

GENERAL TERMS AND CONDITIONS OF SALE OF AEB AFRICA (PTY) LTD


1 DEFINITIONS

- 1.1 “**Act**” shall mean the Consumer Protection Act, 68 of 2008;
- 1.2 “**AEB**” shall mean AEB Africa Proprietary Limited;
- 1.3 “**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Republic of South Africa;
- 1.4 “**Conditions**” means these terms and conditions;
- 1.5 “**Contract**” means the contract or agreement arising out of the acceptance of any offer to purchase any Product(s) from AEB in accordance with these Conditions, which acceptance is communicated by the issue of a Sales Order, and whether such Contract arises as a result of:
- 1.5.1 an offer made by AEB and accepted by the Customer; or
 - 1.5.2 an offer made or order placed by the Customer and accepted by AEB; or
 - 1.5.3 an offer made or order placed by the Customer in response to a Quote from AEB;
- 1.6 “**Customer**” means the customer or purchaser named in the Sales Order;
- 1.7 “**Credit Agreement**” means the Credit Agreement with AEB which is constituted by the application for credit completed by the Customer (or its duly authorised representative) and delivered to AEB, the terms and conditions which pertain to the application for credit, any notice delivered by AEB to the Customer confirming AEB’s decision to grant credit to the Customer and setting out the unique credit terms on which such credit is granted and any quotation if applicable and/or the letter signed by AEB advising that a Credit Agreement has been made available to the Customer, as well as the terms and conditions set out in this document and any amendment to the Credit Agreement that has been recorded in writing and consented to by the Customer;
- 1.8 “**Credit Application**” shall mean an application for credit submitted by the Customer to AEB;

- 1.9 “**Delivery**” shall mean either the delivery of the Products by AEB or AEB making the Products available for collection by the Customer, as specified in the Sales Order;
- 1.10 “**Delivery Note**” means a document accompanying a shipment of the Products that lists the description, and quantity of the Product delivered;
- 1.11 “**Estimated Delivery Date**” means the estimated delivery date (if any) of the Products as communicated to the Customer;
- 1.12 “**Force Majeure Event**” has the meaning given in clause 11;
- 1.13 “**Initial Order**” means the order placed by the Customer for the purchase of the Products which order may be requested telephonically, or in writing or placed orally or in writing with an agent of AEB, and which may include a request for a quote;
- 1.14 “**Products**” shall mean the products being supplied to the Customer by AEB;
- 1.15 “**Protected Consumer**” means a consumer as defined in section 1 of the Act and whose annual turnover or asset value falls below the threshold contemplated in section 5 of the Act and to whom the Act applies;
- 1.16 “**Quote**” shall mean any quote provided in writing by AEB for the supply of Products to the Customer in response to an Initial Order or query by a Customer;
- 1.17 “**Sales Order**” means the sales order issued by AEB to a Customer recording the details of the Initial Order, and the Quote if any;
- 1.18 “**Special Order**” shall mean a Product or Products that a supplier expressly or implicitly was required to procure, create or alter specifically to satisfy the Customer’s requirements; and
- 1.19 “**Statement**” shall mean a written statement provided to the Customer, detailing the amount owing to AEB by the Customer.

2 BASIS OF THE CONTRACT

- 2.1 The Customer and AEB agree that these Conditions shall apply to any Contract for the sale of any Products by AEB to the Customer.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of any conflict these Conditions shall prevail.

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2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of AEB which is not set out in the Contract.

3 PRICE

3.1 Prices of the Products are as stipulated in the Sales Order, or, if no price is quoted, the price set out in AEB's published price list in force as at the date of Delivery.

3.2 Save as may be specified on any Sales Order, prices are not subject to any discount and are applicable to deliveries made on Business Days between the hours of 08h45 to 17h00.

3.3 All prices are strictly nett and exclusive of Value Added Tax (unless otherwise expressly stated). For any Delivery, prices are subject to adjustment in respect of any increase or decrease in the cost of delivery arising directly or indirectly from any one or more causes, in particular:

3.3.1 in the case of delivery by rail or road any increase in railage, transport rates or any other transport costs, including fuel costs and e-tolling; and

3.3.2 any statutes, regulation, bye-law or notice having the effect of law.

3.4 AEB may, by giving notice to the Customer at any time before Delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:

3.4.1 any factor beyond the control of AEB (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

3.4.2 any request by the Customer to change the Delivery date(s), quantities or types of Products ordered, or the Products specification; or

3.4.3 any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give AEB adequate or accurate information or instructions in respect of the Products.

3.5 The amount of all duties, taxes, import levies or other charges applicable to the manufacture and sale of the Products are included in the price. In the event of variation, AEB shall be entitled to increase the price by an amount sufficient to cover

the extra expenses incurred or sustained by it as a direct or indirect consequence of such variation.

