



Terms Governing the Sale of Goods and the Supply of Services to MAN Truck & Bus (S.A.) (Proprietary) Limited

1. Definitions

In these Terms and Conditions:-

- 1.1. "Associated company" means any company which is –
 - 1.1.1. a subsidiary company of the Seller;
 - 1.1.2. the holding company of the Seller; or
 - 1.1.3. controlled by the Seller's holding company.
- 1.2. "Call-off Order" means a blanket Order based on a frame agreement for bulk purchases and/or acquisition of similar products in large quantities guaranteed at the same price. Delivery of these Goods is not necessarily effected at the same time;
- 1.3. "Delivery" means the passing of risk from one Party to the other and Delivery will only be considered complete if effected in accordance with the provisions of these Terms and Conditions;
- 1.4. "Goods" means all goods of whatever nature;
- 1.5. "MAN" means MAN Truck & Bus (S.A.) (Proprietary) Limited with its principal place of business being 105 Andre Greyvenstein Ave, Isando and any of its subsidiary companies;
- 1.6. "Order" means any written Order placed by MAN with the Seller in respect of Goods or Services;
- 1.7. "Parties" means MAN and the Seller collectively;
- 1.8. "Reasonable period" means the period which is appropriate and reasonable having regard to the fault or defect in question and to the purpose for which the Goods and/or Services in question are required;
- 1.9. "Seller" means the person or entity selling Goods or supplying or rendering Services to MAN;
- 1.10. "Services" means all services of whatever nature;
- 1.11. "Terms" means these Terms Governing the Sale of Goods and the Supply of Services to MAN Truck & Bus (S.A.) (Proprietary) Limited;
- 1.1. "Workmanlike manner" means with due care and diligence as can be reasonably expected from the Seller.

2. Scope

The terms set out herein govern and are applicable to the sale of Goods and the supply of Services to MAN. These terms will take precedence over any terms contained in any document issued by the Seller including an Order. In the event that any terms contained in any document issued by the Seller is in any way applicable to the sale of Goods or the supply of Services by the Seller to MAN, then in the event of a conflict between any such terms and these terms, the provisions of these terms will apply.

3. Orders

- 3.1. Any contract or agreement for the sale of Goods or supply of Services will only be binding on MAN if in writing and signed on behalf of MAN by a duly authorised representative of MAN.
- 3.2. All Orders made by MAN as well as modifications and supplements to such Orders must be made in writing. Call-off Orders by MAN may also be effected by means of electronic transfer.
- 3.3. If a Seller does not accept an Order within 7 (seven) business days of receipt of such Order, MAN has the right to cancel the Order. Call-off Orders are deemed to be binding on the Seller if the Seller does not revoke them in writing within 24 (twenty-four) hours of receipt of Order.
- 3.4. Within the context of what can be reasonably expected from the Seller, MAN may request modifications to any Goods in respect of faulty design and/or workmanship. Any changes to costs and/or delivery dates as a result of any such request will only be binding on MAN if agreed by MAN in writing.

4. Delivery

- 4.1. Any Delivery date stipulated in any Order may not be varied or altered without the prior written consent of at least 2 (two) duly authorised representatives of MAN.
- 4.2. If any event occurs that might cause any delay in the delivery of the Goods or Services to MAN, the Seller must forthwith inform MAN of such delay and advise MAN of the reason for the delay and the date/s on which delivery can be effected.
- 4.3. If the situation referred to in clause 4.2 above arises, MAN may either allow the Seller –
 - 4.3.1. an extension of time within which to effect delivery; and/or
 - 4.3.2. to effect delivery of such portion of the Goods or Services in question which can be delivered and on such terms as MAN may stipulate.
- 4.4. If the Seller fails to deliver any Goods or Services within the period stipulated in an Order or within any extended period allowed by MAN in accordance with clause 4.3 above, MAN may either –
 - 4.4.1. claim specific performance; or
 - 4.4.2. cancel the entire Order or the part thereof relating to the Goods or Services whose delivery has been delayed in either event without prejudice to MAN's right to claim damages from the Seller as a result of the delay.

5. Seller's Obligations

- 5.1. The Seller undertakes, in effecting the sale and delivery of any Goods or Services to MAN, to comply with all laws and regulations –
 - 5.1.1. applicable to the Goods or Services in question; and
 - 5.1.2. relating to safety and accident prevention in respect of the manufacturing, delivery and provision of such Goods or Services.
- 5.2. Without derogating from the generality of the foregoing, any rules or procedures stipulated by MAN including rules and procedures in respect of –
 - 5.2.1. the delivery of the Goods or Services in question; and
 - 5.2.2. for reasons of safety and/or accident prevention.

