operate in conjunction herewith.
- 3 If in respect of any contract, the company and the customer agree in writing on any term which conflicts with any of the standard terms herein contained, the term specifically agreed upon by the company and the customer as aforesaid shall override any of the standard terms herein contained which may be in conflict therewith.

Delivery

- 4 Any date indicated by the company for the delivery of goods shall not be binding upon the company but shall be regarded merely as the estimated date of delivery thereof. The company shall not be liable for any loss or damage of whatsoever nature incurred or suffered by the customer as a result of or in connection with any delay in making delivery, incorrect delivery, partial delivery and non-delivery. The customer hereby agrees to indemnify the company against any and all damages. The customer's sole remedy in respect of any breach by the company of its obligations to deliver shall be the right to cancel any order or the balance of any order, as the case may be, if the goods ordered or the balance of the goods ordered, are not delivered within 21 (twenty one) days after receipt by the company of a notice from the customer demanding delivery thereof, provided that such notice shall not be given by the customer prior to the indicated delivery date. In no circumstances whatsoever shall time for delivery of any goods be "of the essence".
- 5 Notwithstanding that the selling price of any goods supplied by the company may be quoted and/or charged on a "delivered" basis, the company shall be deemed to have made delivery of all goods as soon as such goods are placed on road trucks, rail wagons and vessels for consignment to the customer at such address as the customer may from time to time in writing advise to the company. All risk and responsibility in and to the goods shall pass at the point of loading onto any vessel for transport. The customer agrees and acknowledges that it has taken out the necessary insurance to protect against any damages of goods while in transit.
- 6 If the goods forming the subject matter of the sale are to be delivered in instalments, the customer shall pay to the seller in respect of each instalment and amount which bears the same ratio to the purchase price as the quantity of goods delivered in the instalment in question bears to the total quantity of the goods purchased. Each instalment shall be treated as a separate and divisible instalment from each other instalment and accordingly rejection of any one instalment by the customer shall not ipso facto entitle the customer to reject any other instalment.
- 7 The Company reserves the right to suspend deliveries or to terminate any contract in the event of:-
 - 7.1 war, force majeure, casus fortuitus, riots, fire, civil commotion, accidents, strikes or lockouts, inability to obtain supplies and/or other

unforeseen circumstances of any nature whatsoever affecting the company's ability to delivery - if cancellation in any event as aforementioned occurs, the customer shall have no right whatsoever to claim for any losses or damages suffered as a result of the occurrence of such event;

- 7.2** the customer defaulting in payment of any amount owing by it to the company under any contract in force between the company and the customer in which event the company shall be relieved from all obligations in connection with the contract without prejudice to its right to obtain payment in respect of goods delivered prior to such suspension or cancellation and without prejudice to the Company's rights to claim damages.
- 8** Where the customer elects to collect the goods sold in terms hereof, either itself or through the agency of any third party carrier, the following provisions shall apply:-
- 8.1** the customer shall ensure that the person who collects the goods on behalf of the customer or on behalf of its agent, as the case may be (hereinafter referred as "the recipient") shall produce to the company a written authorisation from the customer to the company to the effect that the recipient is authorised to take delivery of the goods in question for and on behalf of the customer. If the recipient produces what appears *prima facie* to be valid authorisation from the customer authorising the recipient to take delivery of the goods on behalf of the customer, the company shall be entitled to hand over the goods in question to the recipient and such recipient shall thereupon be deemed for all purposes hereunder to have been the duly authorised agent of the customer to accept delivery of such goods.
- 8.2** all risk in and to the goods shall pass to the customer upon collection thereof.
- 8.3** the customer shall, upon collection of the goods, sign the delivery note presented to the customer (or to its duly authorised agent as aforesaid) by a representative of the company and the customer's signature on such delivery note shall be deemed to be *prima facie* proof that the customer has received all the goods, as specified in the delivery note, in good order and condition, unless the customer or its duly authorized agent at the time of signing the delivery note records on such delivery note any shortfall in quantity or defect in quality of the goods being delivered and a representative of the company acknowledges the correctness thereof by signing the delivery note to that effect
- 8.4** if the customer fails to collect the goods timeously:-
- 8.4.1** Interest shall be payable by the customer on the purchase price of the goods in question, at the prime overdraft rate plus 5% charged from time to time by First National Bank of South Africa, reckoned from the date for collection of the goods until the date of actual collection thereof, which interest shall be payable on demand by the company;
- 8.4.2** the customer shall be liable for the payment to the company on demand of all additional charges incurred by the company in respect thereof (including but not limited to storage and handling charges) for the period during which the goods remained uncollected;
- 8.5** if the company incurs any additional costs as a result of the customer's election to collect the goods itself, all such additional costs (including but not limited to demurrage, storage charges, loss of interest and penalties) shall be for the customer's account and shall be paid by the customer to the company on demand therefor.
- 9** The business as conducted in terms of this agreement shall be in terms of the INCOTERMS and delivery shall be FCA Germiston. All risk in the product shall pass from Importer to Wholesaler at the connection of the Importer's loading hose connector to

Wholesaler's nominated road tanker. Ownership of and title to the product shall pass from Importer to Wholesaler upon receipt of Wholesaler's payment in full, as per Importer's commercial invoice, by Importer for the subject Volume collected from Importer's Germiston facility by Wholesaler's nominated road tanker.

