

STIEGELMEYER AFRICA PTY LTD
STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

1.1. In these *terms and conditions* of sale the following words shall have the meanings given to them hereunder:

- 1.1.1. "*contract*" means the valid and binding contract, which includes the *terms and conditions*, that comes into existence when and where *Stiegelmeyer* accepts the *purchase order* of the *purchaser*.
- 1.1.2. "*goods and services*" mean the goods and/or services described in the *purchase order* placed by the *purchaser*.
- 1.1.3. "*party*" means either *Stiegelmeyer* or the *purchaser*, as the context requires, and "*parties*" shall mean both of them;
- 1.1.4. "*purchase order*" means a written *purchase order* for *goods and services* placed by the *purchaser* with *Stiegelmeyer* or the *quotation* signed by the *purchaser*;
- 1.1.5. "*purchaser*" means the entity placing a *purchase order* with *Stiegelmeyer* for the supply of *goods and services*;
- 1.1.6. "*purchase price*" means the total amount described in the *purchase order* and will exclude VAT and delivery costs, unless stated otherwise on the *sales order* issued by *Stiegelmeyer*.
- 1.1.7. "*quotation*" means the *quotation* provided by *Stiegelmeyer* to the *purchaser* setting out the quantities, price and description of the *goods and services*;
- 1.1.8. "*sales order*" is an internal document created by *Stiegelmeyer* and is confirmation that *Stiegelmeyer* accepted the *purchase order*.
- 1.1.9. "*Stiegelmeyer*" means Stiegelmeyer Africa (Pty) Ltd (reg nr.: 2011/138031/07).
- 1.1.10. "*terms and conditions*" mean the set out in this document which regulate the sale of *goods and services* by *Stiegelmeyer* to the *purchaser*.

2. APPLICATION

- 2.1. The *terms and conditions* is applicable to the sale of *goods and services* by *Stiegemeyer* to the *purchaser*.
- 2.2. *Stiegemeyer* reserves the right to accept or reject any *purchase order* received from the *purchaser*.
- 2.3. The *purchaser* accepts and agrees that despite the provision of the Electronic Communications and Transactions Act and despite anything to the contrary, these *terms and conditions* become binding upon the parties when and where *Stiegemeyer* accepts the *purchase order*.
- 2.4. Each *purchase order* accepted by *Stiegemeyer* shall constitute a separate *contract* between *Stiegemeyer* and the *purchaser* and shall be governed by the *terms and conditions*.
- 2.5. *Stiegemeyer* reserves the right to amend or vary the *terms and conditions* from time to time and shall give written notice to the *purchaser* of such amendment or variation by placing the amended *terms and conditions* on the *Stiegemeyer* website (www.stiegemeyer.co.za), on which date the amended or varied *terms and conditions* shall be effective.

3. SALE OF GOODS AND SERVICES

- 3.1. Sale: *Stiegemeyer* sells to the *purchaser* who purchases from *Stiegemeyer* the *goods and services* as described in the *quotation* and/or *sales order* and on these *terms and conditions*.
- 3.2. *Stiegemeyer* makes no warranties for the suitability of the *goods and services* for any particular end use contemplated by the *purchaser*, and it is the sole responsibility of the *purchaser* to ensure the suitability of the *goods and services* for the use contemplated by the *purchaser* or any end-user.
- 3.3. The price of *goods and services* is quoted based on the Incoterm (2020) noted in the *quotation* and/or the *sales order* and does not include installation and commissioning charges. Installation and commissioning charges may be purchased separately and will be regarded as a separate order.
- 3.4. Warranty of Authority: The *purchaser* warrants that the person who signs the *purchase order* or *quotation* is duly authorised to do so on behalf of the *purchaser*.

