

TERMS AND CONDITIONS OF SUPPLY

1. General

In these Terms and Conditions of Supply, the following terms shall bear the following meanings:

- 1.1 "agreement" – these terms and conditions of supply and the order;
- 1.2 "Austro Group" - Austro Group Limited and its subsidiaries from time to time;
- 1.3 "Buyer" – the party making the order;
- 1.4 "goods" – any products, services and/or items of merchandise described in an order;
- 1.5 "NCA" - the National Credit Act 34 of 2005, as amended;
- 1.6 "order" – an order for goods made by the Buyer to the Seller by the Buyer signing a written quotation provided to the Buyer by an authorised representative of the Seller (setting out terms and conditions authorised by the Seller (in addition to the terms and conditions set out in this document) applicable to that quotation);
- 1.7 "prime rate" - the publicly quoted rate of interest, compounded monthly, at which the Standard Bank of South Africa Limited lends on unsecured overdraft to its most favoured corporate customers in the private sector, as to which a certificate under the hand of any manager for the time being of that bank (whose capacity need not be proved) shall, save for any patent error, be prima facie evidence; and
- 1.8 "Seller" – that entity of the Austro Group which furnishes a written quotation to the Buyer and with whom an order is placed by the Buyer.

2. Application of Terms and Conditions of Supply to orders

An agreement of sale of the goods, on the terms set out in the agreement, becomes binding between the Seller and the Buyer upon the Buyer placing an order with the Seller.

3. Pricing

- 3.1 Unless otherwise specified in writing, prices are as per the quotation and include VAT but exclude transport and installation costs. Prices in a quotation are valid for 14 (fourteen) calendar days only from date of the quotation and thereafter are subject to written confirmation by the Seller.
- 3.2 Prices for imported goods (or component parts of any goods) are quoted in South African Rand ("ZAR") and are calculated at the telegraphic transfer buying rate (or equivalent) for the conversion of foreign currency to ZAR as quoted by the Standard Bank of South Africa Limited to the Seller on the working day immediately prior to the date of the written quotation provided by the Seller to the Buyer. The prices for imported goods are subject to increase if the quoted ZAR/foreign currency exchange rate should have weakened (in favour of the foreign currency) by more than 10% from the date of the said quotation to the date on which the order is made. Any such price increase will be determined on the date on which the order is placed by the Buyer or, should a deposit be required, on the date of payment of any deposit, whichever is the later. The Buyer undertakes to pay any such price increase on the due date.

4. Payment

- 4.1 Unless the order provides otherwise, payment of the purchase price for the goods is to be effected within thirty (30) days from the date of the tax invoice. In the event of the Buyer disputing any amount payable, pending the Seller's investigation of the Buyer's dispute, the Buyer shall immediately be obliged to make payment to the Seller of the purchase price for the goods already delivered to the Buyer, as reflected in the tax invoice and/or statement.
- 4.2 If the order specifies that a deposit is required, the Seller shall not be obliged to take any action in relation to implementing that order until such time as the Seller receives payment of the full amount of the deposit specified in the order.
- 4.3 The Buyer shall not be entitled to any rebates and/or discounts unless a Director or Manager of the Seller has agreed to such rebates and/or discounts in writing and provided further that : –
notwithstanding the fact that a Director/Manager of the Seller has agreed to such rebates/discount, the Buyer shall not be entitled to same if payment is overdue in respect of any goods or services.
- 4.4 The Buyer agrees to pay the amount on the tax invoice at the offices of the Seller or by way of direct electronic transfer into such bank account as the Seller may designate in writing.
- 4.5 Should any amount not be paid by the Buyer on due date then the whole amount in respect of all purchases by the Buyer shall become due, owing and payable irrespective of the dates when the goods were purchased. The Buyer shall not be entitled to set off any monies due to it by the Seller, against any amounts owing by it to the Seller.
- 4.6 All payments to the Seller shall be made free of bank or other charges or commissions. The Buyer shall have no right to withhold payment for any reason whatsoever. Payment of any sum shall only be deemed to have been made upon the sum clearing into the Seller's bank account.
- 4.7 The Seller shall, without prejudice to any other rights which it may have in terms of this agreement or otherwise, be entitled to charge the Buyer interest at the prime rate plus two percent (2%) from the day on which payment was due until the date on which payment is made in full, provided that to the extent that the NCA is applicable and the prime rate plus 2% exceeds the maximum interest rate permitted in respect of incidental credit agreements in terms of the NCA at any relevant time, interest shall accrue on the outstanding amount at the maximum rate permissible in respect of incidental credit agreements in terms of the NCA at such time.

