

### 1. DEFINITIONS

In these conditions :

- 1.1. **“BADER”** – means - **BADER SA (PTY) LTD**
- 1.2. **“SELLER”** – means the person, firm, company or close corporation to whom the ORDER is addressed;
- 1.3. **“GOODS”** – means the articles or things or any of them including any services described in the ORDER;
- 1.4. **“ORDER”** – means the order placed by BADER for the supply of goods upon the terms hereof, the SPECIFICATIONS and the DRAWINGS;
- 1.5. **“SPECIFICATIONS”** – means the technical description of any of the GOODS contained or referred to in the ORDER;
- 1.6. **“DRAWINGS”** – means the drawings referred to in the ORDER to which the GOODS must comply;
- 1.7. **“the HANDOVER DATE”** – means the date upon which the GOODS are received by BADER at the place of delivery specified in the ORDER.
- 1.8. an expression which denotes :
  - 1.8.1. the singular shall include the plural and vice versa;
  - 1.8.2. any gender shall include the other genders.

### 2. CONTRACT

- 2.1. The contract consists of the ORDER, the DRAWINGS and the SPECIFICATIONS, and the legal contractual relationship between the SELLER and BADER in relation to the subject matter of any supply of GOODS and services shall be governed by the terms and conditions of this Agreement, the DRAWINGS and the SPECIFICATIONS and none of the terms and conditions in any other document given by the SELLER to BADER, which are inconsistent with the terms and conditions of this Agreement shall be of any force and effect unless agreed to in writing by BADER.
- 2.2. The contract supersedes all prior negotiations between the parties and embodies the entire agreement between the parties. Any purported acceptance of the ORDER qualified by terms at variance with the terms of the ORDER shall, unless notified to the contrary by BADER in writing to the SELLER within 7 (seven) days, be treated as an unqualified acceptance of the ORDER.
- 2.3. The SELLER'S terms and conditions of sale whether standard or specific to the negotiations are expressly excluded. All written matter, drawings contained in any of the SELLER'S catalogues, price lists and any advertisements in whatsoever form are binding in detail including but not limited to dimensions, measurements, weights, quantities and colours. All models or samples of the SELLER shown to BADER shall be construed as illustrative of the type and quantity of GOODS and the representation that the GOODS conform to the model or sample.
- 2.4. The obligations of the SELLER in terms of the contract are in addition to and not in substitution for any of its common law obligations.
- 2.5. Time is of the essence where ever there is a time period by which or within which an obligation must be performed by the SELLER.
- 2.6. It is acknowledged by the SELLER that the goods may be ordered by BADER for incorporation into work BADER is obliged to perform for others and the liability of the SELLER to BADER for non-performance in that event includes liability for indirect,

consequential or special damages, such being within the contemplation of the parties at the time of acceptance of the ORDER.

- 2.7. BADER is bound by the ORDER only if it is placed on BADER'S official order form and signed by BADER'S authorized official.

### **3. VARIATIONS**

- 3.1. BADER shall have the right by timeous notice in writing without invalidating the contract to modify or vary the DRAWINGS or SPECIFICATIONS or the nature of the service to be provided by the SELLER pursuant to the contract.
- 3.2. If any such modification or variation warrants an increase in the contract price or any extension of the period for date of delivery the SELLER shall, provided that a claim is submitted in writing to BADER within 14 (fourteen) days of receipt of the notice concerned, be entitled to such increase or extension as is fair and reasonable.
- 3.3. If any such modification or variation warrants a decrease in the contract price or an acceleration of the period for delivery, BADER shall be entitled to such decrease or earlier delivery as is fair and reasonable in the circumstances.
- 3.4. The terms and conditions of this Agreement constitute the entire Agreement between the parties together with all representations, warranties or undertakings of any nature given by the SELLER to BADER in relation to the GOODS or services. No departure from the terms of the contract by the SELLER shall be permitted unless it receives an amendment order in writing from BADER. All amendments and supplements to the written Agreements must be in writing and signed by BADER.