4 PAYMENT

4.1 Unless otherwise agreed, payment in full in respect of any Products ordered by the Customer shall be due on Delivery, or, alternatively where the Customer has entered into a Credit Agreement with AEB, payment shall become due within 30 days of Statement.

4.2 Unless otherwise agreed in writing by AEB, the Customer shall pay the price on the due date for payment either in cash or by direct transfer of cleared funds to AEB's bank account. Time of payment is of the essence.

4.3 Interest will be charged to the Customer on all amounts remaining outstanding and unpaid after the due date for payment at the rate of 2% per annum above the prime rate from time to time in force at AEB's bank and shall be calculated and accrue on a day to day basis from the date on which payment fell due until payment in full has been received by AEB.


4.4 Normally amounts received from the Customer shall be applied by AEB in payment of the oldest debt but AEB may at any time in its absolute discretion appropriate any payment it receives to such outstanding debt as it thinks fit, notwithstanding any purported appropriation to the contrary by the Customer.

4.5 Should the Customer's financial position at any time in AEB's sole determination become unsatisfactory, AEB reserves the right to require payment for any consignment hereunder in advance, or to receive satisfactory security. If the Customer fails to make payment in accordance with these Conditions AEB reserves the right to cancel any undelivered portion of the Products, or to suspend further Deliveries.

4.6 Payment by the Customer shall not be set off against or withheld on account of any counter claim against AEB or any other party, unless such counter claim has been admitted by AEB in writing.

5 DELIVERY

5.1 Except to the extent clause 5.2 is applicable, the Supplier shall deliver the Products to the location set out in the Sales Order or such other location as the parties may agree ("**Delivery Location**") at any time after AEB notifies the Customer that the Products are ready.



5.2 If the Customer chooses to collect the Products, it shall do so from AEB's premises (18 Track Crescent, Montague Gardens, Western Cape) or such other location as may be advised by AEB ("**Collection Location**") prior to Delivery, and within 3 Business Days of AEB notifying the Customer that the Products are ready.

5.3 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location or on the completion of loading of the Products at the Collection Location as the case may be, and signature of the Delivery Note.

5.4 Delivery will be made at the place, and on, or as close as reasonably possible to, the Estimated Delivery Date. AEB shall have the right to effect part deliveries. Each Delivery or part Delivery of an order shall be deemed to be sold under a separate contract. Neither failure on AEB's part to make any Delivery or part Delivery in accordance with these Conditions nor any claim by the Customer in respect of such Delivery or part Delivery shall entitle the Customer to reject the balance of the order or to cancel the order.

5.5 AEB shall endeavour to deliver the Products by the Estimated Delivery Date but shall not be liable for any direct or indirect damage or losses howsoever caused by the delay in Delivery, or failure to deliver, the Products on the Estimated Delivery Date.


5.6 A signed Delivery Note shall constitute prima facie that the goods have been delivered to and/or received by the Customer in good condition, whether signed by the Customer, an employee, an agent, or a representative of the Customer.

5.7 AEB shall not be liable for any delay in Delivery of the Products that is caused by a Force Majeure Event.

5.8 Any times or dates quoted for Delivery are dependent upon AEB receiving all necessary information to enable it to commence work and to proceed therewith without interruption. In all cases whether a time for Delivery is quoted or not, the time for Delivery shall be extended by a reasonable period if delay in Delivery is caused by instructions or lack of instructions from the Customer. An order shall not be cancelled on the ground of AEB's delay.

5.9 If the Customer fails to take delivery of the Products within 7 Business Days of AEB notifying the Customer that the Products are ready, then, except where such failure or delay is caused by a Force Majeure Event or AEB's failure to comply with its obligations under the Contract:

5.9.1 delivery of the Products shall be deemed to have been completed at 08h00 on the seventh Business Day after the day on which AEB notified the Customer that

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the goods were ready, and AEB shall be entitled to arrange storage either at its premises or elsewhere on the Customer's behalf and at the Customer's risk and all charges for carriage, storage or any insurance which AEB might affect shall be for the Customer's account; or

5.9.2 at its sole discretion, AEB shall be entitled to terminate the Contract and recover from the Customer any loss suffered by reason of such failure.

5.10 No claim for shortages in Delivery or damage in transit can be entertained unless made within 7 days after Delivery or in the event of non-delivery within ten days of invoice.

6 OWNERSHIP AND RISK

Risk in the Products shall pass on Delivery, but ownership in any Products delivered (the "**Delivered Products**") remains vested in AEB until the entire price of the Delivered Products has been paid by the Customer. Notwithstanding Delivery, until AEB has received from the Customer payment of all sums (whether the price or otherwise) payable to it in relation to the Delivered Products, whether under these Conditions or any other contract, both beneficial and legal title to the Delivered Products remain with AEB.