6. Passing of Risk

- 6.1. The risk in any Goods or Services sold or supplied by the Seller to MAN will only pass to MAN upon delivery of the Goods or Services in question to MAN.
- 6.2. Prior to the passing of risk to MAN in terms of clause 6.1, the Seller will be liable for insuring the Goods or Services in question if such insurance be required by the Seller or MAN or by law. Any premiums in respect of any such insurance will be paid by the Seller and if paid for by MAN whatever reason, will be refunded to MAN by the Seller on demand.

7. Packaging of Goods

- 7.1. Subject to the provisions of these terms, for the purpose of any Order, delivery of any Goods or Services will only be regarded as having been properly completed when effected in accordance with the Order in question and to the satisfaction of MAN. If any Goods or Services require installation or commissioning by the Seller, delivery will not be regarded as having been completed until any such installation or commissioning has been completed in accordance with the Order and to the satisfaction of MAN.
- 7.2. Goods forming the subject matter of any Order will be packaged in such manner as may be required by MAN and/or by any laws or regulations.
- 7.3. In circumstances where the use of any Goods or Services requires instructions in regard to the assembly or use of such Goods or Services, the Seller is obliged to provide MAN with all such documentation containing such instructions in readable and legible form.

- 7.4. Notwithstanding the provisions of this clause 7, Delivery of any such Goods or Services will not be regarded as having been effected until any documentation referred to in clause 7.3 above is handed to MAN and MAN is satisfied with the contents thereof.
- 7.5. The provisions of this clause 7 will apply *mutatis mutandis* to any documentation relating to the maintenance and repair of any Goods and/or Services supplied to MAN by the Seller.

8. Warranties by the Seller

- 8.1. In respect of all Goods and/or Services supplied by the Seller to MAN, the Seller warrants to MAN that –
 - 8.1.1. such Goods and/or Services are and will be fit for the purpose for which they have been purchased or ordered;
 - 8.1.2. all Goods and the component parts thereof are of good and proper quality and have been produced and/or supplied in a good and workmanlike manner and in accordance with any specifications relating to such Goods and the component parts thereof;
 - 8.1.3. all Services will be rendered to MAN in a good and workmanlike manner and in accordance with any specifications relating thereto;
 - 8.1.4. all Goods and/or Services will be sold and delivered to MAN free of any lien, hypothec or other encumbrance in favour of any third party and that upon receiving delivery of any such Goods or Services, MAN will be entitled to acquire ownership thereof and/or the right to the use thereof to the exclusion of any claim by any third party;
 - 8.1.5. if any fault or defect appears in any Goods and/or Services within any applicable warranty period which renders such Goods and/or Services unfit for the purpose for which they are intended, the Seller will, at the election of MAN in its sole discretion, either repair any such fault or defect or replace the Goods and/or Services in question. Unless otherwise agreed between the Parties in writing, the warranty period applicable to any Goods or Services will be 24 (twenty four) months from the date of Delivery of such Goods and/or the rendering of such Services; and
 - 8.1.6. the use by MAN of such Goods and/or Services will not infringe the intellectual property rights of any third party.
- 8.2. In the event referred to in clause 8.1.5 above –
 - 8.2.1. if the Seller fails to remedy any such default or defect within a reasonable period or, if required by MAN, fails to replace the defective or faulty Goods and/or Services in question within a reasonable period, MAN will be entitled to either –
 - a. cancel the Order in respect of the Goods and/or Services in question;
 - b. have the fault or defect repaired by a third party and claim the cost of doing so from the Seller on demand;
 - c. replace the faulty or defective Goods and/or Services by contracting with a third party and claiming the cost thereof from the Seller; or
 - d. demand that the Seller grants MAN a credit equivalent to the price paid by MAN for the Goods, which the Seller will be obliged to grant upon demand;
 - 8.2.2. if the fault or defect requires repair or replacement on an urgent basis, the Seller will be obliged to effect such urgent repair or replacement at its own cost and expense.
- 8.3. MAN's rights and remedies in terms of clause 8.2 above neither prejudice nor derogate from MAN's rights to claim from the Seller any damages and/or costs sustained or incurred by MAN (including consequential losses or damages) as a result of a default by the Seller. Furthermore, the Seller is liable to MAN where any malfunction of equipment occurs, save and except where such malfunction is as a result of a grossly negligent act by MAN.
- 8.4. MAN has the right to inspect the Seller's premises upon prior written notification to ascertain the progress being made by the Seller in respect of the production, manufacture and/or delivery of any Goods and/or Services forming the subject matter of an Order. Such inspection does not absolve the Seller from any of its obligations to MAN in terms hereof or in terms of an Order and will not preclude MAN from enforcing any of its rights in terms hereof or in law.
- 8.5. The warranties in clause 8.1 above and the provisions of clauses 8.2, 8.3 and 8.4 above will apply *mutatis mutandis* in respect of any repairs effected or replacements provided by the Seller in accordance with clause 8.1.5 above.
- 8.6. The Seller indemnifies MAN against any claim which may be made by any third party in respect of the intellectual property rights of any Goods or Services sold or supplied by the Seller to MAN. MAN is entitled to defend any such claim and claim all costs incurred in so doing from the Seller and, in the event of MAN electing to defend any such claim, the Seller must furnish MAN with all such assistance as may be required.
- 8.7. If any claim envisaged in clause 8.6 above succeeds with the result that MAN is precluded by court Order from using any Goods and/or Services sold or supplied to it by the Seller, the Seller will be obliged to pay to MAN any and all amounts already paid by MAN to the Seller in respect of such Goods and/or Services together with all and any costs incurred by MAN as a result of it being so precluded.