### **4. INSPECTION AND TESTING**

- 4.1. Prior to dispatching the GOODS, the SELLER shall carefully inspect and test them for compliance with the SPECIFICATIONS. The SELLER shall, if requested by BADER, give BADER reasonable notice of such tests and BADER, its insurers, authorized agents and / or customer for whom the GOODS are intended, shall be entitled to be present thereat. The SELLER shall also at the request of BADER supply to BADER a copy of the SELLER'S test sheets certified by the SELLER to be a true copy.
- 4.2. It is agreed that BADER, its insurers, authorized agents and / or said customer will be entitled to inspect and test the GOODS during manufacture, process or storage. If BADER exercises this right, the SELLER shall provide or shall procure the provision of all such facilities as may reasonably be required by BADER therefor.
- 4.3. If, as a result of any inspection or test under 4.1. or 4.2. of this Clause, BADER'S representative is of the reasonable opinion that the GOODS do not comply with the ORDER, or are unlikely on completion of manufacture or processing so to comply, he shall inform the SELLER accordingly in writing and the SELLER shall take such steps as may be necessary to ensure such compliance.

### **5. DELIVERY**

- 5.1. The GOODS, properly packed, in accordance with the usual and prudent business practice (with each package being properly marked and numbered with an order number and an item number) and secured in such manner as to reach their destination in good condition under normal conditions of transport, shall be delivered by the SELLER at, or dispatched at the risk of the SELLER for delivery to the place or places and in the manner specified in the ORDER or as subsequently agreed. The SELLER shall be liable for all damage to the GOODS wholly or partly caused by unsuitable or faulty packing of the GOODS.
- 5.2. All delivery notes must contain an order number, each item must be numbered and the delivery address stated.
- 5.3. Signed delivery notes shall not be evidence of anything other than the specified number of packages and do not imply any acceptance of the GOODS nor the correctness of the contents.

## **6. DELIVERY DATE AND DEADLINES**

- 6.1. The SELLER shall deliver the GOODS at the time specified in the ORDER. The delivery date shall be of the essence of this Agreement and in the event of delivery not being effected on the due date, BADER shall be entitled to cancel this Agreement. Time shall begin to run from the date of acceptance by the SELLER of the ORDER and the date on which the SELLER is placed in possession of such information and DRAWINGS as may be strictly necessary to enable it to start work on the GOODS, whichever may be the later. If owing to industrial disputes or any causes outside the SELLER'S control, the SELLER is unable to deliver the GOODS within the specified time, then provided that the SELLER has given BADER notice in writing without delay of its intention to claim an extension of time and sets out details of the reason therefor, BADER shall grant the SELLER such extension of time as may be reasonable in the circumstances.
- 6.2. If the GOODS or any portion thereof are not delivered within the time or times specified in the contract or any extension of such time or times, BADER shall be entitled to determine the contract in respect of the GOODS undelivered as aforesaid and of any other GOODS already delivered under the contract which cannot be effectively and commercially used by reason of the non-delivery of the GOODS undelivered as aforesaid. On such determination BADER shall be entitled (without prejudice to any other rights which it may have in law) :
- 6.2.1. to return to the SELLER at the SELLER'S risk and expense any of the GOODS already delivered but which cannot be effectively and commercially used as aforesaid and to recover from the SELLER any monies paid by BADER in respect of such GOODS;
- 6.2.2. to recover from the SELLER any additional expenditure reasonably incurred by BADER in obtaining other GOODS in replacement of those in respect of which the contract has been determined.
- 6.2.3. The SELLER shall not have the right to affect delivery in installments.

## **7. CONTRACT PRICE, PAYMENT AND INVOICE**

- 7.1. Unless otherwise agreed in writing, the price specified for the GOODS in the contract shall be fixed and shall not be subject to escalation for any increases in raw materials or other costs. No charge for transportation, insurance costs, packing, crating, storage, containers, VAT or other taxes shall be payable by BADER in addition to the price specified.
- 7.2. If the contract includes a provision for price adjustment the invoice shall also indicate such increases or decreases separately together with the methods by which such increases or decreases have been calculated. No invoice will be accepted by BADER unless the conditions contained in this Clause are met.
- 7.3. Unless specified otherwise in the ORDER, each delivery of GOODS by the SELLER shall be separately invoiced immediately after dispatch thereof. Subject to the GOODS having been duly delivered, receipt by BADER at the place specified for delivery, subject further to the GOODS being in accordance with the contract, BADER shall affect payment of the invoice 60 (sixty) days after receipt of invoice.
- 7.4. In the event of acceptance of early delivery by BADER, the due date for payment which is dependent on the delivery date shall be determined by the agreed delivery date.
- 7.5. In the case of a deficient delivery, BADER is entitled to withhold payment until due and full performance by the SELLER.
- 7.6. The SELLER'S invoice shall be clearly marked with the exact reference to the identity of BADER, the ORDER and the delivery note. If these provisions are not adhered to, the invoice shall be deemed not to have been rendered by the SELLER.

