



General Terms and Conditions of Sale

SWISSBAY SALES (PTY) LTD

1 Joseph Avenue

Northcliff

Johannesburg, 2195

Registration no: 2018/046053/07

Telephone: 083 296 2964

E-mail: matthew@swissbay.co.za

1. Definitions

- 1.1. "Buyer" means the person who buys or agrees to buy the Goods from the Seller
- 1.2. "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller
- 1.3. "Delivery Date" means the date specified by the Seller when the Goods are to be delivered
- 1.4. "Goods" means the articles which the Buyer agrees to buy from the Seller
- 1.5. "Price" means the price for the Goods excluding carriage, packing, insurance and VAT
- 1.6. "Seller" or "Swissbay" means Swissbay sales (PTY) LTD of 1 Joseph Avenue, Northcliff, South Africa.

2. Conditions Applicable

- 2.1. These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.2. All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3. Acceptance of delivery of Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4. Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

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3. Offers and orders

3.1. The offers made by The Seller are subject to confirmation and to a 30-day limit. Orders placed by Buyers require an acceptance by written confirmation on the part of The Seller in order to become effective. Such confirmation of the order shall contain a comprehensive specification of all deliveries and services in connection with the order. Any further deliveries and services shall be charged separately. Particulars regarding measures and weights, illustrations and descriptions in printed matter, advertising material and other publications are not binding.

3.2. Unless otherwise agreed separately, deliveries under call orders shall be called within twelve months after confirmation of the order. If deliveries are not called within that time limit, The Seller shall have the right to bill the Buyer for the remainder of the order.

4. The Price and Payment

4.1. The Price shall be the Seller's quoted price. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.

4.2. Interest on overdue invoices (i.e. where credit terms exceed terms) shall accrue from the date when payment becomes due, calculated daily and compounded, until the date of payment at a rate of 5% above the prime overdraft rate as published by FIRST NATIONAL BANK SOUTH AFRICA from time to time.

4.3. The prices are net prices, ex works (exw), according to INCOTERMS 2000, without taxes, including standard product packaging.

4.4. Payment shall be effected free from charges, without deductions, either in cash or by bank transfer within the agreed payment terms. Bills of exchange or cheques will be accepted, but only upon express agreement and provided that credit to the Buyer's debt will be made only after actual receipt of the funds. Discount and bill charges shall be borne by the Buyer. Documentary payments shall be due on demand; the charges shall be borne by the Buyer.

4.5. The Seller shall have the right to charge collection costs of 1% of the invoiced amount, up to a maximum of R450.00 per collection letter, and the costs incurred in connection with the enforcement of the claim, and to demand compensation for all other damage, costs and expenditures resulting from the delay in payment.

4.6. Payments by the Buyer shall be appropriated to claims vis-à-vis the Buyer, if any, first to unpaid interest and charges and then, in every case, to the oldest invoice item(s).

4.7. In cases of deliveries to a Buyer located outside the borders of South Africa, VAT shall be zero rated only if the shipping and transport of the goods is controlled and paid for Swissbay. If this condition is not complied with, the Buyer agrees to pay Swissbay the full invoice amount and VAT on the invoice, and it will be the responsible to recover the VAT directly from the South Africa Revenue Service.

4.8. In case of non-compliance with the agreed terms of payment, of a material deterioration in the financial condition of the Buyer, or of the subsequent disclosure of straitened circumstances that already existed at the time the contract was signed, The Seller shall have the right to declare all claims to be due and payable forthwith and to refuse performance until the consideration has been paid or the relevant security provided.

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4.9. The setting-off of counterclaims of the Buyer against The Seller's receivables from goods delivered shall be excluded unless the counterclaim has been admitted by The Seller or recognized by final and absolute declaratory judgment.

5. The Goods

The quantity and description of the Goods shall be as set out in the Seller's quotation or order confirmation. Where goods are made to the Buyer's specification, instructions or design, the buyer undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and undertakes to indemnify the Seller against any infringement of any patent, registered design, trade mark, trade name or copyright or any loss, damage or expense which it may incur by reason of such infringement in any Country.

