

**TELLUMAT (PTY) LTD STANDARD CONDITIONS OF SALE****1 Interpretation**

1.1 In these Conditions:

'BUYER' means the person who accepts a quotation of the Supplier for the sale of the Goods or whose order for the Goods is accepted by the Supplier;

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Supplier;

'CONTRACT' means each individual contract for the purchase and sale of the Goods between the Parties as amplified by the Conditions;

'GOODS' means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply in accordance with these Conditions;

'SUPPLIER' means Tellumat (Pty) Ltd registered in terms of the laws of the Republic of South Africa with registration number 1996/000957/07;

'WRITING' includes telex, cable, facsimile, e-mail transmission and comparable means of communication.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**2 Basis of the sale**

2.1 The Supplier shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Supplier which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Supplier, subject in either case to these Conditions, which shall govern each and every Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless specifically agreed in Writing between the authorised representatives of the Buyer and the Supplier.

2.3 The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Supplier in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Buyer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

**3 Orders and specifications**

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier's authorised representative.

3.2 The Buyer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Supplier any necessary information relating to the Goods within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Supplier's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Supplier).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Supplier's use of the Buyer's specification.

3.5 The Supplier reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory provision or, where the Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Supplier may be cancelled by the Buyer except with the agreement in Writing of the Supplier and on terms that the Buyer shall indemnify the Supplier, in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation or for 10% of the total value of the Order whichever amount is the greater.

**4 Price of the Goods**

4.1 The price of the Goods shall be the Supplier's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Supplier's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from South Africa, the Supplier's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Supplier without giving notice to the Buyer.

4.2 The Supplier reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Supplier adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Supplier, and unless otherwise agreed in Writing between the Buyer and the Supplier, all prices are given by the Supplier on an Ex Works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Buyer shall be liable to pay the Supplier's charges for transport, packaging and insurance (for export terms see clause 11).

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Supplier.

**5 Terms of payment**

5.1 Subject to any special terms agreed in Writing between the Buyer and the Supplier, the Supplier shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails

to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Buyer for the price at any time after the Supplier has notified the Buyer that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods.

- 5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Supplier's invoice. Where Goods are to be installed or commissioned by the Supplier, the Supplier shall invoice the Buyer for 90% of the price of the Goods on delivery and for the balance of 10% plus the installation or commissioning charges (if any) on completion of the installation or commissioning. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer; and/or
  - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Buyer); and
  - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per annum above the Supplier's bank prime rate from time to time, until payment in full is made.

## **6 Delivery**

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Supplier in Writing. The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Supplier fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Supplier's reasonable control or the Buyer's fault, and the Supplier is accordingly liable to the Buyer, the Supplier's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Supplier's fault) then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **7 Risk and property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Buyer that the Goods are available for collection; or
  - 7.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, Property in the Goods shall not pass to the Buyer until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Supplier to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Supplier's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Buyer to deliver the Goods to the Supplier and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Buyer does so all moneys owing by the Buyer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

## **8 Warranties and liability**

- 8.1 Subject to the conditions set out below the Supplier warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period 3 (three) months from delivery, whichever is the first to expire.
- 8.2 The above warranty is given by the Supplier subject to the following conditions:
- 8.2.1 the Supplier shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
  - 8.2.2 the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Supplier's approval;
  - 8.2.3 the Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
  - 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier;

- 8.2.5 in the event of any service being carried out during the warranty period by persons other than representatives of the Supplier, without the Supplier's prior written consent, the warranty will not apply.
- 8.3 Subject to as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law, including warranties regarding merchantability and fitness for purpose are excluded to the fullest extent permitted by law.
- 8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Supplier within seven (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Supplier accordingly, the Buyer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Supplier in accordance with these Conditions, the Supplier shall be entitled to replace the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Supplier shall have no further liability to the Buyer.
- 8.6 Except in respect of death or personal injury caused by the Supplier's negligence, which event liability shall be limited to R1 million, the Supplier shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special, punitive or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer (whether in contract, delict or otherwise), and the entire liability of the Supplier under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 8.7 The Supplier shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:
- 8.7.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.7.4 import or export regulations or embargoes;
- 8.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);
- 8.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.7.7 power failure or breakdown in machinery.

