

Terms and Condition

1. TERMS AND CONDITIONS

1.1. The terms hereof shall form part of and apply to this contract and all future contracts or other agreements entered into unless specifically excluded or amended by the parties, such exclusion or amendment to be in writing.

2. PRICE AND PAYMENT

- 2.1. The purchase price of the goods listed on the face hereof shall be paid by the customer to Bopalock cc T/A Toolmac Industrial Supplies without any deduction or set off within the period of the agreed credit terms allowed to the customer after the date of the statement submitted by Bopalock cc T/A Toolmac Industrial Supplies.
- 2.2. Bopalock cc T/A Toolmac Industrial Supplies shall be entitled to charge interest on all overdue amounts at the maximum rate permissible from time to time for credit transactions in terms of the National Credit Act 34 of 2005, as amended. Such interest shall be calculated and payable monthly in advance on the first day of each and every successive month on the balance outstanding from time to time by the customer to Bopalock cc T/A Toolmac Industrial Supplies, and shall be added to the amount due to Bopalock cc T/A Toolmac Industrial Supplies by the customer in the ordinary course of business.
- 2.3. The ownership of all goods supplied by Bopalock cc T/A Toolmac Industrial Supplies to the customer shall remain vested in Bopalock cc T/A Toolmac Industrial Supplies until the purchase price in respect thereof has been paid in full, but the customer shall have the right to dispose thereof in the ordinary course of normal business it being agreed that all payments made by the customer shall in the first instance be and be deemed to have been made in respect of those goods which have been disposed of by the customer in the ordinary course of business.
- 2.4. Where any payment is effected by cheque or by electronic transfer or where any cheque is sent in the post, all risks arising from the use of a cheque, electronic transfer or the use of the post shall lie with the customer who shall be liable for all damage/losses sustained as a result thereof.
- 2.5. The price of the goods sold to the customer is strictly net and not subject to any discounts unless otherwise agreed to in writing.
- 2.6. If any discount is agreed to in writing it shall only be allowed if payment is received by Bopalock cc T/A Toolmac Industrial Supplies strictly by the due date and shall only apply to the actual price of the goods themselves and not to any value added tax, transport costs, insurance, storage charges or other duties or taxes.
- 2.7. Subject to the provisions of the Consumer Protection Act 68 of 2008, all prices quoted are based on rates of exchange of currencies, freight, insurances, landing charges, dock duties, customs and import duties, railage and statutory wage rates in existence at the time that negotiation for the purchase of the goods to which the invoice in question relates, and consequently any variation in such rates will be for the account and be borne by the customer.
- 2.8. Subject to the provisions of the Consumer Protection Act 68 of 2008, all applications, prices, lists, illustrations, diagrams, or prices issued or advertised by Bopalock cc T/A Toolmac Industrial Supplies from time to time are to be utilized only as a general guideline in respect of the matters to which they relate, are subject to change or variation without notice, do not constitute offers for sale nor form part of any contract entered into between Bopalock cc T/A Toolmac Industrial Supplies and the customer.

3. DELIVERY

- 3.1. Delivery shall be completed when goods are off loaded at the destination if the goods are to be transported by means of Bopalock cc T/A Toolmac Industrial Supplies' vehicle, or, when the goods are loaded if they are to be transported by the customer or a carrier engaged (whether by Bopalock cc T/A Toolmac Industrial Supplies or the (customer) to transport the goods to the customer.
- 3.2. Should Bopalock cc T/A Toolmac Industrial Supplies at the customer's request, agree to engage a carrier to transport the goods to the customer, then:
- 3.3. Bopalock cc T/A Toolmac Industrial Supplies is authorized to engage a carrier on such reasonable terms and conditions as it deems fit; and
- 3.4. the customer indemnifies Bopalock cc T/A Toolmac Industrial Supplies against all demands and claims which may be made against it by the carrier so engaged and all liability which Bopalock cc T/A Toolmac Industrial Supplies may incur to the

carrier arising out of the transportation of the goods save for loss or damage incurred as a result of the intentional misconduct or negligence of Bopalock cc T/A Toolmac Industrial Supplies.