## **8. REJECTION AND NOTIFICATION OF DEFECT**

- 8.1. BADER may by notice in writing to the SELLER reject the GOODS if the SELLER fails to comply with its obligation in terms of Clause 4 hereof and may also by notice in writing to the SELLER given within 7 (seven) days or such other period as may be agreed after delivery, reject any GOODS which are not found to be in accordance with the contract. Such notice shall specify the reasons for the rejection and the rejected GOODS shall be returned to the SELLER at the SELLER'S risk and expense. In such case the SELLER shall replace such rejected GOODS with GOODS which are in all respects in accordance with the contract without prejudice to the rights of BADER to recover all damages flowing from such breach.
- 8.2. Any money paid by BADER to the SELLER in respect of any rejected goods not replaced by the SELLER within a reasonable time together with any additional expenditure over and above the contract price reasonably incurred by BADER in obtaining other GOODS in replacement shall be paid by the SELLER to BADER.
- 8.3. BADER shall notify the SELLER in writing of any defects as soon as they are discovered in the ordinary course of business.

## **9. PASSING OF OWNERSHIP AND RISK.**

- 9.1. Unless otherwise agreed in writing, the risk in the said GOODS shall pass to BADER only upon delivery as specified in Clause 5 hereof.
- 9.2. Ownership shall pass from the SELLER to BADER on delivery without prejudice to any right of rejection which may accrue to BADER under these conditions.

## **10. QUALITY AND DOCUMENTATION**

- 10.1. With regard to the GOODS, the SELLER shall comply with all the established rules of technology, standards of safety and generally accepted technical data. Changes to the GOODS of a type which have been supplied previously to BADER shall not be affected unless the prior written consent of BADER has been obtained.
- 10.2. The SELLER shall advise BADER by written notice of the need for special care of the GOODS, its packaging, transport, storage, treatment and disposal if due to the composition of its materials, the GOODS could adversely affect the environment. In the event of the GOODS originating from a member country of the European Community, the SELLER shall provide BADER with an EC Safety Data sheet as per ADR91/1455 EWG with its quotation, or if not possible, with its order confirmation.
- 10.3. Insofar as the GOODS are chemicals, the SELLER shall comply strictly with all labelling obligations. If the chemicals contain pollutants (for example chlorine-hydrocarbons), or contain substances on BADER'S blacklist, the SELLER shall be obliged to inform BADER thereof upon receipt of the order and shall indicate how these substances react and in what form they might have an endangering effect.
  - 10.3.1. BADER'S blacklist shall be made available to the SELLER upon request. The SELLER shall verify that the GOODS comply with this list with each delivery of the GOODS.
- 10.4. In case of machine and technical paint (from Germany or the EC), the regulations of the German Leather Industry Professional Trade Association, regulations for the prevention of accidents (UVV), the rules of the Trade Inspection Office as well as the regulations of the Association of German Engineers and Electricians (VDE/VDI) shall be complied with by the SELLER.
  - 10.4.1. Prior to the delivery of machines and plant (regardless of their origin), the SELLER and BADER shall mutually establish a protocol concerning the start-up and/or the handing over of such machines and plants. Furthermore, the SELLER shall hand over to BADER a function description, maintenance instructions, and a list of spare parts and each delivery shall be accompanied by a works inspection certificate according to DIN EN 10204-3.1 or its equivalent in the country of origin of the machines and plant.

- 10.5. For reasons of safety, motor vehicle manufacturers are subject to certain minimum requirements applicable to the construction of vehicles. As a consequence certain components known as safety critical parts and their construction are subject to prescribed minimum specifications. For purposes of auditing the safety critical parts and their construction to establish compliance with the prescribed requirements, suppliers of these critical parts need to comply to the quality audit verification systems employed by the various motor vehicle manufacturers from time to time. It shall be the duty of the supplier of safety critical parts or components of such parts to ensure that he is aware of the quality audit verification systems applicable to the parts or components supplied. In this regard, the supplier shall ensure strict compliance to the requirements of applicable audit verification systems and in particular the requirements relating to the maintaining of records and the storage thereof for a period of 15 years. Strict compliance with this term shall be regarded as an essential term of the supply agreement.

