



ELOLAM MANUFACTURING (Pty) Ltd

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TERMS AND CONDITIONS OF SALE

DEFINITIONS

Unless the context of this document clearly indicates a contrary intention, the following words/phrases shall have these connotations assigned to them:

"Company" – shall mean ELOLAM MANUFACTURING (Pty) Ltd inclusive of all its operations/branches;

"Customer" – shall mean any party with whom a Contract is concluded with;

"Goods" – shall mean all products as specified in the official quotation submitted by ELOLAM MANUFACTURING (Pty) Ltd;

"Order" - shall mean a written request or instruction by The Customer for the supply of the Goods by quoted by ELOLAM MANUFACTURING (Pty) Ltd;

"Contract" - shall mean any Order for the supply of Goods by ELOLAM MANUFACTURING (Pty) Ltd.

"Delivery" - shall mean the delivery of Goods/Services in accordance with the applicable INCOTERM(S) specified on the official quotation submitted by ELOLAM MANUFACTURING (Pty) Ltd

INTRODUCTION

These terms and conditions, as amended from time to time, applies when we engage in the selling of Goods and/or services to new and existing clients and account holders. These terms and conditions constitute the agreement between the Customer and the Company. By signing this document, the Customer acknowledges adequate opportunity was given to read and understand all of these terms and conditions and that the Customer is aware of all the terms and conditions.

ELECTRONIC STATEMENTS AND TAX INVOICES ARE ORIGINALS

The statements and invoices delivered electronically to you will be regarded as the original and will state "Tax Invoice". The Company confirms that the Customer should be able to print and save all electronic statements and that all statements and invoices are SARS compliant.

1. OFFER AND ACCEPTANCE

1.1 ORDERS PLACED ON THE COMPANY

Orders placed on the Company shall not be binding until accepted by the Company in writing. Price lists and other Company publications are for information only and do not constitute offers

1.2 OFFERS/QUOTATIONS BY THE COMPANY

Offers/Quotations by the Company shall only be valid if made or confirmed in writing and all such offers shall be subject to these terms and conditions. All offers/quotations are subject to the availability of the necessary material and the Company being able to obtain any necessary authorization and/or licenses' and the same remaining valid. Unless otherwise agreed, all offers/quotations including quoted prices by the Company shall be valid for thirty (30) days from date of the written advice by the Company

2. PRICES

Unless specifically agreed to in writing, Orders are accepted on condition that the prices shall be those ruling on the date of dispatch and within the quotation validity period. Price fluctuations may occur due to an increase or decrease in the prices of materials, fuel, labour or transport costs.

3. TERMS OF PAYMENT

3.1 PAYMENT TERMS (SUPPLY OF GOODS AND SERVICES)

The terms of payment unless specified otherwise in writing, for all Goods and services supplied by the Company shall be payable in full within thirty (30) days of date of statement.

3.2 Payment shall only be deemed to have been effected upon a physically cleared receipt of the relevant amount into the bank account of the supplier.

3.3 A certificate by one of the Company's Directors showing the amount due and owing by the Customer to the supplier at any given time shall be sufficient *prima facie* proof of the facts therein stated for the purpose of all legal proceedings against the Customer for recovery of the said amount. The certificate shall be deemed to be of sufficient proof particularly for the purpose of pleading and in any action instituted by the Company against the Customer under and in terms of this application or for purposes enforcing any rights hereunder and shall be valid as a liquid document against the Customer in any competent Court for purpose of obtaining provisional sentence or summary judgement against the Customer.

3.4 Account facilities may be withdrawn by the Company at any time without prior notice to the Customer and the extent and nature of such facilities shall at all times be at the Company's sole discretion and reviewed annually

4. DELIVERY

4.1 The Company's responsibility and risk shall cease at public road kerbline and the Company only leaves the public road and enters the Customer's site on the clear understanding that it does so entirely at the risk of the Customer.

4.2 The delivery note signed by the Customer, its employee/s, agent/s or representative/s shall constitute proof, on its mere production, that the Goods delivered have accorded with the quantity and specifications reflected or referred to thereon. It is agreed that full delivery in accordance with the Company's records will be deemed to have been made unless any discrepancy and/or recorded on the delivery note or reported by the Customer within forty-eight (48) hours after delivery.

4.3 Upon receipt and processing of Orders, the Company shall provide delivery dates for the delivery of Goods, in good faith, and shall not be liable to the Customer for any subsequent variations which may arise from causes stipulated in clause 10.2.