- 10** Any loss or damage to the product occurring during or after the loading of the product by the Wholesaler shall be for the account of the Wholesaler and the Wholesaler shall bear the consequences thereof.
- 11** In those instances in which:-
- 11.1** the goods are sold in bulk but if the customer requires the goods to be delivered in bags (of standard size only), all additional costs incurred by the company in procuring that the goods shall be in placed in bags (including but not limited to additional transport costs incurred in transporting the goods to the bagging facility, additional storage costs and additional insurance costs) shall be for the customer's account and shall be paid by the customer to the company on demand therefor;
- 11.2** the goods are sold in bulk, the customer had been given the option to take delivery of the goods in bags (of standard size only) and the customer has exercised that option, then all additional costs incurred by the company in procuring that the goods are placed in bags shall be for the company's account.
- In either of the aforesaid events, the following provisions shall apply, namely:-
- 11.2.1** nothing contained in this clause 9 shall in any way affect or modify the incidence of the risk or the passing thereof to the customer;
- 11.2.2** if, as a result of any act or omission attributable to the customer, the goods are required to remain in storage longer than the period required for the bagging thereof, all additional costs of storage and interest incurred by the company as a result thereof shall be charged by the company to the customer and shall be payable by the customer to the company on demand.

Ownership and Risk

- 12** Ownership of all goods sold and the packing thereof remains vested in the company until the customer has made payment of the full purchase price thereof to the company.
- 13** Notwithstanding the provisions of clause 10 above, all risk in and to the goods shall pass to the customer on delivery thereof, as the case may be. Any carrier (including the company where the company's vehicles are used for the delivery of such goods) shall be deemed to be the agent of the customer for all purposes hereunder. Notwithstanding anything to the contrary herein contained, if any specific term relating to the passing of the risk has been included in any contract between the company and the customer, such specific term shall override the contrary provisions contained in these standard terms. For the purpose hereof, the term "delivery" shall not be confined to actual physical delivery of the goods but shall, where appropriate, include a reference to symbolic delivery and delivery effected by the handing over of documents evidencing title to the goods.

Price

- 14 Unless otherwise indicated by the company in writing, all prices quoted by the company are quoted ex vessel, as the case may be, and all transport and insurance costs in relation to the transport and insurance of the goods from the warehouse or the vessel, as the case may be, to the customer's designated address for delivery shall be for the customer's account.
- 15 If at any time between the date of contracting and the date of delivery or deemed delivery of the goods, as case may be, the cost of such goods to the company is increased (whether as a result of increases in railage or other transport charges, duties, demurrage, surcharges, wharfage, landing, clearing and forwarding charges, goods being discharged at any port in the Republic of South Africa other than the port at which such discharge was to have been made, force majeure, strikes, lockouts, inclement weather or for any other reason whatsoever, not to be limited by the *eiusdem generis* rule), the company shall be entitled to increase the purchase price of the goods to the customer at the company's election either by the same percentage as the percentage increase to the company in the cost of the goods or by the same increase in the monetary value per metric ton of the goods as shall be borne by the company. Such increased price shall be deemed to be the agreed price of goods.
- 16 Where the purchase price of the goods is related to the mass thereof and such mass has not, at the time of delivery of the goods to the customer, been verified by the weighbridge tickets or weight certificates or other similar documentation, the company shall be entitled to invoice the customer on the basis of the provisional mass of such goods and the customer shall be obliged to pay for the goods in accordance with such provisional mass. Upon receipt by the company of the actual weighbridge tickets, weight certificates or other similar documentation, the company shall either claim payment of the shortfall from, or refund the excess paid to, the customer in accordance with the difference between the provisional mass on the one hand and the actual mass as reflected on such weighbridge tickets, on the other hand.