## **11. GUARANTEE**

- 11.1. The SELLER warrants and undertakes that the GOODS shall be suitable for use in BADER'S business, will be free of defects in materials or workmanship at the HANDOVER DATE and will remain so free for a period of the (12) TWELVE months thereafter or such longer period as may be agreed under usual and proper use and service in BADER'S business, the nature of which the SELLER shall be deemed to have full knowledge.
- 11.2. The SELLER shall upon demand replace or repair any of the goods which may be found to be faulty following upon the HANDOVER DATE for a period of (12) twelve months thereafter immediately upon being called upon to do so by BADER.
- 11.3. The (12) twelve month period shall commence afresh in respect of any GOODS so replaced or repaired from the HANDOVER DATE of such GOODS replaced or repaired.
- 11.4. Should the SELLER fail to repair or replace any goods found to be faulty after the HANDOVER DATE on being called upon to do so by BADER, BADER shall be entitled to repair or replace such GOODS either itself or through a third party at the cost of the SELLER.
- 11.5. The SELLER shall be liable for all direct and consequential damages sustained by BADER arising out of a breach of this Agreement and/or any warranty, and the SELLER hereby indemnifies and holds BADER harmless against claims instituted against BADER by a third party directly or indirectly connected therewith.

## **12. SUSPENSION AND CANCELLATION**

- 12.1. If at any time prior to delivery of the GOODS pursuant to the contract BADER is prevented from performing its obligations pursuant to BADER'S contract due to force majeure, circumstances reasonably beyond the control of BADER or the customer suspending the performance of BADER'S obligations, BADER may suspend the performance of the SELLERS'S obligations partially or wholly during the time that it is so prevented or the performance of its obligations is suspended.
- 12.2. If in BADER'S opinion such prevention is likely to continue indefinitely BADER may cancel the contract in respect of the then uncompleted portion without any liability to the SELLER save for goods or services which have been delivered at the date of cancellation.

## **13. INSURANCE**

The SELLER shall insure in the joint names of BADER and the SELLER any material or property (which shall be at the risk of the SELLER) sent to the SELLER by BADER for any purposes in connection with the contract against any damage which may occur to it whilst in the SELLER'S custody.

#### **14. INDEMNITY**

- 14.1. The SELLER indemnifies BADER against all liability including but not limited to damages, legal costs and interest which BADER may incur to any third party arising from :
- 14.1.1. the negligence of the SELLER, its servants or agents including subcontractors;
  - 14.1.2. the infringement by the SELLER of any letters patent, registered design, trade name or other intellectual property or confidential information;
  - 14.1.3. any breach by the SELLER of its obligations in terms of the contract.
- 14.2. BADER shall be entitled at its election to resist any claim by any such third party and shall resist any such claim at the cost and expense of the SELLER if required thereto by the SELLER provided that if notice has been given to the SELLER of the claim and the SELLER does not in writing within 7 (seven) days of such notification require BADER to resist such claim, BADER shall be entitled to defend, settle, compromise or discharge the claim in its discretion and the SELLER shall be deemed to have agreed thereto.

#### **15. FORCE MAJEURE**

In case of force majeure BADER shall be entitled to terminate this Agreement in whole or in part or to postpone specific performance or any obligation to a later date without the SELLER acquiring any claims against BADER in this regard.

#### **16. DOCUMENTS AND CONFIDENCE**

- 16.1. All documents, DRAWINGS, SPECIFICATIONS and other material form of copyright material (including material electronically stored whether in machine readable form or not) supplied to the SELLER by or on behalf of BADER remains at all times the property of BADER both as to the copyright and the material form to which it has been reduced.
- 16.2. Neither the SELLER nor any of its sub-contractors shall make any copies of, extracts from or duplicates of any of such copyright material save to the extent that BADER may agree thereto.
- 16.3. Neither the SELLER nor any of its sub-contractors shall modify or alter any such material form supplied by or on behalf of BADER in any manner whatsoever. If in the opinion of the SELLER or the sub-contractor such material form shall require alteration, BADER shall be requested to make any alteration necessary.
- 16.4. Upon demand or upon the performance of the SELLER'S obligations in terms of this agreement all such material form without exception shall be returned to BADER.
- 16.5. Neither the SELLER nor any of its sub-contractors shall make use of any information contained in such material form for any purpose other than the performance of their obligations pursuant to or arising out of this contract.
- 16.6. Neither the SELLER nor any of its sub-contractors shall disclose any of the information contained in the material form or any other information imparted to it or them by BADER to any third party, save with the prior written consent of BADER or to the extent strictly necessary for the performance of the obligations pursuant to this contract or arising therefrom. All such material form and information is imparted under a condition of confidentiality and the SELLER shall impose similar conditions of confidentiality on its authorised sub-contractors.
- 16.7. The SELLER shall take reasonable steps to maintain the confidentiality of the material form and any information imparted.
- 16.8. The SELLER shall refer to BADER any enquiries or orders the SELLER may receive for the supply of GOODS or services the supply of which entails the use of the material form or any part thereof or any of the information imparted.