- 3.5. Delivery: *Stiegemeyer* shall deliver the *goods and services* at the place stated on the *purchase order* and/or *sales order* and the *purchaser* shall be obliged to take delivery of the *goods and services* when tendered.
- 3.6. Although *Stiegemeyer* will endeavour to adhere to the quoted delivery cost and dates, no delay in the delivery of the *goods and services* shall give rise to a claim for loss, damages or cancellation of *purchase order* and/or *sales order* by the *purchaser*.
- 3.7. The *purchaser* shall accept delivery when it is tendered and shall not be entitled to resile from the *purchase order* and/or *sales order* on account of delay in delivery.
- 3.8. The *purchaser* shall be liable for all additional costs occasioned by:
- 3.8.1. the *purchaser's* inability to accept the delivery of the *goods and services*;
or
- 3.8.2. the *purchaser's* specific request for delay or suspension of delivery.
- 3.9. Delivery shall be deemed to be affected upon signature of *Stiegemeyer's* delivery note by any employee or agent of the *purchaser*.
- 3.10. Where Goods are sold on the basis that the *purchaser* will take delivery of such goods from *Stiegemeyer's* premises, the *purchaser* will be obliged to take delivery of such Goods within 3 (three) days of being notified that the Goods are available to be collected, failing which *Stiegemeyer* will be entitled to levy a storage charge, payable before the Goods can be released to the *purchaser*. From the time that the *purchaser* is notified that any Goods are available to be collected from *Stiegemeyer's* premises, such goods will remain on *Stiegemeyer's* premises at the risk of the *purchaser*.
- 3.11. In all instances where delivery of Goods is by carrier, the carrier shall be deemed to be the *purchaser's* agent and delivery to such carrier shall be deemed to be delivery to the *purchaser*.
- 3.12. If Goods are ordered to be delivered to a job site, the *purchaser* assumes liability for the Goods at the time of delivery to the job site whether or not the *purchaser's* representative is present to receive delivery. The *purchaser* agrees to pay all standard delivery charged as billed.

- 3.13. Ownership: Ownership in the *goods and services* shall only pass to the *purchaser* when the full *purchase price* in respect of the Goods and Service have been paid in full and received by *Stiegelmeyer*.
- 3.14. Risk: Notwithstanding the provisions of clause 3.13, all risk in the *goods and services* shall pass to the *purchaser* upon physical delivery of the *goods and services* including the risk of loss, theft, destruction, or damage.
- 3.15. Damage to goods and services: Unless *Stiegelmeyer* is advised in writing within 5 (five) working days of delivery of the *goods and services* of any alleged damage of and/or defect in and/or shortage of said *goods and services*, it is deemed that the *purchaser* has accepted the *goods and services* as is and *Stiegelmeyer* shall not be liable for any damages to the *goods and services*.
- 3.16. Cancellation and Returns: If *Stiegelmeyer* agrees to the cancellation of any *purchase order* and/or *sales order*, such a cancellation shall be conditional upon the *purchaser* promptly paying the cancellation fee and other charges stipulated by *Stiegelmeyer*. A certificate signed by a member of *Stiegelmeyer* Management whose appointment shall not be necessary to prove, shall be *prima facie* proof of the amount owed.
- 3.17. If *Stiegelmeyer* approves return of the Goods by the *purchaser*, the *purchaser* agrees that no refund will be granted unless the Goods are returned within 30 days from the invoice date and in original sales condition. *Stiegelmeyer* reserves the right to levy a handling and management fee of not less than 15% of the total *purchase price* on the *quotation* and/or *sales order* and/or the *sales order*.
- 3.18. If *Stiegelmeyer* agrees to approve and accept the return of any Goods pursuant to cancellation of any *purchase order* and/or *sales order*, *Stiegelmeyer* shall be entitled to charge the *purchaser* a handling fee of 10% of the *purchase price* of those Goods. Goods which are not normally stocked by *Stiegelmeyer* or have been specifically sourced or modified for the *purchaser* are not returnable unless incorrectly supplied.
- 3.19. Special goods and services: Where *Stiegelmeyer* supplies *goods and services* which are specifically modified or manufactured it will rely entirely on the *purchaser* specifications in respect of design, type of product, materials, sizes, suitability, or any other relevant criteria. These special goods shall not be returnable or refundable.

- 3.20. Inspection: If, at the time of placing the *purchase order* the *purchaser* gives notice to inspect the *goods and services* and Services ordered such inspection shall take place at the *Stiegemeyer* works premises and the *purchaser's* decision that such *goods and services* passed the inspection shall be final. If the *purchaser* fails to give notice of its intention to inspect the *goods and services* at the time of ordering, the *goods and services* ordered will be deemed to be in all respects in accordance with the *contract* and the *purchaser* shall be bound to accept and pay for them accordingly.
- 3.21. Repairs/modifications: The *purchaser* agrees and accepts that repairs/modifications to the Goods cannot be cancelled once the order for that repair has been accepted by *Stiegemeyer*. The *purchaser* will be liable to pay *Stiegemeyer* the full repair/modification price quoted by *Stiegemeyer*. If, however, *Stiegemeyer* agrees to halt the repair at the *purchaser's* request, the *purchaser* will be liable to reimburse *Stiegemeyer* for all costs incurred by in respect of that repair.

