



Driven by **Powertech** 

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# Standard Terms and Conditions

**Effective 1 April 2011**

**CRABTREE ELECTRICAL ACCESSORIES SA  
A DIVISION OF POWERTECH INDUSTRIES (PROPRIETARY) LIMITED**

## IMPORTANT NOTICE TO ALL EXISTING AND PROSPECTIVE CUSTOMERS

The attached terms and conditions of sale shall govern all existing and future orders placed by you upon us unless expressly otherwise agreed in writing, or until super ceded by new terms and conditions.

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### STANDARD TERMS AND CONDITIONS OF SALE, TENDER AND GRANTING OF CREDIT/OTHER ACCOUNT FACILITIES CRABTREE ELECTRICAL ACCESSORIES SA, a division of POWERTECH INDUSTRIES (PROPRIETARY) LIMITED (hereinafter referred to as "The Supplier")

#### 1. SCOPE AND INTERPRETATION

- 1.1 These terms and conditions shall apply in respect of each and every contract for the sale or provision of goods and/or services and/or the undertaking of projects by the supplier, unless specifically otherwise agreed between the parties in writing.  
**PLEASE TAKE NOTE:**
- 1.2 **The provisions of this document shall overrule any terms and conditions of contract of the customer, unless otherwise agreed between the parties in writing.**
- 1.3 The supplier may agree to a specific contract on special terms set out in the quotation or tender for such contract, and in the event of any inconsistency between the provisions of these terms and conditions and any such special terms, the special terms of the specific contract shall prevail.
- 1.4 In this document headings embodied in the clauses are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention;
- 1.4.1 the singular shall include the plural and vice versa;
- 1.4.2 the reference to one gender shall be capable of being construed as reference to any of the others; and
- 1.4.3 the references to a natural person shall be capable of being construed as a reference to a juristic person and vice versa.
- 1.5 Unless the context of this document clearly indicates a contrary intention, the following words or phrases shall have the meaning assigned to them;
- 1.5.1 **"the supplier"** shall mean Crabtree Electrical Accessories SA, a division of Powertech Industries (Proprietary) Limited, or any of its divisions or businesses;
- 1.5.2 **"the customer"** shall mean any party who purchases goods and/or services or with whom a contract is concluded;
- 1.5.3 **"goods"** shall be those goods to be supplied by the supplier as specified in the supplier's quotation or in a contract;
- 1.5.4 **"services"** shall be those services to be supplied by the supplier as specified in the supplier's quotation or in a contract;
- 1.5.5 **"projects"** shall mean any complete project or projects, or parts thereof, to be undertaken by the supplier and as specified in the supplier's quotation or a contract;
- 1.5.6 **"order"** shall mean a written request or instruction by the customer for the supply of the goods and/or services and/or the undertaking of projects by the supplier;
- 1.5.7 **"quotation"** shall mean a written quotation or tender by the supplier for the supply of the goods and/or services and/or the undertaking of projects;
- 1.5.8 **"contract"** shall mean any contract for the supply of goods and/or services and/or the undertaking of projects by the supplier;
- 1.5.9 **"acceptance tests"** shall mean such tests to be made by the supplier before the works are taken over by the customer as are provided for in the quotation or the contract or, where no specific provision in the quotation or contract exists, such tests as are normally made by the supplier in respect of similar works;
- 1.5.10 **"acceptance certificate"** shall mean a certificate evidencing the execution of acceptance tests, and the acceptance of the works in accordance with those tests;
- 1.5.11 **"take-over date"** shall mean the date that the customer signs an acceptance certificate certifying that the works have been completed in accordance with the quotation or the contract and have passed the acceptance tests, or, where the customer fails and/or refuses to issue such a certificate through no fault of the supplier, the date upon which the works have been completed in accordance with the quotation or the contract and, in the sole opinion of the supplier, have been ready for use, or 2 (two) months after delivery of the works, whichever is the earlier;
- 1.5.12 **"works"** shall mean all goods, work and services to be provided by the supplier in terms of the quotation or the contract;
- 1.5.13 **"due date"** shall mean: in relation to the supply of goods, the agreed terms from the date of invoice or from the date of statement, on which date goods were supplied and such date appearing on the invoice for the first time; and in relation to the supply of repair services and similar non project type services, the agreed terms from the date of invoice or from the date of statement, on which date repair services and similar non project type services were supplied and such date appearing on the invoice for the first time; and in relation to the supply of other services and/or projects, the agreed terms after the take-over date or, where the take-over date is delayed by the customer or by another contractor having an involvement in the project or as a result of anything else out of the control of the supplier, the agreed terms after the services and/or project have been completed and, in the sole opinion of the supplier, have been ready for use;
- 1.5.14 **"the agreed terms"** shall mean the number of days credit allowed from the date of invoice or from the date of statement, either net or subject to a settlement discount as agreed to in writing by the supplier;
- 1.5.15 **"retentions"** shall mean the withholding of portions of the contract price if so agreed upon between the parties, the purpose of which shall be to ensure the due fulfillment by the supplier of its obligations in terms of the quotation or the contract;
- 1.5.16 **"delivery"** unless inconsistent with, or otherwise indicated by the contents of the quotation or the contract, shall be regarded as taking place;
- a) in the case of delivery ex-stores, to the supplier's premises: when the delivery note is signed by the customer or his representative;
- b) in the case of delivery by rail: when a Rail Consignment Note (accompanied by a set of packing lists or detailed delivery note) is stamped by South African Transport Services;
- c) in the case of delivery through post: when a parcel post receipt or other proof of postal despatch (accompanied by a set of packing lists or detailed delivery note) is stamped by the South African Post Office;
- d) in the case of delivery by air: when an air waybill (accompanied by a set of packing lists or detailed delivery note) is stamped by the air carrier in question;
- e) in the case of delivery to a customer's address in South Africa or an adjoining territory: as per (b), (c) and (d) above, as the case may be but with consignment note, proof of posting or air waybill endorsed "carriage paid". Alternatively when a delivery note is signed by the customer or his authorized representative;
- f) in the case of delivery F.O.B. South African port: when an original bill of lading (accompanied by a set of packing lists or detailed delivery notes) is signed by the carrier;
- g) in the case of delivery C.I.F. to the customer's port of entry, ex South African port: as per (f) above, but with bill of lading (accompanied by proof of insurance cover to port of destination) endorsed "freight paid";
- 1.5.17 **"these terms and conditions"** means this document;
- 1.5.18 **"the OHS Act"** the Occupational Health and Safety Act, No. 85 of 1993, as amended;
- 1.5.19 **"the CPA"** – the Consumer Protection Act, 68 of 2008, as amended;
- 1.5.20 **"the NCA"** – the National Credit Act, 34 of 2005, as amended;
- 1.5.21 **"business day"** any day of the week excluding Saturday, Sundays and public holidays.