Deposit & Payment

- 17 All orders placed by a customer which exceed a volume of 3000m³ (Three Thousand Cubic Metres) shall incur a standard deposit in the amount of R1,500,000.00 (One Million Five Hundred Thousand Rand) which shall be immediately due, owing and payable by the Customer.
- 18 The Deposit amount shall be non-refundable in the event that the customer is in breach or default of any order placed whether such order was committed to in writing via a signed Sales Confirmation, message, email or WhatsApp correspondence or verbally.
- 19 Unless the company grants credit all goods are sold for cash. Where credit is granted by the company, the terms and conditions governing such credit shall unless otherwise specified in the contract, be those terms and conditions stipulated by the company.
- 20 In those circumstances where payment for goods is to be made by letter of credit, the company shall be entitled to specify the terms governing such letter of credit, whereupon the customer shall procure that the letter of credit is issued in conformity with

the terms so specified.

- 21** The customer shall pay interest on all amounts in arrear at the prime overdraft rate plus 5% charged by First National Bank of South Africa, reckoned from the due date of payment until date of payment thereof.

Quality

- 22** Goods supplied by the company will conform substantially to the specifications as to the quality of the goods stipulated in the contract. If proven to the company's satisfaction that any goods fail to conform substantially to such specifications, the company may accept return of such non-conforming goods but the company's liability to the customer in respect thereof shall be limited, at the company's election, to the rectification or replacement of such goods or the passing of a credit to the customer for the price thereof or the granting of a pro rata reduction in the purchase price, and the customer shall have no further right, claim or remedy against the company in respect of such failure. Unless the customer notifies the company in writing of the manner in which the goods fail to conform to the specifications within 24 (twenty four) hours of receipt of the goods by the customer, the goods shall be deemed to have conformed substantially to the relevant specifications and the customer shall have no claim against the company thereafter for any alleged failure of the goods so to conform.
- 23** No goods supplied by the company may be returned for credit without the prior written permission of the company, such permission may be granted by the company subject to such conditions as the company within its sole discretion deems fit.

Breach

- 24** Should the customer fail to make payment on due date in terms of this Agreement hereof, or should the customer commit any other breach of its obligations hereunder, then the Company shall have the option to either:
- 24.1** 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
 - 24.2** 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.
- 25** 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.

Arbitration

- 26** In the event of there being any dispute or difference between all or some of the Parties arising out of this Agreement (including but not limited to any dispute or difference as to the validity or otherwise of this Agreement, or as to the enforceability of this Agreement), the said dispute or difference shall on written demand by any Party be submitted to arbitration in Johannesburg in accordance with the AFSA rules, which arbitration shall be administered by AFSA.
- 27** Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, or should AFSA refuse to accept the particular request for arbitration for whatever reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 business days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Gauteng Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.
- 28** Any party to the arbitration may not appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
- 29** Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 30** Any arbitration in terms of this clause (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 31** This clause will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
- 32** The Parties declare that it is their intention that this clause will regulate the manner in which they will resolve any dispute or difference regarding the validity or otherwise of this Agreement, regardless of the fact that one of the parties may dispute the validity or enforceability of the Agreement.
- 33** The Parties agree that the written demand by a party to the dispute in that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, No 68 of 1969.
- 34** Despite the parties being in dispute or taking steps to comply with this Agreement, the parties must continue to perform their respective obligations under this agreement, but will not be

required to complete any matter which is the subject of the dispute unless each party indemnifies the other party against costs (including consultant's costs), damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying party.

Claim Procedures

- 35 The customer shall adhere to all claim procedures laid down from time to time by Spoornet, Portnet, transporters and/or insurance companies, as the case may be, in regard to any claims which the customer may make in respect of any goods. The company may, if it so elects and if called upon to do so by the customer, but without any obligation or legal liability on the part of the company at all, assist the customer in processing any such claims.

Business Rescue

- 36 The customer shall have no claim against the Company in the event of the Company instituting, or having to be placed under, Business Rescue proceedings by virtue of economic circumstances, vis major, or any reason whatsoever.
- 37 Notwithstanding the above, the Company will endeavor to do its best to honour its commitments in terms of this Agreement.
- 38 The customer agrees to pay back the Company any and all amounts outstanding within 7 (seven) days' notice to the customer in the event of the Company being placed under Business Rescue for any reason whatsoever.

Credit Information

- 39 The customer hereby authorises and consents to the company obtaining and using credit and personal information about it and supplying such information to any credit bureau or collection agencies. The customer agrees that the company shall not be held liable for the good faith disclosure of any of this information to such third party.

Domicilium Citandi Et Executandi

- 40 The customer chooses as its domicilium citandi et executandi for all purposes under this agreement, whether in respect of payments, court process, notices or other documents or communications of whatsoever nature the addresses and contact details provided for the company on the Application Form submitted to Trademore.
- 41 Notwithstanding the provisions of clause 27, any notice or pleading actually received by either party from the other shall be considered as valid and legally binding service.