4. PAYMENT

- 4.1. The *purchaser* shall pay the *purchase price* strictly according to the *quotation* and/or *sales order*. If the *purchaser* has a credit facility with *Stiegemeyer*, then payment shall be made strictly within 30 days of the date of invoice. Payment shall be made without set-off or withholding or deduction of any nature in the currency as agreed in the the *purchase order* and/or the *sales order*. *Stiegemeyer* may appropriate any payments made by or on behalf of the *purchaser* to any indebtedness of whatsoever nature of the *purchaser* to *Stiegemeyer*. Any price quoted by *Stiegemeyer* prior to *Stiegemeyer* accepting the order are subject to changes in the applicable exchange rate.
- 4.2. Deposit on Order: The *purchaser* acknowledges that *Stiegemeyer* has the discretion to request the payment of a deposit of 50% of the value of any *purchase* on the confirmation thereof. Should the *purchaser* fail to effect payment of such deposit. *Stiegemeyer* shall not be obliged to provide any *goods or services* as per the *purchase order and/or quotation and/or sales order*.
- 4.3. Payment of any *sales order* or balance thereof shall be in accordance with clause 4.1, alternatively as stated on the *quotation* and failing any such stipulation, on collection or delivery of the *goods or services*. The *purchaser's* failure to pay, as aforesaid, shall relieve *Stiegemeyer* from making any further deliveries of *goods and services*, without

prejudice to *Stieglmeyer's* claim against the *purchaser* for any loss or damage sustained in consequence of breach of the *contract*.

- 4.4. Third Party Contracts: The *purchaser* acknowledges that all *contracts* entered into with *Stieglmeyer* are not subject to contracts between the purchaser and the purchaser's clients, and *Stieglmeyer* will not be prejudiced in terms of payment due to *Stieglmeyer*, when the *purchaser's* client default on their agreed payment arrangements with the *purchaser*.
- 4.5. Taxes: Unless specifically stated, the *quotation* and/or *sales order* excludes any and all taxes (including value added tax), duties, Customs charge, tariffs, and/or levies. The *purchaser* shall pay all taxes, duties, tariffs, and/or levies in respect of these Terms on demand to *Stieglmeyer*.
- 4.6. Interest: *Stieglmeyer* shall be entitled to charge interest on any amount not paid by the *purchaser* on the due date for payment, at the Prime Rate plus 2% calculated from the due date for payment until the date of payment, both days inclusive.
- 4.7. Credit enquiries: The *purchaser* consents to *Stieglmeyer* making enquiries about its credit record with any credit reference agency and any other party. The *purchaser* also consents to *Stieglmeyer* providing credit reference agencies with regular updates, including how the *purchaser* manages its account with *Stieglmeyer*.
- 4.8. Restrictions of purchaser's rights: Until the *goods and services* are fully paid for by the *purchaser*, the *purchaser* shall be obliged to take whatever steps may be necessary to prevent the destruction or loss of the *goods and services*, including without limitation to insuring the *goods and services* (and indicating *Stieglmeyer* as and additional insured) and the *purchaser* shall not sell, cede, assign, transfer or pledge the Goods and Services or allow them to become subject to any lien of whatsoever nature or deliver possession to any other person.
- 4.9. The *purchaser* undertakes to assist *Stieglmeyer's* measures to protect its proprietary rights in the *goods and services*. If third parties try to assert or substantiate their rights to any of the *goods* which *Stieglmeyer* still owns, the *purchaser* shall be obliged to inform *Stieglmeyer* of any such action immediately.
- 4.10. Late payment: The *purchaser* hereby acknowledges that if any amount payable by the *purchaser* is not paid on the due date, the full amount outstanding, shall immediately become due and payable to *Stieglmeyer*.