## 2. QUOTATIONS

- 2.1 Where the supplier supplies a quotation, no contract between the parties shall exist until acceptance of the quotation by the customer is received in writing by the supplier, together with the official order number of the customer, unless circumstances exist which call for the immediate commencement with the works, in which event the parties shall attempt to conclude the contract as soon as is possible under the circumstances. For the sake of clarity, it is recorded that where a contract exists between the supplier and the customer the terms of such a contract shall prevail over the terms of the quotation, unless otherwise agreed in writing.
- 2.2 If the customer purports to accept any quotation subject to any qualification or to any terms other than those contained in this document and in the quotation, no contract shall come into existence and the supplier shall not be bound until it expressly binds itself in writing to those terms.
- 2.3 Any drawings or information supplied with a quotation or in terms of a contract shall not be transmitted or communicated to any person, whether natural or juristic, who is not subject to the provisions of this document, without the supplier's prior written authority. Ownership of all plans, diagrams and patterns shall remain vested in the supplier and no copies of such shall be made without the supplier's prior written consent.
- 2.4 Unless otherwise stated in a quotation or contract, data such as dates, dimensions, weights, capacities, calculations and quantities specified in a bill of quantities accompanying the quotation or forming part of the contract shall be approximate guides only and unless the correctness of such data is expressly guaranteed by the supplier, such data shall not give rise to any claim or action against the supplier. In the event of actual quantities of goods used by the supplier, or the extent of the services required, exceeding any amounts specified in any quotation, contract or bill of quantities, the customer shall pay any additional costs arising out of the use of such extra goods or services.
- 2.5 The supplier reserves the right to make any reasonable changes to the design or form of any goods ordered provided that the stated performance, quality and specification of the goods remain unaffected.
- 2.6 A quotation provided by the supplier to a customer shall remain valid, and unless withdrawn prior to acceptance, shall be capable of acceptance within the period stated therein, or where no period is stated, for a period of thirty (30) days as calculated from the date of the quotation.
- 2.7 The acceptance of any quotation must be accompanied by sufficient information in writing to enable the supplier to proceed with the execution of the order forthwith, failing which the supplier shall be entitled to amend the quoted process to cover any increases in cost incurred as a result of such delay.
- 2.8 Where a quotation has been given for the sale of goods "ex-stock" and if an order is subsequently received for such goods, there will be no obligation on the supplier to supply such goods if prior to the placing of the order on the supplier, the supplier has sold such goods to a third party.
- 2.9 Unless otherwise stated, quotation and budget prices are estimates only and shall not bind the supplier.

## 3. LIMIT OF CONTRACT

The supplier shall only be obliged to supply the goods and/or services as are specifically quoted for and accepted by the customer.

## 4. PACKING

Unless otherwise specified, all prices contained in a quotation shall include packing in accordance with the standard practice of the supplier.