4.4 Any delivery of Goods by the Company to the Customer shall be deemed to be completed when the Goods are delivered and/or off-loaded at the delivery address, depending on which requirement was quoted/allowed for, or when the Goods are handed over to the third party engaged to transport the Goods on behalf of the Customer in terms of clause 4.6.

4.5 In the case where Goods are off-loaded, the Customer shall provide suitable access roads and level ground at the point of off-loading at the delivery address or premises of the Customer.

4.6 If the Company agrees to engage a third party to transport the Goods the Company is hereby authorized to engage, at the cost of the Customer, such third party on the Customer's behalf and on the terms deemed fit by the Company. The Customer indemnifies the Company and holds it harmless against any claims that may arise from such agreement.

5. OWNERSHIP AND RISK

5.1 Ownership in the Product shall not pass to the Customer until the Company has been paid in full.

5.2 The risk of damage to, destruction or theft of the product shall pass to the Customer on completion of delivery as referred to in clause 4.

5.3 The Customer shall insure the Goods against loss and damage, to the satisfaction of the Company, until the Goods have been paid in full.

5.4 Until the Goods have been paid for in full, the Customer shall not encumber the Goods or purport to transfer ownership of the Goods to any third party and shall advise third parties of the Company's rights on the Goods.

5.5 The Customer authorizes the Company to enter its premises to repossess any Goods delivered and indemnifies the Company and holds it harmless against any damages whatsoever relating to the removal of such Goods.

6. COPYRIGHTS

6.1 The Customer acknowledges all copyrights, trademarks, intellectual property and shall not duplicate copyrighted material.

6.2 The Customer indemnifies the Company and holds it harmless against claims, costs and expenses arising out of the infringement of copyright, patent, trademark, or design supplied by the Company.

7. WARRANTEE

As a standard warrantee, unless otherwise stated in writing, the Company provides a (5) year warrantee against latent defects on all Goods supplied.

8. DEFECTIVE GOODS/WORKMANSHIP

The Company shall, at its own option, either repair or replace Goods and/or materials sold or delivered or workmanship proven to be defective, the fact and extent of which the Company shall be the sole judge, provided that notice of such defect is received in writing by the Company within three (3) days of delivery of fourteen (14) days of execution of any contract. After expiration of the relevant period, no claim shall be entertained and the Company shall have no liability whatsoever.

9. PASSING OF OWNERSHIP

Ownership of Goods shall pass to the Customer only when full payment for the Goods plus any other costs incurred have been recovered by the Company.

10. EXCLUSION OF LIABILITY

10.1 The Company shall not be held liable by the Customer for any loss or damage arising out of the improper or negligent use of Goods, and the Customer indemnifies the Company against any claims arising from the use of the Goods by any third parties.

10.2 The Company shall not be liable to the Customer for any loss resulting from the delay in or cancellation of the Customer's Order arising from a cause beyond the Company's control, including but not limited to, inability to secure labour, power, Goods or supplies, computer services, act of God war, civil disturbance, riot, state of emergency, strike, lockout, other labour disputes, fire, flood, drought or legislation.

10.3 The Company shall not be liable for any negligent or innocent misrepresentation made by its employees.

10.4 The Company shall not be liable under any circumstance for any special, indirect or consequential damages, including but not limited to, loss of profit.

11. OVERRIDING EFFECT

These terms and conditions shall override all terms and conditions stipulated, incorporated or referred to by the Customer in any Order or negotiations and shall be the only terms and conditions binding on the parties.

12. GOVERNING LAW

The rights and obligations of the Company and its Customers shall be governed by the law of the Republic of South Africa and the Customer agrees to submit to the jurisdiction of the Courts of the Republic of South Africa for determination of all disputes.

13. LEGAL COSTS

The expression "costs" herein shall include, without limiting the generality of the foregoing, all costs relating to legal expenses incurred in enforcing the Company's rights and recovering any amounts due. These costs will include attorney's fees collection commission and tracing agent's fees.

14. VARIATION

No amendment or variation of these conditions of sale shall be of any force or effect unless recorded in writing and signed on behalf of the Company by an authorized signatory.

15. RELAXTION NOT WAIVER

No relaxation or indulgence of these conditions by the company in favor of the Customer shall be construed as a waiver of the Company's rights.

16. CANCELLATION

All Orders placed with the Company will be regarded as firm and irrevocable and may not be cancelled without the prior written consent of the Company. The reserves the right to charge for all Goods manufactured for the Order.