- 4.11. Failure to pay: Should the *purchaser* fail to pay *Stiegemeyer* within 14 (fourteen) days after demand, *Stiegemeyer* shall have the option to cancel the Sale and repossess the *goods and services* in lieu of payment of the balance thereof and the *purchaser* shall forfeit any amount paid to *Stiegemeyer* for such *goods and services*. Should *Stiegemeyer* be able to resell the *goods and services*, the *purchaser* may be given a credit for all the amounts received in excess of the expenses of the recovery and resale. *Stiegemeyer* is similarly entitled to cancel the *contract* in the event that the *purchaser*:
- 4.11.1. commits any act of insolvency, or being a natural person, assigns, surrenders or attempts to assign or surrender his estate; or
 - 4.11.2. allows a default judgement to remain unsatisfied for a period of 7 (seven) days or be refused rescission within 14 (fourteen) days of any default judgement; or
 - 4.11.3. is sequestrated or wound up, whether provisionally or finally, or
 - 4.11.4. makes a compromise with any of its creditor/s or endeavours to attempt to do so.
 - 4.11.5. In the event that the *purchaser* is placed under "business rescue", this *contract* shall be deemed to be cancelled by the *purchaser* immediately prior to the *purchaser* being placed under business rescue and in which event the *purchaser* consents to the unpaid *goods and services* being returned to *Stiegemeyer*.
- 4.12. Discount: Should *Stiegemeyer* agree to any discount of its prices as *quotation* and/or *sales order*, it shall be on the condition that such discount falls away if payment by the *purchaser* is not made strictly on the due date.
- 4.13. Credit limits: Credit limits granted by *Stiegemeyer* to the *purchaser* may not be exceeded without *Stiegemeyer's* prior written consent. Should the *purchaser* exceed such credit limit without *Stiegemeyer's* prior written consent, the full amount due will be immediately payable.

5. **WARRANTY**

- 5.1. Warranty: *Stiegemeyer* warrants that the products will be free from defects in materials and workmanship for period of 24 (twenty four) months calculated from the date of delivery (the "Warranty Period"). *Stiegemeyer* warrants that under proper use no defects shall arise in the *goods and services* during the warranty period. Any parts supplied to the *purchaser* under this warranty will be supplied subject to the defective parts being returned to *Stiegemeyer* at the *purchaser's* cost. The Warranty does not

cover any failures resulting from misuse or negligence. The warranty will be rendered null and void for the balance of the warranty period if:

5.1.1. Any work is carried out on the *goods and services* by any person other than suitable qualified employee(s) of *Stiegemeyer* or its nominated service representative; or

5.1.2. the recommended service procedures are not followed.

5.2. Any recommendations or advise by *Stiegemeyer* is by way of general advice only.

6. **CONFIDENTIALITY**

6.1. Each *party* will treat the other *party's* proprietary information disclosed hereunder as confidential and will not use or disclose it to any third parties unless:

6.1.1. permitted under the *contract*,

6.1.2. mutually agreed upon by the *parties*, or

6.1.3. required by law.

7. **INTELLECTUAL PROPERTY RIGHTS**

7.1. Notwithstanding the sale of the *goods and services* to the *purchaser*, all intellectual property rights in the *goods and services* shall at all times remain vested in *Stiegemeyer*.

7.2. *Stiegemeyer* hereby grants to the *purchaser*, who hereby accepts, a non-exclusive, non-transferable licence to use the *goods and services* in accordance with these *terms and conditions* for the duration of the life of the *goods and services*.

8. **INDEMNITY, LIMITATION OF LIABILITY**

8.1. In addition to any other specific exclusions of liability contained herein and unless otherwise expressly stated herein, the *parties* agree that the *purchaser* shall have no claim against *Stiegemeyer* for any loss or damage, of any nature, occasioned by any defect in the *goods and services* supplied, or any failure to provide adequate instructions in respect of any hazards that might arise from the use or incorrect use of the *goods and services*.

8.2. The *purchaser* indemnifies *Stiegemeyer* and undertakes to hold it harmless against all claims which may be made against *Stiegemeyer*, and against all losses, damages and

costs (including costs on an attorney and own client scale) which *Stiegemeyer* may incur or suffer

8.2.1. arising out of or in connection with any act or omission on the part of the *purchaser*, its agents, officers, employees or subcontractors, except to the extent to which such claims, losses, damages and costs arise out of the unlawful and wilful or negligent act or omission of *Stiegemeyer*;

8.2.2. arising, directly or indirectly, from any third party claims related to: (i) the *purchaser's* breach of the *contract*, representations, warranties or other obligations in the *contract*; or (ii) fraud, gross negligence or intentional misconduct by the *purchaser* or its representatives in connection with the *contract*;

8.2.3. arising, directly or indirectly, from: (i) any claim that the *purchaser's* use of the *goods and services* infringes on the intellectual property rights of any third party; (ii) medical diagnosis or treatment decisions; and/or (iii) use of the *goods and services* in any manner or for any purpose, for which *Stiegemeyer* did not design it, or in violation of *Stiegemeyer's* written recommendations or instructions.