## 5. CONTRACT COMPLETION, DELIVERY AND CLAIMS IN RESPECT OF GOODS DELIVERED

- 5.1 Delivery of anything to be delivered in terms of a quotation or the contract shall take place upon physical delivery thereof to the addresses referred to in clause 5.2 below, or a mutually agreed storage facility, and the date of such delivery shall be the delivery date for purposes of this contract. In the event that the supplier is ready to deliver and the customer is not ready to accept delivery at the addresses referred to in clause 5.2 below, or, where such delivered goods would be stored is not ready to accept delivery thereof, then the supplier shall store such goods on behalf of the customer in its own storage facilities and shall be entitled to claim from the customer its then prevailing storage charges therefore.
- 5.2 The addresses at which the goods and/or services shall be supplied shall be those addresses specified on the customer's order form.
- 5.3 Delivery shall not include off-loading, unless otherwise agreed, and the customer shall arrange and pay all costs of hiring any special hoists and other lifting equipment, if necessary.
- 5.4 The customer shall ensure that the supplier is given free and unfettered access to the addresses referred to in clause 5.2 above. In the event of the customer not being able to provide such access or in the event of the customer requesting a suspension or delay in performance by the supplier, the supplier shall be entitled to claim from the customer any additional costs incurred by the supplier by virtue of such suspension or delay.
- 5.5 Where applicable, the customer shall prepare any address referred to in clause 5.2 above or where necessary shall procure that such address be prepared, in accordance with the supplier's recommended specifications as contained in the quotation and that all necessary electrical and other installations and fittings are available in accordance with those specifications.
- PLEASE TAKE NOTE:**
- 5.6 **The supplier shall endeavor to complete delivery in the time period specified in the quotation or the contract but shall not incur any liability of any nature whatsoever to the customer in the event of it failing to do so, unless specifically otherwise agreed in writing, the customer's sole remedy in such an event being to cancel such order or unexecuted portion thereof on 7 (seven) days written notice to the supplier.**
- 5.7 **Unless specifically otherwise agreed between the supplier and the customer, where delivery of any works in accordance with a contract is due and the supplier tenders such delivery and the customer refuses to take delivery or is not ready to accept such delivery, delivery shall be deemed to have taken place and the supplier shall have the right, without detracting from any other legal remedies it may have in law, to act as if delivery had taken place and to issue an invoice for payment, which payment shall then become due in accordance with the agreed terms, to store the works at the customer's risk and cost, and to claim whatever costs and/or damages incurred or sustained by the supplier as a result of the customer's refusal or failure to take delivery.**
- 5.8 It is the duty of the customer to inspect the goods on receipt, and by signing the delivery note the customer shall be deemed to have confirmed the receipt of the goods in good order, except to the extent of any damage thereto which is endorsed on the delivery note.
- 5.9 It is agreed that after delivery to and acceptance of the goods by the customer, the customer will inspect and test the goods and that no defective goods may be returned to the supplier for credit more than 7 (seven) days after the delivery date, unless the customer is a consumer who is not excluded from the CPA by virtue of section 5(2)(b) of the CPA, in which event the goods have to be returned within 6 months from the delivery date.
- 5.10 Any goods returned to the supplier due to an error in ordering by the customer will be accepted for credit solely at the discretion of the supplier and will in all cases be subject to a handling charge equal to 10% of the value of the order.
- 5.11 The goods delivered, erected or installed are deemed to be operating satisfactorily unless the supplier receives written notification to the contrary from the customer within 7 (seven) days after the delivery, erection or installation of the goods, as the case may be, and the customer returns same to the supplier within such period, provided that where the customer is a consumer who is not excluded from the CPA by virtue of section 5(2)(b) of the CPA, the goods have to be returned within 6 months from the delivery date.
- 5.11 All goods returned to the supplier must be recorded on a goods returned by customer document.

## 6. PRICES, PAYMENTS, CREDIT LIMITS AND FINANCIAL CIRCUMSTANCES

- 6.1 The price for a specific contract or order shall be as reflected in the quotation, or as agreed and/or amended by the parties in writing.
- 6.2 In the event of a variation or suspension of work at the instance of the customer or as a result of a lack of instruction by the customer or as a result of delay caused by force majeure circumstances, the supplier shall be entitled to increase the contract price by a sum of money sufficient to cover the extra expenses incurred or sustained by it as a direct or indirect consequence of such variation or suspension or delay.
- 6.3 Unless otherwise agreed, payment terms shall be either payment against invoice or statement or progress payments whichever is specified in the quotation or the contract, and if progress payments are in force payment intervals and the basis of calculation of such payments will be those as set out in the quotation or the contract.
- 6.4 Unless otherwise agreed in writing between the parties, prices shall generally be payable on the due dates reflected in the quotation or the contract, absent which shall be the dates defined in clause 1.5.13.

**PLEASE TAKE NOTE:**

- 6.5 **Without prejudice to any of the rights of the supplier, if any payment is not made on the due date it shall bear interest which is three percentage points above the prime interest rate charged on short term loans and facilities by the supplier's bankers as they may be from time to time, which interest shall be calculated from the date any such payment falls due until it is paid, compounded monthly in advance.**
- 6.6 **The supplier shall be entitled, in its sole and absolute discretion, to appropriate any payments received on account of the customer's indebtedness to any indebtedness whatsoever of the customer to the supplier.**
- 6.7 In the event of the customer disputing any amounts due by it to the supplier, which dispute must be bona fide then the customer shall only be entitled to withhold payment of that amount in dispute and shall not be entitled to withhold the full payment then due by it to the supplier.
- 6.8 A certificate produced and suitably signed by the supplier, detailing the invoice numbers, invoice dates, invoice amounts due, the interest rate applicable in terms hereof and the interest payable, shall be prima facie proof of the facts stated in such a certificate and will be binding upon the customer for purposes of obtaining summary judgment against the customer.
- PLEASE TAKE NOTE:**
- 6.9 **Should the customer at any stage default in the observance of any of the payment terms hereof, the supplier shall be entitled to claim the full amount then owing by the customer to the supplier, notwithstanding the fact that such amount may not at the time be due and payable.**
- 6.10 The supplier reserves the right to make partial deliveries against any order and the customer shall make payment in respect thereof, as stipulated in the quotation or the contract.
- 6.11 Notwithstanding any other provision herein or elsewhere included, unless otherwise specifically agreed to be the supplier in writing, the supply of all goods to the customer by the supplier shall be subject to an agreed credit limit, which is subject to the successful granting of credit insurance cover by the relevant insurer, contracted to the supplier in this regard and as such may be subject to change in accordance with any change in such insurance cover from time to time. Once the agreed credit limit is reached or exceeded (as the case may be) and notwithstanding any agreed payment terms to the contrary, the supplier shall be entitled to demand payment by the customer of such amount that will in the supplier's sole discretion be necessary to reduce the outstanding balance on the customer's account after delivery of the relevant goods to an amount less than or equal to the agreed credit limit. The supplier shall be entitled to suspend the supply and delivery of all goods to the customer until such payment is received. The supplier shall not have any liability of any nature whatsoever towards the customer as a result of any such suspended supply and delivery of the goods.