7 RETURN OF PRODUCTS

7.1 AEB does not accept the return of Products, other than Products delivered in error or not corresponding with the specifications in the Sales Order. Such Products may be returned to AEB after agreement by AEB in writing, at AEB's expense within 15 days of receipt thereof by the Customer.

7.2 The Customer may return any Product delivered to it in terms of these Conditions where such Product is considered to be defective. The determination of whether such Product is defective shall be at the sole discretion of AEB who shall refund or replace any defective Product should it be found to be as such.

8 CANCELLATION OF CONTRACT

8.1 The Customer is not entitled to cancel any Special Orders which have been placed with AEB, and any return of Specially Ordered Products shall only be allowed after reasonable opportunity is afforded to AEB to rectify the cause for such return of Products.

8.2 AEB reserves the right to levy a reasonable charge or cancellation fee for any cancellation, or to request a deposit in advance in respect of any Special Order placed with it by the Customer.

9 INDEMNITY

9.1 The parties acknowledge that in terms of section 61 of the Act, the producer, importer, distributor, retailer, and/or supplier, may be jointly and severally liable for any harm caused wholly or partly as a consequence of:

9.1.1 supplying unsafe goods;

9.1.2 a products failure, defect or hazard in any goods; or

9.1.3 inadequate instructions or warning provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor, retailer or supplier, as the case may be.

9.2 In respect of clause 9.1, each party ("**Indemnifying Party**") hereby indemnifies and holds harmless the other party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other party as a result of or arising out of any harm alleged or proven by a consumer himself or is attributable to the conduct of the Indemnifying Party or any contravention by the Indemnifying Party of any applicable law.

9.3 It is recorded that this Contract is without prejudice to any rights or defences which AEB may have under and in terms of the Act or at law in respect of any claims made or brought against it by the Customer and/or any Protected Consumer or purchaser of any Products supplied by AEB.

10 PROTECTED CONSUMERS

10.1 To the extent that the Customer is a Protected Consumer:

10.1.1 clauses 4.5, 5.4, 5.8, 8 and 13.6 shall be read with the provisions of section 14 of the Act;

10.1.2 clauses 5.3, 5.4 and 5.9 shall not apply to the extent they contravene the provisions of section 19 of the Act;

10.1.3 clause 7 shall not apply in so far as it contravenes the provisions of section 20 of the Act;

10.1.4 clause 11 shall be read in conjunction with section 19 of the Act; and

10.1.5 clause 9 shall not apply.

11 **FORCE MAJEURE EVENT**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A “**Force Majeure Event**” means any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme weather conditions, or default of suppliers or subcontractors.


12 **JURISDICTION AND ARBITRATION**

12.1 Any action or motion which may in any way arise out of these Conditions shall be brought at AEB’s sole election and discretion either in such division of the High Court of South Africa as is chosen by AEB, or in the Magistrates’ Court.

12.2 Notwithstanding anything to the contrary contained herein, and at AEB’s sole election, any dispute may be referred to arbitration to be held at Cape Town in a summary manner, i.e. on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures (e.g. there shall not be pleadings or discovery) or the strict rules of evidence, immediately with a view to it being decided in accordance with the Arbitration Act, 42 of 1958. The arbitrator in terms of such arbitration shall be a senior counsel chosen by AEB, whose decision shall be final and binding on the parties and not be susceptible to appeal. The decision shall be capable of being made an order of any court of competent jurisdiction and shall be carried into effect.

13 **GENERAL**

13.1 No variation, alteration or modification of any of these Conditions or any clause herein, including this clause, shall be of any force or effect unless reduced to writing and signed by an authorised representative of AEB.



13.2 AEB may from time to time, at its sole discretion, amend the Conditions. The most current version of these Conditions will be available at www.aebafrika.co.za.

13.3 AEB may at any time subcontract or cede any of its rights and delegate any of its obligations under these Conditions.

13.4 No relaxation or indulgence offered by AEB to the Customer, or failure by AEB to completely enforce its rights in terms of these Conditions or the law in general shall in any way prejudice it from exercising its complete and unrestricted rights in terms of these Conditions or in terms of the law.

13.5 Each of these terms and conditions and each clause hereof shall be construed as separate terms and conditions. Should any clause be found to be invalid or unenforceable or an unreasonable restriction of the Customer then such clause shall apply with such modification as may be necessary to make it valid and effective.

13.6 If the Customer dies or becomes insolvent or, being a company, commences to be wound-up or is placed under business rescue, AEB shall be entitled to cancel any order with the Customer with notice in respect of any undelivered portion of the order and in the event of the Customer's death or sequestration or liquidation in the case of a company, all amounts owing to AEB by the Customer shall immediately become due and payable.

13.7 Any notice or communication required or permitted to be given in terms of these Conditions shall only be valid and effective if it is in writing.

13.8 The Conditions will be construed and operated in conformity with the laws of the Republic of South Africa.