- 16.9. The SELLER hereby assigns to BADER any copyright which may arise and vest in the SELLER as a result of the performance of its obligations in terms of this contract and shall impose a similar condition upon any of its sub-contractors.
- 16.10. The SELLER shall be obliged to ensure that its sub-contractors perform their work in accordance with the DRAWINGS, SPECIFICATIONS or data supplied by BADER and to the extent that any DRAWING, SPECIFICATIONS or data of the SELLER or the sub-contractor are used in performing the obligations hereunder, the SELLER warrants that the GOODS when delivered, will comply in all respects with the DRAWINGS, SPECIFICATIONS or other data supplied by BADER. To the extent that BADER may permit the use of DRAWINGS, SPECIFICATIONS or data of the SELLER or any sub-contractor of the SELLER, such permission does not constitute or imply approval of such DRAWINGS, SPECIFICATIONS or other data by BADER.

## **17. FREE ISSUE ITEMS**

- 17.1. All equipment and GOODS provided to the SELLER by or on behalf of BADER for the purpose of the performance of the SELLER'S obligations under the contract shall at all times remain the property of BADER and any GOODS into which they have been incorporated shall become BADER'S property immediately on the commencement of work incorporating such items.
- 17.2. The SELLER shall be liable to BADER for any loss or deterioration of or damage to such equipment or GOODS until delivered to BADER.
- 17.3. The SELLER will affect adequate insurance cover in respect of such loss or damage, including the value of work carried out thereon.
- 17.4. On completion of the contract, the SELLER will at its expense promptly return all such equipment and GOODS to the extent that they have not already been incorporated in GOODS delivered to BADER.

## **18. ASSIGNMENT AND SUB-CONTRACTING**

- 18.1. The SELLER shall not without the written consent of BADER cede, delegate or transfer its rights or obligations under the contract or any portion thereof to any other person.
- 18.2. The SELLER shall not without the consent in writing of BADER sub-let the contract or any part thereof other than materials, minor details, or for any part of the GOODS of which the makers are named in the order or the SPECIFICATION. This shall not prevent the SELLER sub-letting part of the contract to any company which is a subsidiary or holding company of the SELLER or is a subsidiary of the direct or indirect holding company of the SELLER. Any such consent or sub-letting shall not relieve the SELLER or any of its obligations under the contract.

## **19. LAW AND DISPUTE PROCEDURE**

- 19.1. The proper law of this contract is the law of the Republic of South Africa and the proper language of the contract is the English language.
- 19.2. If any dispute arises between BADER and the SELLER relating to or connected with this contract, the interpretation thereof, the performance of any of its terms or the termination thereof, either party may notify the other party in writing of the nature of such dispute and both parties shall forthwith attempt to settle the matter amicably.
- 19.3. Any dispute which cannot be settled amicably shall be referred at the option of BADER to be exercised in writing to arbitration or court proceedings.
- 19.4. If BADER elects to refer the matter to arbitration, BADER and the SELLER shall mutually agree a single arbitrator and failing such agreement, the dispute shall be referred to 2 (two) arbitrators, one appointed by BADER and one appointed by the SELLER. The two arbitrators shall appoint an umpire to be referred to in case of need only. Arbitration proceedings shall be conducted in accordance with the Arbitration Act No. 42 of 1965 or any amendment or re-enactment thereof. The place of arbitration shall be in or adjacent to Johannesburg, Republic of South Africa and shall

be conducted in English. The award rendered shall be final and binding upon both parties.

19.5. If BADER exercises its option to refer the matter to litigation, the parties hereby consent and submit the jurisdiction of the Pretoria Local Division of the High Court of South Africa which, for the purposes of this contract, shall have exclusive jurisdiction.

19.6. No dispute, reference to arbitration or litigation shall entitle the SELLER to discontinue or suspend the execution of any work under the contract.

**20. GENERAL**

20.1. No indulgence which either party (the GRANTOR) may grant to the other (the GRANTEE) shall constitute a waiver of any of the rights of the GRANTOR who shall not thereby be precluded from exercising any rights against the GRANTEE which may have arisen in the past or which might rise in the future.

20.2. Place of performance and delivery shall be Ga-Rankuwa.