**7. OWNERSHIP**

- 7.1 The ownership in all goods sold, delivered or in any other way made available to the customer by the supplier shall remain vested in the supplier until the customer has made full payment of the contract price for such goods.
- 7.2 The supplier shall have the right at any time to give notice of its continued ownership in the goods to every possessor and every landlord of premises in or on which the goods are stored or may be placed or installed, whether for sale, repair, assembly or otherwise.
- PLEASE TAKE NOTE:**
- 7.3 **Without prejudice to any of its rights in terms of this document or the law, the supplier reserves the right to repossess goods in the event of the customer failing to make any payment on due date or at all.**
- 7.4 Payment will only be acknowledged when the relevant deposit is acknowledged by the supplier's bankers as having been deposited into the supplier's bank account by the supplier or the customer.
- 7.5 It is the responsibility of the customer to ensure that payments are either deposited directly into the supplier's bank account (supported by adequate detail to identify the deposit) by due date or received at the supplier's domicilium citandi et executandi or physical address as identified in clause 24.1 of this documents in time for the supplier to bank the monies into the supplier's bank account by due date.
- 7.6 The customer is obliged to advise the supplier in writing of any change in ownership or control of the customer including the sale of the customer's business or any part thereof, failing which the customer indemnifies and hold the supplier harmless for any loss, damage claim or expense that the supplier may incur as a result of any change of ownership or control, including but not limited to, any loss sustained by the supplier as a result of continuing the grant of credit facilities. It was specifically recorded that the intention of the supplier is not to continue to grant credit facilities in the event of a change of ownership or control of the customer.

**8. RISK**

- 8.1 The risk in the goods or any portion of the works shall pass from the supplier to the customer upon delivery, or deemed delivery in accordance with clause 5.7, of the goods or relevant portions of the works to the customer or its agent.
- 8.2 In the event of any goods being repossessed by the supplier, the customer shall be liable for any damage sustained to the goods, from the time the goods were delivered by the supplier to the customer until such time the goods were repossessed by the supplier.

**9. LIABILITY FOR DELAY AND EXTENSIONS**

Any times quoted for delivery are dependent upon receiving of all necessary information to enable the supplier to commence work and to proceed therewith without interruption. Whenever any delay is caused by any instructions, or the lack thereof, by the customer, or as a result of industrial dispute or force majeure or any other cause whatsoever beyond the reasonable control of the supplier, the time for delivery shall be extended by a reasonable period in the circumstances.

**10. PERFORMANCE, INSPECTION AND TESTS**

- 10.1 Any performance figures given by the supplier are based upon the supplier's experience and are such as the supplier expects to obtain on testing at its premises. The supplier accepts no liability for damage or failure to attain such figures unless specifically guaranteed performance figures subject to the recognized tolerance applicable to such figures have been given, in which event the supplier's liability shall be limited to the amount specifically so agreed with the customer prior to the acceptance of the order. The customer bears the sole responsibility should the performance of the works that were supplied be in accordance with the customer's specification and requirements but are nevertheless found not to be performing in accordance with what is required there from.
- 10.2 The supplier's works are carefully inspected and, where practicable, submitted to standard tests at the supplier's factories and/or warehouses before dispatch. If tests other than those specified in the quotation or tests in the presence of the customer's representative are required, these will be charged for in accordance with the supplier's standard tariffs then in force. In the event of any delay on the part of the customer to attend such tests after three (3) days' notice in advance of the tests being concluded, the tests will proceed in the absence of the customer and shall be deemed to have been made in its presence.

