

Terms and Conditions of Sale

1. **Credit terms**

- 1.1** THE APPLICANT agrees that any amount reflected in a Tax Invoice shall be due and payable unconditionally (a) Cash on Delivery; or (b) if THE APPLICANT is a Credit Approved Customer, within 30 days from the end of the month in which a Tax Invoice has been issued by B & E INTERNATIONAL. Settlement is effected only on receipt of cash or due honour of cheque or similar payment instrument and shall be made to B & E INTERNATIONAL free of exchange and without deductions of any nature. Any credit facilities granted to THE APPLICANT by B & E INTERNATIONAL is entirely at the discretion of B & E INTERNATIONAL, and may be withdrawn at any time.
- 1.2** THE APPLICANT agrees to accept the receipt of electronic format statements, tax invoices, shipment documents (proof of delivery), credit and debit notes from B & E INTERNATIONAL, which will be transmitted via email, and the following conditions thereto as required by South African Revenue Services and in terms of the provisions of the Value-Added Tax Act for the issuing of tax invoices, credit and debit notes:
- 1.2.1** Electronic documents (tax invoices, credit and debit notes) will be transmitted and issued to THE APPLICANT in 128bit encrypted PDF file format.
- 1.2.2** Both THE APPLICANT and B & E INTERNATIONAL shall retain the electronic documents in its original encrypted format for a period of five years from the date of the delivery to which it relates.
- 1.2.3** The transmitted electronic document will constitute the original statement, tax invoice, credit or debit note. No other tax invoice, credit or debit note will be issued in respect of any specific delivery, unless as a copy of the original document.

2. **Change of address**

THE APPLICANT undertakes to notify B & E INTERNATIONAL in writing within 7 (seven) days of any change of address.

3. **Change of ownership**

THE APPLICANT undertakes to notify B & E INTERNATIONAL, in writing, within twenty days of any change in Ownership of THE APPLICANT'S business, or should THE APPLICANT be a company, of its share transactions whereby the majority shareholding is affected. THE APPLICANT acknowledges that immediately upon any change of Ownership in THE APPLICANT any outstanding amount whether due or not shall be deemed to be forthwith payable by THE APPLICANT to B & E INTERNATIONAL.

4. **Domicilium**

THE APPLICANT and the signatory hereto chooses Domicilium Citandi et Executandi (in other words, the address at which the Applicant and the signatory will accept all notices, legal documents and the like, whether or not the Applicant and/or the signatory is still at the address chosen) for all purposes arising out of this application at the physical address stipulated in Section A, clause 3.2 of this application.

5. **Consent to sharing information and retention periods**

- 5.1** For the purposes of making credit risk management decisions and preventing fraud, THE APPLICANT hereby warrants that B & E INTERNATIONAL has consent to:-
- 5.1.1** Carry out a credit enquiry on THE APPLICANT and the Directors/Members/Partners/Trustees/Principals of THE APPLICANT from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors (trade references) of THE APPLICANT'S in terms of this agreement.
- 5.1.2** B & E INTERNATIONAL may transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT'S of how THE APPLICANT has performed in meeting his/her/its obligations in terms of this agreement.
- 5.1.3** If THE APPLICANT fails to meet his/her/its commitments to B & E INTERNATIONAL, B & E INTERNATIONAL may record THE APPLICANT 'S non-performance with credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT.
- 5.2** Such information shall be retained for periods as stipulated in any applicable law, but no longer than the duration of the validity of this agreement. Where THE APPLICANT has not used a facility under this agreement for 12 months, THE APPLICANT will be required to re-apply for such a facility.

6. **Pricing increments**

Prices quoted by B & E INTERNATIONAL are determined from time to time and are subject to increases, at the discretion of B & E INTERNATIONAL. B & E INTERNATIONAL shall be entitled to increase the cost of goods delivered or services rendered to THE APPLICANT with prior written notice.