9. Payment

- 9.1. Unless otherwise provided for in an Order, the Supplier hereby elects for MAN to pay the purchase price or the charges in respect of Goods and/or Services either (tick appropriate) –

9.1.1. within 30 (thirty) days of the date of statement, in which event MAN is entitled to a 2,5% discount of the purchase price or contract price; OR	<input type="checkbox"/>
9.1.2. within 60 (sixty) days of the date of invoice, in which event no discount will be applicable;	<input type="checkbox"/>

provided that if the Supplier does not make any election, MAN will pay the purchase price or the charges in accordance with clause 9.1.1 above.
- 9.2. Any credit terms will be subject to MAN's Standard Conditions of Credit which the Seller warrants it has read and understood and hereby agrees to.
- 9.3. Payment will be made by way of electronic funds transfer to the Seller's bank account.
- 9.4. The Seller is required to provide MAN with its correct bank account details in writing. If the Seller's bank account details change at any time the Seller will be obliged to provide MAN, in writing, timeously of such change. MAN is not for any loss or damages resulting from any incorrect information provided to MAN by the Seller or for any payment not being made or being made late as a result of such incorrect information.
- 9.5. If the Seller delivers any Goods or renders any Services prior to the due date for Delivery or supply as specified in an Order, MAN will not be obliged to pay for such Goods or Services on an earlier date than that provided for in the Order or contract in question.

Date Signed: _____

Name: _____

Signature: _____



- 9.6. In the event of incomplete Delivery or delivery which does not comply with clause 4 and clause 7 above, MAN is entitled to withhold payment for the Goods and/or Services in question until proper Delivery has been made, unless otherwise agreed to by MAN in writing.
- 9.7. In the event that the Seller or any associated company of the Seller is indebted to MAN for whatever reason, MAN is entitled to set off any such indebtedness against any payment due by MAN to the Seller.
- 9.8. If MAN pays any amount which the Seller is obliged to pay in terms of these Terms (which MAN is not obliged to do) MAN is entitled to either –
 - 9.8.1. claim repayment of the amount concerned from the Seller on demand;
 - 9.8.2. deduct the amount in question from any amount owing by MAN to the Seller in respect; and/or
 - 9.8.3. of the supply of Goods and/or Services in terms of any Order.

10. Cession and assignment

- 10.1. The Seller may not cede, assign or subcontract any of its rights or obligations in terms hereof without the prior written consent of MAN.
- 10.2. If the Seller subcontracts any of its obligations in terms hereof to any third party in accordance with clause 10.1 above, the Seller remains jointly and severally liable with its subcontractor/s in question for the due and proper performance of the obligations so subcontracted.
- 10.3. In the event that MAN consents to the Seller subcontracting any part of the Seller's obligations in terms hereof, MAN is entitled, at its election and sole discretion, to pay the subcontractor directly for any Goods supplied or Services rendered by such subcontractor.

11. Ownership

- 11.1. Unless otherwise agreed in an Order, the ownership of all Goods supplied to MAN and/or intellectual property or documents created in the provision of Services to MAN by the Seller will pass to MAN upon payment for the Goods or Services in question.
- 11.2. Notwithstanding the provisions of clause 11.1 above, the Seller is not entitled, in any way, means or form to claim or repossess any item which is in the possession of MAN and not yet paid for.