- 3.5. The risk in the goods shall pass to the customer on delivery of the goods.
- 3.6. Bopalock cc T/A Toolmac Industrial Supplies shall not be liable under any circumstances for any loss or claim arising from any alleged shortage in delivery or defect in the goods unless written notice is received by Bopalock cc T/A Toolmac Industrial Supplies within thirty days after delivery of the goods to the customer.
- 3.7. The signature of any employee or agent of the customer which appears on Bopalock cc T/A Toolmac Industrial Supplies' official note or way-bill or the delivery note of any authorized independent carrier, shall constitute prima facie evidence of delivery of goods purchased.
- 3.8. If more than one delivery is to be made, then the provisions of the clause 3 shall apply to each delivery.
- 3.9. The sale of the items reflected on the invoice in question does not include installation, erection or commissioning unless otherwise specifically referred to.
- 3.10. In terms of the Consumer Protection Act 68 of 2008 all Bopalock cc T/A Toolmac Industrial Supplies supply of stock have an implied stock warranty that the stock is reasonably suitable for the purposes for which they are intended and of good quality.
 - 3.10.1. supply of defective items;
 - 3.10.2. incorrect or late deliveries;
 - 3.10.3. faulty erection, installation or commissioning;
 - 3.10.4. failure to deliver the items to which this invoice relates caused by breakdowns in/of machinery, strikes, labour disputes, riot, civil commotions, accidents, orders or regulations of any government or authority, shortage of material, acts of God or any other causes either wholly or partly beyond Bopalock cc T/A Toolmac Industrial Supplies' control.

4. EXCLUSIONS

- 4.1. The customer shall not have any claim whatsoever against Bopalock cc T/A Toolmac Industrial Supplies for any failure by Bopalock cc T/A Toolmac Industrial Supplies to carry out any of its obligations as a result of causes beyond Bopalock cc T/A Toolmac Industrial Supplies' control, including but not limited to any strike, lockout, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier of Bopalock cc T/A Toolmac Industrial Supplies, riot, political or civil disturbances, the elements, any act of any State or Government, and delay in securing any permit, consent or approval required by Bopalock cc T/A Toolmac Industrial Supplies for the supply of goods or any authority or any other cause whatsoever beyond Bopalock cc T/A Toolmac Industrial Supplies' absolute and direct control.

5. DEFAULT

- 5.1. Should either party ("the defaulting party") default in paying any amount due to the other party ("the affected party") strictly on due date and fail to remedy such default within 7 days of being served notice to do so or commit a breach of any of the terms and conditions of this contract or;
- 5.2. Being an individual, die or be provisionally or finally sequestered or surrender or make application to surrender his estate or commit any act of insolvency; or
- 5.3. Being partnership, the partnership is dissolved; or
- 5.4. Being a company or close corporation, is placed under provisional or final order or liquidation or judicial management; or
- 5.5. Has a judgment recorded against it which remains unsatisfied for seven days; or
- 5.6. Compromises or attempts to compromise generally with any of the defaulting party's creditors or enters into any transaction which has the effects of changing the beneficial ownership of the defaulting party's business, or if the defaulting party is a company or close corporation, enters into any transaction which has the effect of a change in the effective control of the company or corporation; then, without prejudice to any other right it might have:
 - 5.6.1. The affected party shall be entitled, but not compelled, forthwith to demand that all amounts outstanding by the defaulting party from whatsoever cause arising, be paid immediately; and
 - 5.6.2. The affected party shall furthermore be entitled to cancel any agreement which exists between it and the defaulting party and suspend the carrying out of any of its then uncompleted obligations, in which event the defaulting party shall have no claim or claims of whatsoever nature against the affected party arising out of such cancellation or the suspension by the affected party to carry out any obligations.
 - 5.6.3. The affected party's rights in terms of 5.1 above shall not be exhaustive and shall be in addition to its common law rights.

- 5.6.4. No relaxation which the affected party may have permitted on any occasion in regard to the carrying out of the defaulting party's obligations shall prejudice or be regarded as a waiver of the affected party's rights to enforce its obligations on any subsequent occasion.
- 5.6.5. Upon the cancellation of the contract between the parties for any reason whatsoever;
- 5.6.6. all amounts then owed by either party to the other party from any cause whatsoever shall become due and payable forthwith.
- 5.6.7. The defaulting party will be held liable for all expenses incurred in the recover of any outstanding payments.

6. JURISDICTION

- 6.1. Bopalock cc T/A Toolmac Industrial Supplies shall be entitled but not obliged to institute any proceedings against the customer in any Magistrate's Court having jurisdiction over the customer notwithstanding that the claim or the value of the matter in dispute may exceed the jurisdiction of the Magistrate's Court. Further, the customer agrees to be liable for all legal costs including costs on the scale as between attorney and his own client and collection charges and tracing costs resulting from the Customer's payment default.
- 6.2. A certificate signed by any director or manager of Bopalock cc T/A Toolmac Industrial Supplies showing the amount due and owing by the customer to Bopalock cc T/A Toolmac Industrial Supplies at any given time shall by prima facie evidence of the amount due by the customer and such certificate shall be sufficient for purposes of judgment or provisional sentence or other legal proceedings.

7. DOMICILIUM

- 7.1. The customer nominates its head office address as reflected on the face hereof as its domicilium citandi et executandi for service upon it on all notices and processes whether in connection with any claim or any sum due to Bopalock cc T/A Toolmac Industrial Supplies or otherwise.