7. **Valid orders**

In the event of any order being given to B & E INTERNATIONAL on an order form reflecting THE APPLICANT'S name as the entity from which the order emanates, such order shall be deemed to have emanated from THE APPLICANT, notwithstanding the fact that such order may have been given or signed by a person not authorised by THE APPLICANT, and such order will be deemed to constitute valid delivery. It is further the sole responsibility of THE APPLICANT to determine that goods ordered are suitable for the purposes of the intended use.

8. **Delivery**

- 8.1** THE APPLICANT agrees that the signature of any agent, contractor, sub-contractor or employee of THE APPLICANT on B & E INTERNATIONAL'S official delivery note/invoice/waybill, or the delivery note of any authorised independent carrier will constitute valid delivery of the goods purchased.
- 8.2** Any delivery date stated on any order confirmation is approximate only. B & E INTERNATIONAL shall not be bound by that date, but will make all reasonable efforts to deliver by that date.
- 8.3** Whilst B & E INTERNATIONAL will endeavour to ensure that goods are delivered timeously, it shall not be responsible for any delays in the delivery of such goods, and THE APPLICANT shall not be entitled to refuse acceptance of such late deliveries.
- 8.4** The risk in and to the goods shall pass from B & E INTERNATIONAL to THE APPLICANT at the time of delivery notwithstanding that ownership will not pass to THE APPLICANT until full payment of the purchase price. Delivery shall be deemed to have taken place against signature of B & E INTERNATIONAL'S delivery note, proof of posting if the goods are posted to THE APPLICANT or delivery to the South African Transport Services or Road Carrier if the goods are railed or transported by B & E INTERNATIONAL. The Post Office/South African Transport Services or Road Carrier shall act as the agent of THE APPLICANT.

9. **Copyright**

THE APPLICANT acknowledges B & E INTERNATIONAL'S intellectual property rights in the goods and shall not infringe such intellectual property rights.

10. **Payment to B & E INTERNATIONAL**

B & E INTERNATIONAL does not appoint the Post Office as its agents for payments by post. All payments shall be made to B & E INTERNATIONAL'S place of business from where the goods were ordered. In the event of any payments being mislaid; lost in the post; or transferred to the incorrect banking account THE APPLICANT shall still be liable to B & E INTERNATIONAL for payment. Should B & E INTERNATIONAL at any time advise THE

APPLICANT of any change to B & E INTERNATIONAL'S banking account details THE APPLICANT shall confirm such change with a Manager of B & E INTERNATIONAL before effecting any further payments, provided however that nothing contained herein shall be interpreted as obliging B & E INTERNATIONAL to afford THE APPLICANT any such indulgence to effect payment after due date.

11. Reservation of ownership

Until such time as THE APPLICANT has paid the purchase price in full in respect of any purchase of goods, the ownership in and to all such goods shall remain vested in B & E INTERNATIONAL. B & E INTERNATIONAL shall, in its sole discretion, without notice to THE APPLICANT, be entitled to take possession of any such goods which have not been paid for and in respect of which payment is overdue, in which event THE APPLICANT shall be entitled to a credit in respect of the goods so returned being the price at which the goods are sold or the value thereof as determined by B & E INTERNATIONAL. THE APPLICANT hereby waives any right it may have for a spoliation order against B & E INTERNATIONAL in the event that B & E INTERNATIONAL takes possession of any goods.

12. Responsibility for losses, damages or delays

B & E INTERNATIONAL will not be in any way responsible for losses; consequential losses; damages or delays sustained by THE APPLICANT, irrespective of whether this is caused by or arising from any error; discrepancy; defect on specifications; measurements or other instructions; natural disasters, unavoidable accidents of any kind, acts of the State's enemies, riots, lockouts, cessation of labour, transport delays, shortened hours of labour, insurrection, war, the imposition of any trade boycotts or sanctions of trade restrictions by any government, authority, company or organisation or person or persons, whether within the Republic of South Africa or anywhere else, or any other cause or contingency whatsoever beyond the control of B & E INTERNATIONAL.