**11. WARRANTY**

- 11.1 The supplier warrants that the goods supplied by it will be safe, free from defects in materials, parts, design and workmanship, that they will be reasonably suitable for the purposes they are generally intended for, and that the goods will operate fault-free and safely under normal operating conditions for a reasonable period after delivery, which the customer hereby specifically agrees shall be for a period not in excess of 12 (twelve) months after delivery of the goods to it.
- 11.2 The supplier will repair or replace at its own cost any goods that don't comply with the warranties contained in clause 11.1 above or which fail within the agreed warranty period. Any repaired or replaced goods shall be subject to a further 3 (three) month warranty period.
- 11.3 The supplier shall have no liability in terms of the warranties contained in clause 11.1 above in the event that:
- 11.3.1 the characteristic, failure, defect or hazard that is alleged to be in breach of the warranties did not exist at the time of supply;
  - 11.3.2 the goods have been altered or tampered with by the customer without the approval of the supplier;
  - 11.3.3 the goods have been used under wrong operating conditions or for purposes not intended or have been abused by the customer;
  - 11.3.4 the customer has failed to properly take care of and maintain the goods; or
  - 11.3.5 the customer has failed to comply with any usage – and/or operating instructions provided by the supplier in respect of the goods.
- 11.4 The supplier's liability in terms of the warranties provided by it shall under no circumstances exceed the invoiced selling price of the goods.
- PLEASE TAKE NOTE:**
- 11.5 **The warranties contained in this clause 11 are the sole and entire warranties applicable to the goods and no other warranties, express or implied by conduct or common law, shall apply.**

## 12. LIMITATION OF LIABILITY

- 12.1 NOTE: The supplier's sole obligations and responsibilities to the customer in relation to the goods shall be in terms of the warranties as set out in clause 11, and furthermore, insofar as the relevant transaction is subject to the provisions of section 61 of the CPA, to indemnify the customer against and to hold the customer harmless from, any harm arising from the death or personal injury suffered by the customer, and from the loss of or physical damage to property belonging to the customer, caused by the goods supplied by the supplier, subject to the limitations and/ or exclusions and/or effects of sub-sections 61(4) and 61(6) of the CPA.
- 12.2 The supplier shall under no circumstances be liable towards the customer for any other losses, damages or harm of whatsoever nature, irrespective of whether such losses, damages or harm may have been caused by the fault of the supplier provided the supplier is not guilty of gross negligence.
- 12.3 The supplier's total cumulative liability to the customer shall under no circumstance exceed the greater of the value of items for which the supplier may be held liable in terms of the warranties referred to above together with the liabilities provided for in clause 12.1, and the invoiced selling price of the goods, provided that the supplier shall under no circumstances be liable for any indirect or consequential damage, including but not limited to loss of income, loss of revenue, loss of profits and any other economic loss, except to the extent caused by its gross negligence.
- PLEASE TAKE NOTE:
- 12.4 THE CUSTOMER, BY ACCEPTING THE GOODS SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, ACKNOWLEDGES THAT THE CONTENTS OF THIS CLAUSE 12, INCLUDING THE LIMITATIONS CONTAINED HEREIN, HAVE BEEN SPECIFICALLY POINTED OUT BY THE SUPPLIER AND DRAWN TO THE ATTENTION OF THE CUSTOMER, THAT THE CUSTOMER HAS READ IT AND THAT IT FULLY UNDERSTANDS AND APPRECIATES THE IMPLICATIONS OF THIS CLAUSE 12, THAT IT HAD SUFFICIENT TIME TO CONSIDER THE ACCEPTABILITY OF THIS CLAUSE 12 BEFORE IT ENTERED INTO THE TRANSACTION OF PURCHASE WITH THE SUPPLIER, AND THAT NOTWITHSTANDING THE PROVISIONS OF THIS CLAUSE 12 IT FREELY AND VOLUNTARILY DECIDED TO PROCEED WITH THE TRANSACTION TO WHICH THIS CLAUSE 12 APPLIES.

## 13. RELIEF FROM DUTIES UNDER THE OHSA

- 13.1 The customer undertakes to take such steps as are sufficient, necessary and reasonably practicable in order to ensure that the goods supplied in terms of a quotation or contract, will be safe and without risks to health when properly used, and will comply with the requirements of section 10 of the OHSA and herewith releases the supplier from any duties imposed on the supplier by section 10 of the Act.
- 13.2 The supplier shall under no circumstances assume any liability for any health and safety hazards arising out of the misuse or abuse of the products manufactured, sold, imported or supplied by the supplier.

## 14. DUTIES UNDER THE CPA

In the event that the customer will not be the end user of the goods and will on-supply the goods to third party users, the following shall apply:

- 14.1 The customer is familiar with the provisions of the CPA insofar as the supply of goods or services to "consumers", as defined in the CPA, is concerned, and the customer hereby agrees to comply with all the provisions of the CPA insofar as they relate to such "consumers".
- 14.2 Without detracting from the generality of the provisions of clause 14.1, the customer hereby undertakes with specific reference to sections 49 and 58 of the CPA, to provide "consumers" with all such notices as may be required in terms of the aforesaid sections 49 and 58, and to provide same in the manner and format prescribed by the CPA.
- 14.3 The customer hereby indemnifies and agrees to hold the supplier harmless from, any claims, losses or liability made against, suffered by or established by any third party end user against the supplier, based upon or founded in the failure by the customer to comply with the provisions of the aforesaid sections 49 and 58.

## 15. ACCEPTANCE CERTIFICATES

- 15.1 At the delivery of goods and/or the completion of the works or phases thereof the customer shall be required to sign an acceptance certificate in accordance with the provisions of this clause.
- 15.2 The acceptance certificate shall state in clear terms to what portion of any work performed by the supplier the certificate relates, and shall state clearly the matters set out in clause 15.3 hereunder. The acceptance certificate shall be signed and dated by the authorized representative of the customer.
- 15.3 In the event that the works form part of a phase of a bigger project which is dependant upon any work and/or services to be performed by a third party, the customer shall not be entitled to refuse or delay the signing of an acceptance certificate relating to the supplier's works, and shall be obliged to sign an acceptance certificate stating that although that phase is not completed, the supplier's works have been completed to the satisfaction of the customer. Should in such an event any testing of anything provided by the supplier be required but could only be done after the completion of a phase, the acceptance certificate so given shall state that it is subject to and dependant on the results of any such tests undertaken after the completion of the phase.