6. Warranties and liability

6.1. Where the Goods are made to the Buyer's specification, instructions or design, the Buyer undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and undertakes to indemnify the Seller against any infringement of any patent, registered design, trade mark, trade name or copyright and any such loss, damage or expense which it may incur by reason of such infringement in any Country.

6.2. The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller. Except where the Buyer is dealing as a consumer (as defined in the Consumer Protection Act) all other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods and whether implied by statute or common law or otherwise are excluded.

6.3. Where the Buyer is dealing as a consumer (as defined in the Consumer Protection Act) the Seller will replace any item found to be faulty within twelve months from the delivery date.

6.4. It is the responsibility of the Buyer to return the faulty Goods sufficiently packaged so as to avoid damage, with the original documentation to the Sellers' address shown at Clause 1.6 above. No refund will be given until the Goods are returned as aforesaid.

6.5. In the event that the Goods are returned subsequently tested and found to be free of any faults the Sellers reserve the right to make a reasonable charge for time spent.

7. Delivery of Goods

7.1. Delivery of Goods shall be made to the Buyer's address or as instructed by the Buyer on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

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7.2. While the Seller will endeavour to deliver by any date or within any period agreed upon such dates and periods are estimates only given in good faith and the Seller will not be liable for any failure to deliver by such a date or within such a period.

7.3. The Seller is entitled to make deliveries exceeding or falling short of the quantities ordered by 10% per order. Unless otherwise agreed in writing, the forwarding charges shall be paid by the Buyer.

7.4. The Seller is entitled to make partial deliveries or advance deliveries and to submit separate invoices for such deliveries.

7.5. In case of non-compliance with agreements regarding payment or of delay in payment, as well as if the time agreed for payment is exceeded or if the Buyer is or becomes insolvent or overindebted, The Seller shall be entitled to terminate any contract for delivery without granting a grace period.

7.6. The products shall be packed according to The Seller's discretion and the packing materials will not be taken back. Any packing expressly requested by the Buyer shall be charged separately.

7.7. Deliveries shall be effected ex works ("exw" according to INCOTERMS 2000). The point of delivery and of the passing of the risk shall be the Seller works.

7.8. As a matter of principle, samples and specimen products are only delivered against payment, unless the parties have otherwise agreed in writing. In any case, they remain the property of The Seller until full payment has been effected.

7.9. In case of forwarding of products, The Seller is entitled to choose the means of transport and the forwarding route; any liability in this connection is excluded.

8. Acceptance of Goods

8.1. The Buyer shall be deemed to have accepted Goods 24 hours after delivery to the Buyer.

8.2. After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract.

9. Confidentiality

All information which derives from either party shall remain confidential to the other party, shall at all times be treated as trade secrets and shall not be disclosed to any third party without prior written consent except to the extent that the same is or becomes public knowledge without breach of these Terms and Conditions by the other party or is in their possession prior to its receipt with rights to use and/or disclose the same without reference to the party disclosing the information.

10. Force Majeure

If compliance with these terms and conditions or any obligation hereunder is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the Seller, the Seller (upon giving prompt notice to the Buyer) shall be excused from performance to the extent of the prevention, restriction or interference but the Seller shall use its best endeavours to avoid or remove

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the causes of non-performance and shall continue to comply with these terms and conditions with the utmost dispatch whenever such causes are removed or diminished. For the avoidance of doubt, the Buyer shall be entitled to request within a reasonable period and the Seller shall provide a statement indicating whether the contract to which these terms and conditions is capable of being performed within a reasonable period and the Seller shall be entitled to terminate the contract if in its reasonable opinion such termination is appropriate.