8. NEGOTIABLE INSTRUMENTS

- 8.1. Any promissory note, bill of exchange or other negotiable instrument received by Bopalock cc T/A Toolmac Industrial Supplies from the customer shall not be a novation of the debt for which it is given and the customer waives presentment, notice of dishonour and protest where applicable.

9. RETURN OF GOODS

- 9.1. The credit / return policy of Bopalock cc T/A Toolmac Industrial Supplies is annexed to these terms and conditions of specifically incorporated herein.

10. INSURANCE

- 10.1. The customer shall at all times keep the goods sold to it adequately insured against all forms or loss.
- 10.2. Pending payment to Bopalock cc T/A Toolmac Industrial Supplies for goods purchased, all benefits in terms of the insurance of such goods are hereby ceded to Bopalock cc T/A Toolmac Industrial Supplies

11. LAW APPLICABLE

- 11.1. This contract of sale is governed by the laws of the Republic of South Africa.

12. GENERAL

- 12.1. No variation, alteration or consensual cancellation of any of these terms and conditions shall be of any force or effect, unless in writing and signed by Bopalock cc T/A Toolmac Industrial Supplies and the customer.
- 12.2. No waiver or abandonment by either Party of any of its rights in terms of these terms and conditions shall be binding on it unless such waiver or abandonment is in writing and signed by it.
- 12.3. No indulgence, extension of time, relaxation or latitude which either party may show, grant or allow to the other party shall constitute a waiver by it of any of its rights and the first party shall not thereby be prejudiced or stopped from exercising any of its rights against the other party which may have arisen in the past or which might arise in the future.
- 12.4. The customer hereby acknowledges and agrees that information concerning the credit worthiness of the customer may be disclosed to any registered credit bureau and/or any other suppliers.
- 12.5. The foregoing terms constitute the entire agreement between Bopalock cc T/A Toolmac Industrial Supplies and the customer and Bopalock cc T/A Toolmac Industrial Supplies has not given to the customer any undertakings, warranties or representations apart from those set out herein.

13. SUSPENSION / SETTING ASIDE OF THE GRANT OF CREDIT

- 13.1. The Applicant unequivocally agrees that in the event that the grant of credit is suspended or set-aside for any reason whatsoever, the Applicant:
- 13.1.1. In the event that the goods, or a portion thereof can be recovered, the Applicant shall immediately notify the Company of the whereabouts of the goods for which payment has not been made, and unequivocally accede the Company's rights of ownership over such goods;
- 13.2. In the event that the goods cannot be recovered, the Applicant unequivocally agrees that it has been unjustly enriched in the sum of all the amounts outstanding to the company, and shall furthermore make immediate payment of all such amounts to the Company on the basis of such unjustified enrichment.

14. CREDIT LIMIT APPLICABLE

- 14.1. It is hereby agreed that in the event of the Company granting incidental credit as requested, the Applicant shall;
- 14.1.1. At all times, conduct itself within the terms applicable to such grant of incidental credit;
 - 14.1.2. In the event that the agreed credit limits is exceeded, Applicant agrees that;
 - 14.1.3. The amount of such excess was requested by the Applicant;
 - 14.1.4. The excess does not constitute a breach by the Company of its obligations to the Applicant;
 - 14.1.5. The Company may increase the credit limit applicable at its discretion as contemplated by the Act.
 - 14.1.6. The Company may, if credit is exceeded, place the account on suspension until the account is brought back to the approved credit limit

15. RETURNS POLICY

- 15.1. No stock will be accepted back for credit if:
- 15.1.1. Our representative / management have not authorized the return.
 - 15.1.2. The original invoice is older than three months.
 - 15.1.3. The goods are not in a re-saleable condition.
 - 15.1.4. The goods have customer pricing or labels on.
 - 15.1.5. Invoice numbers must be supplied when returning stock for credit and stock must be in the original undamaged packaging.
 - 15.1.6. Any stock returned by transport will be for senders account unless the fault was made by Bopalock cc T/A Toolmac Industrial Supplies.
 - 15.1.7. Special buyout orders will not be accepted for credit under any circumstances.
 - 15.1.8. Machines returned for repair will not be credited or exchanged, but will be repaired and returned to the customer (charged or under warranty).
 - 15.1.9. If, in the exercise of its discretion, Bopalock cc T/A Toolmac Industrial Supplies shall agree, at the request of the customer, to accept the return of any goods for credit, which goods were correctly supplied by Bopalock cc T/A Toolmac Industrial Supplies and are not faulty or subject to any claim, then Bopalock cc T/A Toolmac Industrial Supplies shall be entitled without the necessity of any further agreement to claim from the customer a handling charge of 10% (ten percent) of the invoice price of the goods returned
 - 15.1.10. All returns must be authorized before you return stock.