8.3. Notwithstanding the provisions set out herein, the total liability of *Stiegemeyer* in respect of the *goods and services* will not exceed to the selling price of those *goods and services*.

9. **NOTICES AND COMICILIUM**

9.1. The *purchaser* chooses as its *domicilium citandi et executandi* for all purposes their address as stated in the Credit Application Form or if no credit facilities with *Stiegemeyer* exist, then on the *purchaser's purchase order*.

9.2. Either *party* may change its *domicilium citandi et executandi* by giving written notice to the other *party*.

9.3. Any notices to a *party's domicilium citandi et executandi* by facsimile or email shall be deemed to have been received on the date of transmission provided that the transmission or receipt report does not indicate otherwise and if posted by registered or secured mail, on the 7th (seventh) day after posting.

10. **FORCE MAJEURE**

- 10.1. Neither *party* shall be liable for any failure to meet any of its obligations in terms of these *terms and conditions* or any delay in meeting them, if such failure is occasioned by any circumstance whatsoever which is beyond its reasonable control (“a *force majeure* event”), including but not limited to any labour dispute, industry wide strike or lock-out (excluding labour disputes, strikes and lockouts confined to employees of either *party*) war, riot, civil commotion or any order or regulation of any Government or other lawful authority.
- 10.2. The fact that a labour dispute could be resolved by the *party* involved acceding to the demands made of it shall not make it a circumstance within the reasonable control of such *party*.
- 10.3. Any inability to meet a payment due by either *party* to the other because of lack of funds shall in no circumstances be treated as an event of force majeure.
- 10.4. The affected *party* shall give notice thereof to the other immediately upon the occurrence of an event of force majeure.
- 10.5. Should the force majeure prevent performance of a material obligation for a period exceeding 45 days, either *party* shall be entitled to cancel this agreement on written notice to the other.

11. **GENERAL**

- 11.1. These *terms and conditions* constitute the sole *terms and conditions* applicable to the supply of the *goods and services* by *Stiegelmeyer* pursuant to these *terms and conditions* and no terms sought to be imposed by the *purchaser* shall be of any force or effect.
- 11.2. Interpretation: If there is a conflict in meaning between these *terms and conditions* and any *purchase order* or any other correspondence relating to any *purchase order* then the meaning of these *terms and conditions* shall prevail, unless expressly provided otherwise on the *quotation* and/or *sales order*. The clause and sub-clause headings to these *terms and conditions* are intended for convenience only and shall not affect the construction or interpretation of these *terms and conditions*.

- 11.3. Variation: No amendment or modification to these *terms and conditions* by the *purchaser* shall be effective unless in writing and signed by authorised signatories of both *Stiegemeyer* and the *purchaser*.
- 11.4. Waiver: No relaxation or indulgence granted or given by *Stiegemeyer* to the *purchaser* or failure by *Stiegemeyer* to exercise any right shall be deemed to be a waiver of any of *Stiegemeyer's* rights in terms of these *terms and conditions* and such relaxation or indulgence shall not be deemed to be novation of any of these *terms and conditions*.
- 11.5. Applicable Law: These terms shall be governed and construed according to the laws of the Republic of South Africa. The *purchaser* hereby consents and submits to the jurisdiction of the Magistrate's Court having jurisdiction in respect of all proceedings in connection with these *terms and conditions*, notwithstanding that the amount claimed or the value of the matter in dispute exceeds such jurisdiction. In any event *Stiegemeyer* shall be entitled, at its option, to institute any proceedings in connection with these *terms and conditions* against the *purchaser* in any other court of competent jurisdiction.
- 11.6. Costs: All costs and disbursements (including without limitation, legal costs on the attorney and own client scale including collection charges and tracing agents fees and valuation costs) incurred by *Stiegemeyer* as a result of or relating to the *purchaser* failing to comply with its obligations in terms of these *terms and conditions* shall be for the account of the *purchaser* and are payable on demand.