11. Title and risk

11.1. The Goods shall be at the Buyer's risk as from delivery.

11.2. In spite of delivery having been made property in the Goods shall not pass from the Seller until

11.2.1. The Buyer shall have paid the Price plus VAT in full; and

11.2.2. No other sums whatever shall be due from the Buyer to the Seller

11.3. Until property in the Goods passes to the Buyer in accordance with clause 8.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

11.4. Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

11.5. The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that the Property in any of the Goods has not passed from the Seller.

11.6. Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 8.4 shall cease.

11.7. The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the Property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

11.8. The Buyer shall insure and keep insured the Goods to the full Price against "all risks" to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller and shall whenever requested by the Seller produce a copy of the Policy of Insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

11.9. In case of an enforcement of claims by third parties, the Buyer shall be obligated to draw attention to The Seller's title to the products and to inform The Seller immediately in writing, in order to enable The Seller to claim its property. Insofar as the third party is not able or not obligated to compensate The Seller for the costs of asserting its rights of ownership, the Buyer shall reimburse The Seller for the costs incurred. This applies equally if the assertion of rights was rendered necessary by any action on the part of the Buyer.

11.10. If the products are resold before the Price including all ancillary charges and fees has been paid in full, the claim against the third party for the Price created by the resale transaction shall be regarded as having been assigned to The Seller in place of the reservation of title. Such assignment for security purposes shall be entered in the account books of the Buyer (Buyer account as well as list of outstanding items), indicating the date of formation of the contract and the full firm name of The Seller (assignee). The Buyer undertakes to inform the third party of the assignment and The Seller of the sale as soon as possible, but not later than on the date the contract with the third party is entered into. Additionally, the Buyer irrevocably authorizes The Seller to inform the third party of the assignment in its name. It further undertakes to deposit the proceeds realized, if any, separately and to hand them over to The Seller as soon as the claims of The Seller fall due.

12. Remedies of Buyer

12.1. Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which confirm to the Contract of sale.

12.2. Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.

12.3. The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.

The provisions of this clause shall apply to rights claims or liability arising directly, consequentially or otherwise.

13. Miscellaneous

13.1. The Seller is entitled to correct obvious errors (errors in spelling and calculation) in offers, cost estimates, delivery notes, invoices etc. at any time.

13.2. If individual provisions of these Terms and Conditions turn out to be partly or entirely invalid or unenforceable, the remaining provisions shall remain unaffected thereby. In place of an invalid or unenforceable provision, a provision realizing as far as legally possible the economic purpose of the invalid or unenforceable provision shall be regarded as having been agreed by the parties.

13.3. Written declarations shall be regarded as having been received if they are sent to the address most recently communicated by the relevant other contractual party.

13.4. Any deviation from these Terms and Conditions as well as from the formal requirements mentioned in these Terms and Conditions requires an express written agreement. The Buyer is aware of the fact that persons employed by The Seller or third parties whose services are used by The Seller are not entitled to give promises which are at variance with the contractually agreed main

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points of performance (such as agreements concerning payments, quality undertakings, terms and conditions of delivery).

13.5. The use of The Seller trademarks by the Buyer requires the prior written consent of The Seller.

13.6. These Terms and Conditions supplement the contracts entered into by and between The Seller and the Buyer. In case of contradictions to the provisions of the contract or if the contract contains more detailed provisions, the contract shall take precedence over the Terms and Conditions.

13.7. The Seller is entitled to modify the Terms and Conditions. The Seller will inform the Buyer with regard to such modifications and the date of the modification at least one month before the date of the modification. The modification shall take effect unless the Buyer raises an objection to it within one month of receiving the relevant information. The Seller will draw the attention of the Buyer to the possibility of raising such an objection.

14. Proper Contract of Law

This Contract is subject to the Law of the Republic of South Africa. The Buyer hereby consent that should the Seller so choose that any legal matter irrespective of the value involved can be referred to any Magistrate Court in the Republic of South Africa/

Signed by: _____ on this day of _____ 20 ____

Who warrant that he/ she is authorised to do so for and on behalf of

(The "Buyer")

Witness: _____

Witness: _____

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