5. Credit Facilities

- 5.1 The Seller reserves the right to withdraw any credit facilities granted by the Seller to the Buyer, at any time on written notice to the Buyer and the nature and extent of such facility shall at all times be in the Seller's sole discretion.
- 5.2 The Buyer shall not be entitled to cede any of its rights nor delegate any of its obligations in any application for credit facilities or in respect of the agreement to a third party without the prior written consent of the Seller.

6. Orders

- 6.1 All orders shall be deemed to be binding offers to purchase, and the Buyer shall, if it is a juristic person, provide the Seller with an order number when placing any such order with the Seller.
- 6.2 Any order being made by a person who purports to be acting on behalf of the Buyer shall be valid and shall be binding on the Buyer unless the Seller was aware at the time that the order was so made that the person purporting to act on behalf of the Buyer did not have the necessary authority to do so.
- 6.3 It is the sole responsibility of the Buyer to determine that goods ordered are suitable for the purposes of the intended use.
- 6.4 The Seller reserves the right to demand that full or part payment in respect of all specially manufactured goods, imported goods or custom specific sized items be made by the Buyer on the date on which the order is placed by the Buyer.
- 6.5 If prior to delivery and/or despatch of the goods, there is any increase, for whatsoever reason in the Seller's cost of material or components or in the statutory labour charges, the price of the goods may be increased proportionately on notice given by the Seller to the Buyer and the Buyer undertakes to pay such increased price.

7. Delivery and Installation

- 7.1 The Seller shall, without prejudice to any other rights which it may have in terms of this agreement or otherwise, have the right to refuse to accept any new orders and/or suspend deliveries in respect of existing orders if –
 - 7.1.1 any amounts due by the Buyer to the Seller (whether in terms of the agreement or otherwise) remain unpaid;
 - 7.1.2 the Buyer, being a juristic entity, takes steps to
 - 7.1.2.1 place itself, or is placed in liquidation or under judicial management in either case whether voluntarily or compulsorily and provisionally or finally;
 - 7.1.2.2 deregister itself or is deregistered.
 - 7.1.3 the Buyer, being a natural person, dies, becomes of unsound mind or is sequestered, whether provisionally or finally;
 - 7.1.4 the Buyer makes, or attempts to make or recommends, any offer of compromise with its creditors generally;
 - 7.1.5 the Buyer owns or possesses assets which are subject to judicial attachment and the Buyer fails to procure the release of such assets from attachment within 60 days of their attachment, except that if the Buyer provides evidence on an ongoing basis to the reasonable satisfaction of the Seller that steps have been initiated within 60 days to appeal, review or rescind the attachment order and to procure the suspension of the attachment and that such steps are being expeditiously pursued, the period of 60 days shall run from the date the attachment order becomes final or the attempt to procure suspension of the attachment fails;
 - 7.1.6 the Buyer commits an act which would be an act of insolvency as defined by the Insolvency Act of 1936 as amended from time to time if committed by a natural person; and/or
 - 7.1.7 the Buyer fails to satisfy a judgment entered against itself within 21 days after it becomes aware of the judgment, except if it provides evidence on an ongoing basis to the reasonable satisfaction of the Seller that steps have been initiated within the 21 days to appeal, review or rescind the judgment and to procure suspension of execution of the judgment and that such steps are being expeditiously pursued; the period of 21 days shall run from the date on which the judgment becomes final, or the date on which the attempt to procure the suspension of the execution fails.