13. Defaulting in payment

In the event of THE APPLICANT defaulting in making payment of any amount that has become due and owing, then the full balance outstanding (whether due or not) will immediately become due and payable without notice to THE APPLICANT.

14. Interest on overdue accounts

B & E INTERNATIONAL shall be entitled to charge THE APPLICANT interest at the rate of **2%** (two percent) per month from the moment any debt becomes overdue, provided however that nothing contained herein shall be interpreted as B & E INTERNATIONAL affording THE APPLICANT any indulgence to make payment after due date.

15. Proof of Claims

A certificate signed by a manager or any director of B & E INTERNATIONAL - whose position and signature shall not be necessary to prove - reflecting the amount owing by THE APPLICANT to B & E INTERNATIONAL, in respect of any credit facilities granted to THE APPLICANT relating to THE APPLICANT'S dealings with B & E INTERNATIONAL, and of the fact that such amount is due, owing and unpaid shall be considered as adequate proof – on its mere production – of the outstanding amount for the purpose of any action (whether by way of provisional sentence or otherwise), proof of debt on insolvency or for any purpose whatsoever where the amount of such claims is required to be established, and it shall rest with THE APPLICANT to prove that such amount is not owing and/or due and unpaid.

16. Arbitration

16.1 Any dispute or deadlock between the parties pursuant to this agreement must be referred to arbitration in terms of the rules and regulations of the Arbitration Foundation of South Africa (hereinafter referred to as AFSA).

16.2 This clause shall not prevent a party from obtaining relief on an urgent basis from a competent Court, pending the decision of the arbitrator.

16.3 The arbitrator shall, if the matter in dispute is principally –

16.3.1 A legal matter, be a practicing Counsel or a practicing attorney of not less than 10 (ten) years standing;

16.3.2 An accounting matter, be a practicing chartered accountant of not less than 10 (ten) years standing;

16.3.3 Any other matter, be an independent person qualified to adjudicate upon such matter;

and shall be agreed to between the parties in dispute.

16.4 Should the parties to a dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after arbitration has been demanded, the matter shall be considered to be a legal dispute.

16.5. Should the parties fail to agree upon an arbitrator within 14 (fourteen) days after the arbitration has been demanded, then the arbitrator shall be appointed at the request of either parties to the dispute by AFSA.

16.6. The parties irrevocably agree and undertake with each other that any award that may be made by the arbitrator:

16.6.1. Shall be final and binding upon them;

16.6.2. Will be carried into effect;

16.6.3. May be made an order of Court.

16.7 The provisions of this clause constitute the irrevocable consent of the Parties to the arbitration proceedings in terms hereof and none of the parties shall be entitled to withdraw therefrom or to claim at any such arbitration proceedings that it is not bound by the provisions of this clause.

17. Recovery of legal /collection costs

Should B & E INTERNATIONAL instruct its attorneys or collection agent to collect any overdue amounts, or to take any action against THE APPLICANT in the implementation or protection of B & E INTERNATIONAL'S rights, B & E INTERNATIONAL shall be entitled to the recovery of all legal or collection costs arising there from, on the scale as between attorney, agent or collection agency and own client.

18. Non-waiver of rights

Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence or grace on the part of B & E INTERNATIONAL shall not in any way operate as or be deemed to be a waiver by B & E INTERNATIONAL of any rights under this contract, or be construed as a novation thereof.

19. Severability of clauses

Each clause of these conditions of sale is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause/clauses shall not affect the balance of these conditions of sale, which shall remain of full force and effect.

20. Entire agreement

This contract contains the entire agreement between the parties and any other terms thereof whether express or implied or excluded herefrom and any variations, cancellations or additions to this contract shall not be of any force or effect unless reduced to writing and signed by the parties or their duly authorised signatories. The agreement shall be governed by the laws of the Republic of South Africa. THE APPLICANT and THE SURETY / SURETIES, by their signatures hereunder, confirm that the information submitted in this application is true and correct in all respects and that they are entirely familiar with the terms and conditions contained herein.