12. Confidentiality

- 12.1. Both MAN and the Seller undertake to treat as confidential any information regarding the other of a commercial or technical nature gained through their relationship. In addition, the Seller will, at all times, maintain in confidence and not divulge to any third party for whatever purpose any information of whatever nature which comes into the possession of the Seller concerning any aspect of the business of MAN.
- 12.2. All drawings, specifications, plans or other documents handed to the Seller by MAN for the purpose of supplying any Goods or Services will remain the property of MAN and will be returned to MAN upon delivery of the Goods or Services in question or, if the Order relating thereto is cancelled by MAN, then upon such cancellation.
- 12.3. The Seller undertakes that any drawings, models, templates, samples or similar items received by it from MAN will not be handed to or divulged to any third party save with the prior written consent of MAN and copying or reproduction of any such items will only be made where strictly required for the purpose of the Seller complying with its obligations in terms hereof and subject to copyright provisions.
- 12.4. The Seller undertakes that any subcontractor appointed by it in accordance with the provisions of clause 10 above will be bound to give effect to the provisions of this clause 12.
- 12.5. Both MAN and the Seller will only be entitled to advertise their business relationship with the prior written consent of the other.

13. Anti-corruption

- 13.1. The Seller must comply with the provisions of any and all applicable laws in relation to its business activities pursuant to these Terms and must not perform any unlawful acts in relation to its business activities, which unlawful acts may include, but are not limited to, inter alia, offering, granting, requesting or accepting illegal or corrupt payments, benefits or other advantages for the Seller or any third party.
- 13.2. The Seller confirms that it has received the Code of Conduct and undertakes to comply with the Code of Conduct in its dealings with third parties in providing any Goods or Services to MAN and to use its best endeavours to procure compliance by such third parties with the Code of Conduct. The Seller will be bound to the Code of Conduct, irrespective of whether the Seller has signed a copy of the Code of Conduct.
- 13.3. Notwithstanding anything to the contrary contained in these Terms, MAN is entitled to terminate any agreement (without prejudice to any of MAN's rights in terms of these Terms or in law including, but not limited to, the right to claim damages) in the event that MAN reasonably and in good faith determines that the Seller has breached any of its obligations contained in this clause 13. Upon termination of these Terms by MAN pursuant to this clause, the Seller will not be entitled to any further payment under these Terms and will have no claim of whatsoever nature against MAN arising out of such termination.

14. Audit right

In the event that any aspect of MAN's relationship with the Seller becomes the subject of an enquiry or investigation by a Government or any other official authority, the Seller will, at the request of MAN, furnish to a professional advisor appointed by MAN and bound by confidentiality, with all information and documentation in regard to the investigation or enquiry. Such professional advisor is entitled to disclose all information received by him from the Seller to MAN.

15. Compliance with section 37(2) of the OHS Act

- 15.1. The Seller undertakes full responsibility for ensuring that the provisions of the OHS Act will be complied with and more particularly undertakes to ensure that all of its employees and workers under its control in all of the Sellers work places and/or areas of operation will be provided with a working environment that is safe and without risk to the health of its employees and all other persons who may be directly affected by the activities of the employees so as that they are not exposed to hazards to their health or safety.
- 15.2. Without derogating from the generality of the foregoing, the Seller undertakes to ensure that the requisite number of health and safety representatives are appointed for the work place(s) and/or areas of operation under the Sellers control and will assist such health and safety representatives and any inspector in the performance of their functions.
- 15.3. The Seller must issue all the necessary and appropriate safety/health Products to all persons working and/or entering into, the area(s) of operation.
- 15.4. If the OHS Act is replaced by a new statute, the provisions of this clause 27 will apply mutatis mutandis, as far as is practically possible, to compliance with such new statute and the Seller agrees to sign any Addendum, to give effect to such new statute, if MAN so requires it.

16. Broad Based Black Economic Empowerment

- 16.1. The Seller acknowledges MAN's commitment to a BBBEE Strategy to promote and advance the development of previously disadvantaged individuals and BBBEE enterprises.
- 16.2. MAN requires the Seller not to engage in any fronting practices, misrepresentation or any default in terms of BBBEE Codes of Good Practice. The Seller is further required to –
 - 16.2.1. adhere to the provisions of the BBBEE Act;
 - 16.2.2. be an Empowering Supplier as defined in the BBBEE Codes of Good Practice;
 - 16.2.3. keep abreast of changes in the BBBEE Codes of Good Practice and the verification processes; and
 - 16.2.4. depending on the size of the enterprise, furnish MAN with an audited BBBEE Certificate or an affidavit attesting to their exempt status.
- 16.3. The Seller must, on an on-going basis, assess its compliance with its obligations in terms of the guidelines provided above. MAN has the right to, upon prior notice to the Seller, attend at the premises of the Seller to assess the compliance of the Seller with these guidelines and the Seller agrees to make available all relevant information which the Importer may require for this purpose.
- 16.4. MAN reserves the right to request the Seller, on an annual basis, to present a development plan to confirm their strategy in working towards a higher BBBEE rating.
- 16.5. Non-compliance with this clause 16 will constitute a breach of this Agreement and MAN may terminate this Agreement.