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- 7.2 Delivery and installation of the goods is not included in the price set out in the order, unless otherwise specified in writing. If delivery of the goods is not accepted within thirty (30) days after notification by the Seller that the goods are ready for delivery, the Seller reserves the right, without prejudice to any other rights which it may have in terms of the agreement or otherwise, to dispose of the goods to defray expenses. The Buyer is responsible for the cost of delivery and installation of the goods.
- 7.3 No deliveries will be made unless all payments are up to date. The Buyer shall accept delivery and installation of the goods or part thereof forthwith upon delivery by the Seller of the goods to the Buyer's premises upon inspection by the Buyer.
- 7.4 To facilitate deliveries, the Buyer shall ensure that the allocated areas are clear, protected and ready for installation prior to the delivery. The Seller does not accept liability for any losses (whether actual, contingent or otherwise), claims, damages, costs or expenses incurred by the Buyer in respect of any damage caused to or at the premises during the installation and delivery process.
- 7.5 The Buyer agrees that the signature of any agent, contractor, sub-contractor, employee or other representative who purports to act on behalf of the Buyer on the Seller's official delivery note/invoice/waybill, or the delivery note of any authorised independent carrier will constitute proof of delivery of the goods purchased and that the services and goods were inspected by the Buyer and conform to the quality and quantity specified in the order.
- 7.6 Electrical infrastructure and cabling which may be required by the goods will not be provided by the Seller, unless otherwise specified in writing.
- 7.7 Installation of the goods shall be deemed to be completed when the goods pass the Seller's defined installation and test procedures at the Buyer's premises.
- 7.8 Claims for shortages, breakages or defects in the goods will only be accepted for return by prior arrangement and within 7 working days of delivery of the relevant goods, and will be subject to a 15 % handling charge. Electrical/Electronic items are not refundable. All goods must be returned in their original condition and packaging.
- 7.9 Whilst the Seller will endeavour to ensure that goods are delivered timorously, it shall not be responsible for any delays in the delivery of such goods, and the Buyer shall not be entitled to refuse acceptance of such late deliveries. The Seller shall in any event not be liable to the Buyer, or to any third party, for any loss of whatsoever nature as a result of goods not being delivered timorously.

Ownership and risk

- 8.1 All risk of damage to and risk of loss, theft or destruction of the goods shall pass to the Buyer on delivery.
- 8.2 Until the Buyer has made full and final payment for the goods and any other charges (including delivery and installation charges) related to the goods --
 - 8.2.1 all goods delivered by the Seller shall remain the property of the Seller;
 - 8.2.2 the Buyer shall maintain the goods in good order and repair;
 - 8.2.3 the Buyer shall not be entitled to sell or dispose of or otherwise encumber the goods in any way
- 8.3 The Buyer hereby indemnifies the Seller against any loss (whether actual, contingent or otherwise), claims, damages, costs and expenses arising out of the infringement of copyright, patent, trade mark or designs in respect of the goods supplied by the Seller.

Product Warranties and Representations

- 9.1 Any warranties, representations, guarantees and the like in respect of the goods are limited to that which is stated in the order and no "fitness of purpose" shall be implied or construed. Save for the warranties, representations and guarantees set out in the order, the goods are sold voetstoots.
- 9.2 In the event that the Buyer proves that the goods have been applied in full compliance with the Seller's recommendation and that the goods have failed due to defects in the goods, then the Seller's liability shall be limited to complying with the warranty terms set out in the order and the Buyer shall have no other claim against the Seller (or any other member of the AustroGroup) in respect of any loss (whether actual, contingent or otherwise), claim, damage, costs or expenses, including loss or damage of a consequential nature, which may be sustained by the Buyer and/or any third party as a result of any defect in the goods supplied, or any other cause arising pursuant to the sale or delivery of the goods.
- 9.3 The Seller shall not be bound by or be liable in terms of any representations or warranties, express or implied, made by any employee or agent purporting to act on its behalf unless such representation or warranty is contained in the order or is otherwise reduced to writing and signed by an authorised representative of the Seller.