## 16. RETENTIONS

No retentions shall apply to any contract unless specifically agreed between the parties in writing and the customer shall under no circumstances be entitled to retain any portions of the contract price.

## 17. GENERAL PRICE VARIATION

- 17.1 Any price quoted is subject to adjustment in accordance with the provisions of this clause.
- 17.2 Unless otherwise stated in the supplier's quotation or the contract the amount of all duties, taxes or other charges applicable to the works shall be borne by the customer.
- 17.3 Quoted prices are based on the cost of material, transport, exchange rates and labour ruling at the date of the supplier's quotation and, unless otherwise stated, if between that date and the date of delivery variations occur in these costs, then quoted prices shall be amended to provide for these variations, the detail of which will be written into the supplier's quotation or the contract. Such variations shall be calculated in accordance with the following formula.

$$P = \frac{P_Q}{100} * \left[ 10 + l * \frac{L_{D-2}}{L_Q} + m * \frac{M_{D-2}}{M_Q} \right]$$

In which the symbols have the following meaning:

- P = Final contract price; P<sub>q</sub> = quoted price;
- l = specified percentage of the quoted price representing proportion to be adjusted on the basis of the percentage increase or decrease in the SEIFSA index of labour cost;
- L<sub>q</sub> = SEIFSA Index of Labour Cost at the date of tender.
- L<sub>d-2</sub> = SEIFSA Index of Labour Cost at a date two months prior to the date when the goods are ready for despatch;
- m = specified percentage of the quoted price representing proportion to be adjusted on the basis of the percentage increase or decrease in the relevant price index and/or price of materials;
- M<sub>q</sub> = SEIFSA index of mechanical and/or electrical engineering materials and/or price of materials at the date of tender;
- M<sub>d-2</sub> = SEIFSA index of mechanical and/or electrical engineering materials and/or price of materials at a date two months prior to the date when the goods are ready for dispatch. This includes substantiated re- or devaluation of international currencies.

## 18. COST CONTAINMENT

- 18.1 In order to assist the customer and to contain the cost of any imported goods to be supplied in terms hereof, the supplier is prepared to arrange forward cover on the customer's behalf.
- 18.2 Should the customer wish to avail itself of this benefit, it shall indicate to that effect in writing at the time of acceptance of the supplier's quotation.

- 18.3 In the event of a customer availing itself of this benefit, the supplier undertakes to provide a forward cover rate for indication purposes only which is inserted in the relevant forward cover section of the quotation.
- 18.4 On being informed by the customer that it wishes to avail itself of this benefit, the supplier undertakes to enter into a forward exchange contract for the benefit of the customer within 4 (four) business days from the customer accepting the quotation. The rate of exchange per the actual forward exchange contract will be confirmed to the customer in writing by fax, post or any other form of communication as soon as it is known.
- 18.5 The supplier shall invoice the customer at the rate of exchange confirmed to the customer as per clause 18.4 above.
- 18.6 The parties record that nothing in this clause contained shall impose any obligations on the supplier should forward cover not be available to the supplier for any reason whatsoever. Furthermore any obligation of the supplier shall be subject to the exigencies pertaining to the procurement of forward cover on a normal commercial basis from time to time and the parties specifically record that such cover is presently only available for a maximum period of 12 (twelve) months.
- 18.7 In the event that the customer elects not to arrange the forward cover as referred to in this clause 18, then the supplier shall be entitled to recover from the customer the difference between the quoted prices of any imported goods, and the prices that are paid by the supplier to whomever such goods were sourced from.

## 19. PENALTIES

- 19.1 The supplier shall not be liable for the payment of penalties unless specifically so agreed between the parties in writing.
- 19.2 Where penalties are agreed between the parties, the amount of penalties shall be calculated on the value of the outstanding portion of the works only.

## 20. LAW TO APPLY

This agreement shall be governed by and construed in accordance with South African law.

## 21. BREACH

- 21.1 This agreement shall be deemed to be breached by any party if that party is placed into liquidation in terms of the Insolvency Laws operating in the Republic of South Africa, or in the case of any judicial management of that party or compromise by that party with its creditors, and may under such circumstances immediately be terminated by the one party by registered letter sent to the other party informing it of the termination of the agreement.
- 21.2 Should either party commit a breach of any provision of this agreement and fail to remedy such breach within 14 (fourteen) days of receiving written notice from the other party requiring it to do so, then the party aggrieved by such breach shall be entitled, without prejudice to its other rights at law, to claim specific performance of all the defaulting party's obligations, whether or not such obligations would otherwise have fallen due for performance or to claim cancellation of this contract, in either event without prejudice to its right to claim damages, and who shall be entitled to claim payment of any legal costs incurred from the other party on an attorney and client scale.