17. Dispute Resolution

- 17.1. Any which may arise at any time between the Parties, relating to any matter arising out of this Agreement or the interpretation, termination and/or cancellation thereof, must first be referred to mediation between the Parties.
- 17.2. If a dispute is not resolved after the mediation process, it must be submitted to and finally decided by arbitration, to any appropriate arbitration body within the Republic of South Africa.
- 17.3. Either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party. The arbitration must be held in the Republic of South Africa and in the English language, with a view to its being completed within 15 (fifteen) business days after receipt by the other Party of the referral.
- 17.4. This clause 17 does not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 17.5. The Parties irrevocably agree that the decision in arbitration proceedings:
 - 17.5.1. is final and binding upon the Parties;
 - 17.5.2. must be carried into effect; and
 - 17.5.3. may be made an Order of any court of competent jurisdiction.
- 17.6. If a dispute arises as to whether any person was duly authorised to sign any Order or contract or other document of behalf of MAN, the onus of establishing such authority is on the Seller.

18. No partnership or agency created

Nothing in these Terms constitutes, or will be deemed to constitute, a partnership between the Parties, or be deemed to make either Party an agent of the other, for any purpose whatsoever. The Parties have no authority to bind each other or to contract in the name of each other, or create any liability against each other in any way or for any purpose.

19. Breach

- If the Seller –
- 19.1. breaches any of the provisions of these Terms and/or any additional provisions relating to an Order and fails to remedy the breach within 7 (seven) days (or such shorter period as may be reasonable having regard to the breach in question) of having been required to do so;
 - 19.2. breaches any of the terms of an Order or default in the performance of its obligations in terms of an Order;
 - 19.3. if a natural person, dies or is sequestered or becomes incapacitated or ceases to carry on business;
 - 19.4. if a juristic person, be liquidated whether provisionally or finally or cease to carry on business or be placed under judicial management or business rescue;
 - 19.5. commits any act of insolvency;
 - 19.6. commits any act or allow any omission which in the reasonable opinion of MAN will prevent the Seller from performing its obligations in terms of an Order;
 - 19.7. fails, within such period as may be allowed or provided for in the applicable rules of court, to set aside any default judgement granted against it; or
 - 19.8. allows any of its assets to be seized in execution by an officer of a court, then and in any such events, MAN will be entitled to cancel any current and/or outstanding Orders with the Seller even if partially performed by the Seller, without prejudice to MAN's right to claim such damages as it may have sustained as a result of the breach, default, act or omission in question.

20. General

- 20.1. These Terms are governed in all respects by the law of the Republic of South Africa.
- 20.2. All Goods sold and Services supplied by the Seller to MAN must be delivered and/or performed at MAN's principal place of business in South Africa or at such other place or places as may be stipulated by MAN in an Order or otherwise in writing.
- 20.3. These Terms and the provisions written in an Order will constitute the entire agreement between MAN and the Seller relating to Orders. Neither these Terms nor any provisions written in any Order will be capable of being varied, altered or amended unless such variation, alteration or amendment is in writing and signed by a minimum of two duly authorised representatives of MAN, save where such provisions will be more favourable to MAN.
- 20.4. The Seller will pay to MAN the cost of repairing any damage caused to the property of MAN by any of the Seller's employees or representatives or contractors during the course of implementing an Order. Furthermore the Seller is liable for any damages or personal injuries sustained by any employees of MAN caused to any such employees by any of the Seller's employees or representatives or contractors during the course of implementing an Order. This expressly includes any maintenance work to be carried out by the Seller during or subsequent to initial delivery.
- 20.5. Any notices to be served by one Party on the other must be served in writing.
- 20.6. If it is necessary for a Party to institute any legal proceedings against the other Party, the losing Party will be liable for all costs of whatever nature incurred by the winning Party in so doing including costs on an attorney and own client scale.
- 20.7. If MAN requires any sureties or performance bonds to be given by or on behalf of the Seller in respect of any Order to guarantee the performance of the Seller's obligations in terms of such Order, then notwithstanding anything to the contrary in these Terms or in the Order in question, such Order will not be binding on MAN until the sureties or performance bonds have been provided to the satisfaction of MAN.

Date Signed: _____ Company stamp: _____

Company Name: _____

Authorized Representative: _____

Signature: _____