## **9 Indemnity**

- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Supplier shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 9.1.1 the Supplier is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.2 the Buyer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations;
- 9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier (which shall not be unreasonably withheld);
- 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 9.1.5 the Supplier shall be entitled to the benefit of, and the Buyer shall accordingly account to the Supplier for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 9.1.6 without prejudice to any duty of the Buyer at common law, the Supplier shall be entitled to require the Buyer to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Supplier is liable to indemnify the Buyer under this clause.

## **10 Insolvency of buyer**

- 10.1 This clause applies if:
- 10.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes insolvent or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession, or a receiver or trustee is appointed, of any of the property or assets of the Buyer; or
- 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 10.1.4 the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **11 Export terms**

- 11.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a

particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

- 11.2 Where the Goods are supplied for export from South Africa, the provisions of this clause 11 shall (subject to any special terms agreed in Writing between the Buyer and the Supplier) enjoy precedence notwithstanding any other conflicting provision of these Conditions.
- 11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 11.4 Unless otherwise agreed in Writing between the Buyer and the Supplier, the Goods shall be delivered Ex Works Tellumat, Cape Town, East London or Pretoria as the case may be (Incoterms 2000).
- 11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 11.6 Payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Buyer in favour of the Supplier and confirmed by a first class bank in South Africa acceptable to the Supplier or, if the Supplier has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Supplier of a bill of exchange drawn on the Buyer payable thirty (30) days after sight to the order of the Supplier at such branch of the Supplier's bank in South Africa as may be specified in the bill of exchange.
- 11.7 Where the Supplier agrees to delivery other than Ex Works, in Writing, the acceptance by Supplier of any export Order is subject to Supplier obtaining any necessary Export Licence. The Buyer shall be obliged to obtain any necessary Import Permit. In the event that the Buyer fails or neglects to obtain such Permit by the date on which the Goods are ready for dispatch, any additional costs incurred by Supplier by reason of the delay shall be for the Buyer's account; should the Import Permit not have been obtained within 30 days after the date on which the Goods are ready for dispatch, Supplier shall be entitled to cancel the Contract without any liability to the Buyer and the Buyer shall indemnify the Supplier, in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation or for 10% of the total value of the Order whichever amount is the greater.

## **12 Software**

- 12.1 Unless otherwise agreed in Writing, all software which comprise or are embodied in the Goods is supplied under non-exclusive transferable licence in machine readable object code form and will be the Software release current at time of Order.
- 12.2 The Buyer may be required to sign a licence agreement before delivery of any software can be effected. Installation of software (where applicable) remains the Buyer's responsibility.
- 12.3 The Buyer undertakes not to reverse-engineer, decompile or translate the Software embodied within the Goods into another computer language, in whole or in part, nor make copies or media translations of the Software.

## **13 General**

- 13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13.2 No waiver by the Supplier of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

## **14 Disputes**

- 14.1 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be finally settled by arbitration before a single arbitrator appointed by agreement or (in default) nominated on the application of either party in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA"). The AFSA arbitration rules shall govern the arbitration proceedings and the venue of the arbitration shall be Cape Town.
- 14.2 Notwithstanding the above, in the event that the Buyer is a *perigrinus* of South Africa (i.e. export transaction in terms of clause 11), any dispute arising under or in connection with these Conditions or the sale of the Goods shall be finally settled by arbitration before a single arbitrator appointed by agreement or (in default) according to the UNCITRAL Arbitration Rules which rules shall govern the procedural aspects of the arbitration. AFSA shall act as the appointing authority. The arbitration shall be conducted in the English language with the venue of the arbitration being Cape Town.
- 14.3 The arbitrator (whether in terms of clause 14.1 or 14.2) shall make an award in respect of the costs of the arbitration having regard to the substantial success of each Party in the outcome of the proceedings.
- 14.4 The Parties irrevocably agree that the decision in the arbitration proceedings:-
- 14.4.1 shall be final and binding on the Parties;
- 14.4.2 shall be carried into effect;
- 14.4.3 may be made an order of any court of competent jurisdiction.
- 14.5 Clause 14.1 or 14.2 shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the outcome of the negotiations, mediation or decision of the arbitrator as the case may be from time to time.
- 14.6 The Contract and these Conditions shall be governed by the laws of the Republic of South Africa and excluding its conflict of laws provisions in the event of an international export transaction.