## 22. FORCE MAJEURE

- 22.1 Neither party will be liable to the other for any failure, delay or default in the performance of its obligations under this agreement, if and to the extent that such failure, delay or default is caused by *vis major* including, (without detracting from any other events covered by the rules and principles relating to *vis major*), *casus fortuitus*, acts of God, strikes, lock-out, fire, riot, flood, drought, state of emergency), inability to secure power or materials or supplies, embargoes, export control, international restrictions, shortage of transport facilities, any order of any international authority, any requirements of any authority or other competent local authority, war (whether declared or not), civil disturbance, any circumstances beyond its reasonable control, Court order, or failures, shortages, interruptions or fluctuations in electrical power, water supply or communications (collectively, "Circumstances of *Vis Major*").
- 22.2 On the occurrence of any Circumstances of *Vis Major*, the party disabled thereby shall;
- 22.2.1 as soon as reasonably possible, notify the other party thereof by whichever means available and if possible thereafter, confirm the notification in writing;
- 22.2.2 be released from further performance or observance of its obligations so affected for so long as such Circumstances of *Vis Major* prevail;
- 22.2.3 continue to endeavor to re-commence performance or observance whenever and to whatever extent reasonably possible without delay; and
- 22.2.4 co-operate with the other party in implementing such contingency measures as the other party may reasonably require, until the Circumstances of *Vis Major* cease.
- 22.3 Should the Circumstances of *Vis Major* continue or be likely to continue for any unreasonable long time, having regard to the nature of the affected obligation or obligations and the surrounding circumstances, then either party shall be entitled to terminate this agreement by giving written notice to the other party to that effect, subject to any other provisions contained in this agreement dealing with rights and obligations arising from termination, including but not limited to the payment of cancellation fees.

## 23. DISPUTE RESOLUTION

- 23.1 Subject to 23.12, if any dispute arises out of or in connection with this agreement, or related thereto, whether directly or indirectly, the parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of arbitration. The reference to negotiation and mediation is a precondition to the parties having the dispute resolved by arbitration.
- 23.2 Without derogation from the meaning of the word "dispute", which word shall be interpreted widely, it shall be regarded as a dispute for the purpose of this clause if one party addresses to the other party any notice in terms of this agreement or dealing with any matter related, directly or indirectly, to this agreement including its alleged breach, cancellation or termination which notice calls either for remedy of any breach or for a response to that notice and, after the lapse of time specified in this agreement for remedy or response, (or, in the absence of any such specified time, a period of 7 (seven) days from the date of receipt of the notice, the party which gave the notice alleges that no or inadequate remedy has occurred or that no or inadequate response has been received. A dispute within the meaning of this clause exists once one party notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.
- 23.3 Within 10 (ten) business days following such notification, the parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the parties for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.
- 23.4 In the event of the negotiation between the designated representatives not resulting in an agreement signed by the parties resolving the dispute within 15 (fifteen) business days, the parties must refer the dispute for resolution by way of mediation in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA").
- 23.5 In the event of the mediation envisaged in 23.4 failing in terms of the rules of AFSA, the matter must, within 15 (fifteen) business days, be referred to arbitration as envisaged in the clauses below. Such arbitration will be final and binding and will not be subject to an appeal unless the parties expressly agree otherwise.
- 23.6 The periods for negotiation or mediation may be shortened or lengthened by written agreement between the parties.
- 23.7 Each party agrees that the arbitration will be held as an expedited arbitration in Sandton in accordance with the then current rules for expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the parties. If the parties cannot agree on the arbitrator within a period of 10 (ten) business days after the referral of the dispute to arbitration, the arbitrator and, if applicable the appeal arbitrators, shall be appointed by the Secretariat of AFSA.
- 23.8 Unless specifically otherwise agreed in writing, the arbitration proceedings, including the outcome thereof, will be done on the basis that it is confidential between the parties and will not be made public.
- 23.9 The provisions of this clause 23 shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or *mandamus* pending finalisation of this dispute resolution process for which purpose the parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.
- 23.10 The references to AFSA shall include its successor or body nominated in writing by it in its stead.
- 23.11 This clause is a separate, divisible agreement from the rest of this agreement and shall remain in effect even if the agreement terminates, is nullified or cancelled for whatsoever reason or cause.

- 23.12 Notwithstanding the foregoing provisions of this 23, where the dispute solely revolves around the payment of outstanding moneys allegedly due and owing to the supplier of goods delivered or services performed, such dispute may, at the sole discretion of the supplier and subject to the preceding processes of negotiation and mediation referred to in 23.1, be dealt with through courts having jurisdiction.
- 23.13 The provisions of this clause 23 shall not detract from, and shall be subject to, the customer's rights in terms of section 69 of the CPA to enforce any rights through the mechanisms created by the CPA.

#### 24. DOMICILIUM

- 24.1 The parties choose as domicilium citandi et executandi and for the delivery of all notices arising out of this agreement or its termination or cancellation, the addresses set out below:
- 24.1.1 the supplier at the physical address that appears on the supplier's official letterheads and/or statements;
- 24.1.2 the customer at the physical address specified in the application for credit facilities or any contract concluded between the parties.
- 24.2 Either party shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 24.3 Any notice given and any payment made by any party to any other ("the addressee") which:
- 24.3.1 is delivered by hand during normal business hours of the addressee at the addressee's domicilium shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
- 24.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium shall be deemed, until the contrary is proved by the addressee, to have been received on the seventh day after the date of posting;
- 24.3.3 is sent by facsimile machine shall be deemed, until the contrary is proved by the addressee, to have been received within 1 (one) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day (excluding Saturdays) where it is transmitted outside such business hours.
- 24.4 No provision of this domicilium clause shall be taken as affecting the validity of any notice which is actually received by any party, whether at its domicilium or not and whether delivered in terms of the express provisions of this domicilium clause or not and any notice which is actually received by any party shall be deemed to be notice validly given.