0. Breach

- 10.1 The Buyer agrees that if it fails to pay fully in terms of the "Pricing and Payment" clause above, or should it commit any other breach of these terms the Seller shall be entitled, without prejudice to any other rights it has, whether in terms of this agreement or otherwise, to --
 - 10.1.1 cancel the agreement forthwith by written notice to the Buyer and to claim payment of all amounts payable by the Buyer to the Seller whether in terms of this agreement or otherwise and whether due for payment or not and (ii) take possession of any goods delivered to the Buyer; and/or
 - 10.1.2 claim damages being the difference between the selling price and value of the goods at the time of repossession and all other costs incurred in the repossession of the goods; provided that the value of the repossessed goods shall be deemed to be the value placed on them by any sworn valuator after such repossession; and/or
 - 10.1.3 enforce the provisions of this agreement and to claim all outstanding amounts, which shall become immediately due and payable together with interest at the rate set out in 4.7 calculated from the due date until the date of payment in full.
- 10.2 The Buyer agrees that the amount due and payable to the Seller shall be evidenced by a certificate issued by the Seller and signed on its behalf by any duly authorised person, whose authority need not be proven, which certificate shall constitute prima facie proof of the amount due and payable.
- 10.3 The Buyer shall be liable to the Seller for all legal expenses (including collection fees) incurred by the Seller, on the attorney and own-client scale in the event of any default by the Buyer. The Buyer shall be liable for any valuation fees incurred.

1. Jurisdiction

- 11.1 The law of the Republic of South Africa governs the agreement
- 11.2 The Buyer hereby consents to the jurisdiction of the Magistrates' Courts in terms of section 45 of the Magistrates Court Act 32 of 1944, notwithstanding that the Magistrates Courts may not have jurisdiction due to the amount of the claim.
- 11.3 Notwithstanding the provisions of Error! Reference source not found., the Seller shall, in its sole discretion, be entitled to institute proceedings in any High Court of South Africa which has jurisdiction and the Buyer hereby consents to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg.

2. Force Majeure

ny order is subject to cancellation by Austro Group(Pty) Ltd due to any inability on the part of Austro Group(Pty) Ltd to perform in terms of this agreement by reason of any ause beyond the control of Austro Group(Pty) LTD, including (without restricting this clause to these instances) inability to secure goods, labour, power, materials or supplies, y reason of an act of God, war, civil disturbances, riot, state of emergency, strike, lock out or other labour disputes, fire, flood, drought.

3. General

- 13.1 This document, read together with the order constitutes the sole and entire agreement between the parties.
- 13.2 In the event of any conflict between the provisions of these terms and conditions and the provisions of the order, the provisions of the order shall prevail.
- 13.3 The Seller shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 13.4 No addition to, variation of, or agreed cancellation of the agreement shall be of any force or effect unless reduced to writing and signed by both parties.
- 13.5 No indulgence which the Seller may grant to the Buyer shall constitute a waiver of any of the rights of the Seller, who shall not thereby be precluded from exercising any rights against the Buyer which may have arisen in the past or which might arise in the future.
- 13.6 The Buyer undertakes to notify the Seller forthwith in writing of any change in address.
- 13.7 The Buyer undertakes to notify the Seller in writing, within seven days of any change in ownership of the Buyer's business including change in majority shareholding. Failure to do so will, without prejudice to any other rights which the Seller has in terms of the agreement or otherwise, deem any outstanding balance due immediately.
- 13.8 Each clause of these terms and conditions of sale is severable, the one from the other and if any one or more clauses is found to be invalid or unenforceable, that clause/clauses shall not affect the balance of these terms and conditions of sale, which shall remain of full force and effect.

4. Consent to Sharing information

- 14.1 The Buyer hereby consents to the Seller carrying out a credit enquiry from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors of the Buyer's in terms of the agreement.
the Buyer fails to meet its commitments to the Seller, the Seller may record the Buyer's non-performance with credit bureaus, credit information agents, credit insurance companies or other creditors of the Buyer. The Seller shall not be liable to the Buyer for any loss (whether actual, contingent or otherwise), damages, claims, costs or xpenses incurred by the Buyer as a result of the Seller so recording the Buyer's non-performance with credit bureaus, credit information agents, credit insurance companies r other creditors of the Buyer.