17. SECURITY

Without affecting any of the above terms and conditions, the Company shall be entitled to call for a bank guarantee, suretyship or suitable form of security to be provided by the Customer at any time and the Customer shall be obliged to do so, failing which the Company shall be entitled to cancel the account and call for the immediate payment of all outstanding balances due.

18. DOMICILIUM

The Customer chooses the address

As his domicilium citandi et ececutandi for all purposes, including the giving of all notices and serving of all Court processes. The Company choose as its domicilium citandi et executandi for all purposes the following address:

[Aviation Park, 18 Pomona Road, Pomona AH, Kempton Park, Johannesburg, 1619, South Africa](#)

19. BREACH

If the Customer has not paid the Company in full by the due date or breeches any other term of these terms, or if the Company receives information relating to any application for the liquidation or sequestration, any compromise with creditors or any execution against the assets of the Customer, then the Company shall have the right, in its sole discretion and without prejudice to any other right it may have in law:

19.1 to cancel this agreement forthwith and to retain all amounts paid as rouwkoop and/or Liquidated damages; and

19.2 Claim its right of ownership; and

19.3 Claim payment of the full amount owing, including costs on overdue amounts to date, plus any damages which it may have suffered.

The Company shall be entitled to apply any amount paid, in the reduction of overdue payment, or to any costs

19.4 No claim under these terms shall arise unless:

19.4.1 It is supported but the original tax invoice and delivery notes; and

19.4.2 The Customer has, within three (3) days of the alleged breach occurring, given the Company thirty (30) days written notice by prepaid registered post to rectify any breach of these terms.

19.5 Should the Customer at any stage change the form of legal entity or the name or ownership under which the account and credit facilities are being used, the Customer undertakes to notify the Company accordingly in writing by registered post within seven (7) days as from the date when change takes effect. The Customer furthermore indemnifies the Company against any loss or damage which may result from such change of from any failure on my/our part to notify the Company of such change

20. FORCE MAJEURE

Should the Company be delayed in or prevented from making a delivery and/or rendering a service and/or executing a Contract owing to a force majeure, Act of God or any cause whatsoever beyond the Company's control, the Company shall not be liable for any loss or damage resulting therefrom.

21. ARBITRATION

21.1 Where any matter regarding the quality of Goods remains unresolved after the expiry of fourteen (14) days as from the date of complaint, the Company or the Customer may refer the matter to the South African Bureau of Standards for resolution of the dispute and the decision of the South African Bureau of Standards shall be final and binding on the Company and the Customer, such referral shall be done within fourteen (14) days of expiry of the first period.

21.2 Where any other dispute between the Company and the Customer arising from or in connection with these terms remains unresolved after the fourteen (14) days as from the date of dispute, the Company or the Customer may refer the matter to the Arbitration Foundation of South Africa for resolution in accordance with rules for Arbitration Foundation of South Africa shall be final and binding ON THE Company and the Customer

22. EXPORT/IMPORT PERMITS

In case of export sales, the customer shall maintain in force all necessary permits.

22.1 to enable the Goods to be exported by the Company into the Country of destination; and

22.2 To enable payment to be effected in accordance with these terms and conditions of sale.

23. CREDIT FACILITIES

The Company may perform a credit information search on the Customer at a credit information bureau of the Company's choice. The Company may monitor the Customer's payment behavior by researching its record at one or more credit information bureau. Use new information and data obtained from a credit information bureau in respect of the Customers future account applications. Record the existence of the Customer's account with any credit information bureau. Record and transmit details of how the Customer has performed in terms of his agreement reflecting how the account has been conducted by the Customer in meeting its obligations in terms of this account.

24. NATIONAL CREDIT ACT/CONSUMER PROTECTION ACT

In the event that the national credit act 34 of 2005 and/or Consumer Protection Act 68 of 2008 applies to this agreement or to a specific transaction, any provision of the agreement or of the particular transaction concerned are in conflict with these acts, the agreement shall be deemed to be deleted and shall not apply.

I/We _____, the undersigned, do hereby warrant that all the information recorded herein is true and correct, that I/We sign of my/our own Free will and with full knowledge and understanding of the contents hereof, and that I am/we are duly authorized in doing so.

SIGNED AT _____ THIS _____ DAY OF _____

WITNESS

SIGNATURE/S OF APPLICANT OR ITS DULY AUTHORISED REPRESENTATIVES