Magistrates Court Jurisdiction

- 42 The company may, at its sole discretion, institute any legal proceedings against the customer in the relevant Magistrates Court having jurisdiction notwithstanding that the amount of the claim may exceed the jurisdiction of the magistrates Court, provided that it retains the right to proceed, at its discretion, in the High Court or another court with competent jurisdiction.

Certificate Of Indebtedness

- 43 A certificate under the hand of any director of the company as to the amount of the indebtedness of the customer to the company at any time, the fact that such amount is due and payable, the amount of interest accrued thereon and the rate of interest payable thereon and any other fact, matter or thing relating to the indebtedness of the customer to the company shall be *prima facie* proof of the contents and correctness thereof and the amounts of the customer's indebtedness in terms of this clause for the purposes of provisional sentence or summary judgment or any other proceedings against the customer in any competent Court and shall be valid as a liquid document for this purpose. It shall not be necessary to approve the appointment of the person signing any such certificate.

Consumer Protection Act

- 44 The Customer acknowledges and confirms that at the time of signing this agreement it is not a Protected Consumer, meaning that the transaction contemplated in terms of this agreement is exempt from the majority of the provisions of the Consumer Protection Act 68 of 2008 ("the Consumer Protection Act"). The Customer undertakes to notify the company, in writing, as soon as there is a material change to its business which results in it becoming a Protected Consumer so that these terms and conditions can, where necessary, be amended to ensure compliance with the Consumer Protection Act.

National Credit Act

- 45 The customer acknowledges and confirms that at the time of signing this application, its annual turnover or asset value exceeds the threshold determination contemplated in section 4(1)(i) of the National Credit Act 34 of 2005 ("the NCA"), meaning that the transaction contemplated in terms of this agreement is not a credit Agreement as contemplated and governed by the NCA. The customer undertakes to notify the company, in writing, as soon as there is a material change to its business which results in it falling below the aforesaid threshold amount so that these terms and conditions can, where necessary, be amended to ensure compliance with the NCA.

Confidentiality

- 46 Each Party will keep confidential and will not disclose to any person:
- 46.1 the details of this Agreement, the details of the negotiations leading to this Agreement, and the information handed over to each Party during the course of negotiations, as well as the details of all transactions or agreements contemplated in this Agreement; and
 - 46.2 all information relating to the business or the operations and affairs of the Parties, (hereinafter referred to as "Confidential Information").
- 47 The parties agree to keep confidential all Confidential Information and to disclose it only to their officers, directors, Employees, consultants, and professional advisors who:
- 47.1 have a need to know (and then only to the extent that each such person has a need to know);

- 47.2 are aware that the Confidential Information should be kept confidential;
 - 47.3 are aware of the disclosing Party's undertaking in relation to such information in terms of this Agreement; and
 - 47.4 have been directed by the disclosing Party to keep the Confidential Information confidential.

- 48 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:
 - 48.1 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who disclosed such Confidential Information;
 - 48.2 is required by the provisions of any law, statute, or regulation or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and subject to the provisions of this Agreement, the Party require to make the disclosure has taken all reasonable steps to oppose or, prevent the disclosure of a to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the other Party prior to making such disclosure; and

- 49 is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in lawful possession or control of that Party and no subject to an obligation of confidentiality.
- 50 The parties agree not to approach the other party's clients. In particular, the Importer shall in no way attempt to solicit or circumvent the clients of the Importer. This non-solicitation and non-circumvention provision shall be effective for as long as this agreement is in force.

General

- 51 No variation, extension or termination of or addition to this Agreement shall be of any force or effect unless reduced to writing and signed on behalf of the Parties.
- 52 Where a Party is granted a right or remedy under this Agreement it shall be in addition to and not in substitution for any other right or remedy which that Party might have in terms of this Agreement or in law.
- 53 No failure on the part of a Party to exercise, and no delay by a Party in exercising, any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right under this Agreement preclude any further or other exercise of that right nor act to the exclusion of any other right.
- 54 This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.
- 55 Should any Party fail or decline to enforce the whole or any part of this Agreement or grant any indulgence to any other Party, then the act or omission aforesaid shall not be interpreted as a

- waiver of rights, nor shall it act as an estoppel against or otherwise prejudice the Party committing the act or omission.
- 56 No provision of this Agreement shall be construed against or interpreted to the disadvantage of a Party to this Agreement by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- 57 If any provision of this Agreement is found by a court to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.
- 58 This Agreement may be signed in any number of counterparts, each of which shall be an original, but all of which together shall constitute a single indivisible agreement..
- 59 This is the sole agreement between the Parties on this subject. No preceding representation, warranty, offer, invitation, term or condition proposed or settled upon shall be of any effect whatsoever save to the extent that it is recorded in this Agreement.

These Terms and Conditions shall be an annexure to the Sales Confirmation and shall form an essential part thereof upon execution.