#### 25. CANCELLATION OF ORDERS

Notwithstanding anything contained in this agreement, where the customer seeks to cancel any order placed on the supplier for any reason whatsoever, excluding breach of the agreement on the part of the supplier, then, subject to the supplier agreeing to such cancellation in writing, the customer shall be liable towards the supplier for a cancellation fee equivalent to the higher of 5% (five percent) of the value of the cancelled order or the actual cost incurred by the supplier in the procurement of materials and/or goods as well as for other expenses necessarily incurred in connection with the execution or planned execution of the order.

#### 26. REQUIRED STANDARDS AND PRINCIPLES OF ETHICAL BUSINESS CONDUCT

- 26.1 Altron, the ultimate holding company of the supplier adheres to the highest levels of lawful, ethical and responsible business conduct and it requires its subsidiaries, as well as suppliers, customers and stakeholders of the Altron group, in their interaction with the Altron group, to adhere to similar principles.
- 26.2 The customer is referred to the following documents that can be viewed on Altron's public internet website at [www.altron.com](http://www.altron.com):
- The Altron Corporate Compliance Policy
  - The Code of Ethics for the Altron Group
  - The Corporate Gifts and Entertainment Policy for the Altron Group.
- 26.3 The customer confirms that it has read and that it understands the above mentioned policies and that it fully subscribes to the principles of ethical business conduct as are expressly or implicitly dealt with in the said policies. For the sake of clarity, the relevant principles are summarized as follows:
- Fair competition and avoidance of anti-competitive conduct
  - Integrity in business dealings – no corruption or bribery
  - Sustainability – no inappropriate risks for human health and the environment
  - Equal opportunities in securities trading – no insider trader
  - Proper record keeping and accurate financial reporting – no deception
  - Respecting the legal rights of others – no infringement of intellectual property rights
  - No conflicts of interest between business and personal rights
  - Cooperation with the authorities – no misinformation
  - Compliance with laws, regulations, rules and standards
  - Observance of ethical obligations without causing harm other than by fair commercial competitive practices
  - Not to supply defective or dangerous products
  - Not to improperly induce or influence someone by the provision of gifts, entertainment or other gratification
  - To report any events or suspected events of bribery, corruption, improper inducement or influencing, or any other unlawful conduct.
- 26.4 The Altron group distances itself from any conduct that deviates from the principles referred to in 26.3 above and it reserves its right not to deal with any party whose conduct is contrary to these principles. The supplier hereby reserves the right to terminate this agreement forthwith in the event that any information comes to its attention which causes it to conclude, in its sole opinion, that in its conduct towards the supplier in terms of or in connection with this agreement the customer has engaged in an act or omission which constitutes a material breach or disregard of the above mentioned principles of ethical business conduct. Such information shall be justified and lawful and shall be capable of giving rise to any damages claims against or any other liability for the supplier.

#### 27. GENERAL

- 27.1 No alteration of, variation of, or addition to this agreement shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorized representatives.
- 27.2 Subject to clause 27.1 above, this document contains the sole and entire record of the agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law.
- 27.3 No indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 27.4 Neither party may cede its rights or delegate its obligations in terms of this agreement without the prior written approval of the other party, save that the supplier may cede its rights or delegate its obligations (or both) to any member company of the Altron Group as is constituted by Allied Electronics Corporation Limited and its subsidiaries including Power Technologies (Proprietary) Limited and its subsidiaries.
- 27.5 Any person who signs any credit application form or order or document on behalf of the customer warrants that he/she is authorized thereto by the customer.
- 27.6 These Standard Terms and Conditions of Sale, Tender and Granting of Credit/Other Account Facilities form part of the application for credit facilities and the signatory or signatories thereto acknowledge that they have read, agreed and irrevocably accept and understand the Standard Terms and Conditions of Sale, Tender and Granting of Credit Facilities.
- 27.7 The supplier shall be required to issue letters of demand and institute legal proceedings as required in terms of its credit insurance policy and this fact shall be highlighted in all relevant correspondence to the customer or his authorized representative.
- 27.8 In the event of an order being placed on the official order form of the customer, the customer shall be precluded from denying the validity of such order, notwithstanding the fact that such order may have been signed by a person not authorized to do so.
- 27.9 You, the customer, hereby authorize the supplier, subject to the provisions of the NCA and the regulations issued subsequent thereto, to transmit any details contained in this document (including personal details if applicable), as well as any information relating to your performance in meeting your obligations in terms of any agreement and/or transaction concluded between you and the supplier, to any credit bureau registered in terms of the NCA. You furthermore hereby acknowledge and agree that such credit bureau may, in the normal course of its business, share any such information with any of its customers and other credit providers registered in terms of the NCA, for the Prescribed Purposes (as defined in terms of the Regulations published in Government Gazette No. 8477, Notice 28864).