

## **UMLOZI INTERNATIONAL (Pty) Ltd TERMS OF SALE CONDITIONS GENERAL**

1. In these Conditions:

- (a) Umlozi International (Pty) Ltd is called "Umlozi" and the individual firm, company or other party with whom Umlozi contracts is called "the Customer"
- (b) "Goods" means the goods articles materials and services which are to be supplied by Umlozi pursuant to the Contract (as hereinafter defined).
- (c) Any contract, howsoever made, between Umlozi and the Customer ("the Contract") shall incorporate and be subject to these Conditions and receipt of goods by the Customer shall be deemed to be conclusive proof that the Customer has accepted these Conditions in the absence of any express or other implied acceptance of those Conditions by the Customer.
- (d) Without prejudice to the generality of the foregoing, all other terms and conditions (except those implied in favour of a seller which are not inconsistent with these Conditions), whether or not the same are endorsed upon, delivered with, or referred to, in any purchase order or any other document delivered or sent by the Customer to Umlozi, are expressly excluded. Any reference in the Contract to any document of the Customer shall not be deemed to imply that any terms or conditions endorsed upon, delivered with, or referred to, any such document, will have effect.

## **PRICES**

2. Unless otherwise provided in the Contract:

- (a) The price of the goods is exclusive of Value Added Tax, which will be charged at the rate applicable at the appropriate tax point.
- (b) The price of the goods includes the cost of carriage to the contracted place of delivery by the means most convenient to Umlozi. If the customer instructs Umlozi to send the goods by passenger train, parcel post, airfreight or other special transport, the additional cost will be for the account of the Customer.

## **DELIVERY AND RISK**

3. (a) Delivery of the goods shall be made to the Customer at the place specified in the Contract or as subsequently agreed between the parties and the risk in respect of all goods shall pass to the Customer at the time of delivery. Special notice is directed to the fact that delivery to the carrier will, in such circumstances, constitute delivery to the Customer.
- (b) Umlozi shall be entitled to make delivery of the goods by instalments and to invoice the Customer for each instalment dispatched. Where damage to or loss of the goods occurs before delivery thereof to the Customer Umlozi undertakes (subject as provided below) to replace free of charge any goods so damaged or lost in which event the time for delivery of the goods shall be extended for such period as Umlozi shall reasonably require for such replacement. The foregoing undertaking of Umlozi is conditional upon the Customer giving written notice of such damage or loss with reasonable particulars thereof to Umlozi and to the carrier within two days of the receipt of the goods and a claim being made in writing within seven days or in the case of total loss the said notice being given within ten days and the claim being made in writing two days of receipt of Umlozi's or the carrier's delivery advice or other notification of dispatch; Provided that if the customer proves that:
- (i) It was not reasonably possible, for the Customer to advise Umlozi and the carrier or make a claim in writing within the time limit applicable; and

(ii) such advice or claim was given or made within a reasonable time; Umlozi shall not have the benefit of the conclusion of liability afforded by this Condition:

(d) Save as expressly provided in this Condition, Umlozi shall not have any liability whatsoever for or in connection with any damage to or loss of the goods in transit to the contracted place of delivery.

## **TITLE**

4. (a) Title to and property in the goods shall remain vested in Umlozi (notwithstanding the delivery of possession of the same and the passing of the risk therein to the Customer) until: (1) the price of the goods comprised in the Contract; and (2) all other money due from the Customer to Umlozi on any other account has been paid or satisfied in full;

(b) Until the title to and property in the goods pass to the Customer as aforesaid the following provisions shall apply:

(i) Umlozi may at any time without prior notice to the Customer repossess and resell the goods if any of the events specified in Condition 9 hereof shall occur, or if any sum owed by the Customer to Umlozi under this or any other Contract between the Customer and Umlozi is not paid on the due date for payment. For the purpose of exercising its rights under this sub-clause (i) Umlozi its employees or agents together with all vehicles and plant considered by Umlozi to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon the Customer's premises and/or other locations where any of the goods are situated, (ii) The Customer shall store the goods in a proper manner without charge to Umlozi and ensure that they are clearly identified as belonging to Umlozi. Umlozi shall be entitled to examine the goods in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so.

(iii) The rights and remedies conferred upon Umlozi by this Condition 4 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of Umlozi under the Contract.

## **PERFORMANCE**

5. (a) Umlozi will use its reasonable endeavours to comply with any date or dates for dispatch or delivery of the goods as stated in the Contract, but unless the Contract otherwise expressly provides such date or dates shall constitute only statements of expectation and shall not be binding. If Umlozi having used its reasonable endeavours fails to dispatch or deliver the goods on such date or dates, such failure shall not constitute a breach of the Contract nor shall the Customer be entitled to treat the Contract as thereby repudiated or to rescind or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.

(b) If Umlozi is prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control including (but without limiting the generality of the foregoing) strikes, lockouts or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, fire, flood, civil commotion or any cause of whatever kind and whenever occurring, further performance of the

Contract shall be suspended for so long as Umlozi is so prevented or hindered provided that the performance of the Contract is suspended for more than one calendar month the Customer shall be entitled by notice in writing to Umlozi forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract rate for all goods supplied by Umlozi to the actual date of such termination Umlozi shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the customer as a result of Umlozi's inability to perform its obligations under the Contract by reason of any such circumstances.

(c) Where goods are delivered by instalments each such instalment shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply (mutatis mutandis) and save as provided in sub clause (d) of this Condition no default in respect of any one instalment shall affect or prejudice due performance of the Contract as regards any other instalments.

(d) Where goods are to be supplied or delivered by Umlozi in accordance with periodic delivery schedules or similar notification of the delivery requirements of the Customer, the Customer shall not be entitled to cancel or vary any such delivery schedule or requirement which is expressed by the Customer to be a firm requirement without the prior written consent of Umlozi and Umlozi shall be entitled to reimbursement of any additional costs and expenses incurred or suffered as a result of any such cancellation or variation;

(e) When expedited delivery is agreed by Umlozi and necessitates overtime or other additional costs, the Customer shall reimburse Umlozi for the amount of such overtime payment or other costs. Where postponement of delivery is agreed by Umlozi the Customer shall, if required by Umlozi, pay all costs and expenses (including a reasonable charge for storage and insurance of the goods and interest on the contract price) occasioned thereby, but the goods shall be held at the Customer's risk from the time of such postponement.

(f) If performance of the Contract is suspended at the request of or delayed through default of the Customer including (without prejudice to the generality of the foregoing) lack of or incomplete or incorrect instructions or refusal to collect or accept delivery of the goods for a period of 14 days, Umlozi shall be entitled to payment at the Contract rate for goods supplied or ordered and any other additional costs thereby incurred including storage, insurance and interest PROVIDED THAT if the Customer fails to collect or accept delivery of the goods or any part thereof within 28 days of written notification from Umlozi that the goods are ready for collection or delivery, Umlozi shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell the goods and to apply the proceeds of sale thereof if sold towards payment of all sums due to Umlozi under the Contract.

## **ACCEPTANCE**

6. (a) Without prejudice to the Customer's rights under Condition 8 hereof the Customer shall be deemed to have accepted the goods as being in conformity with the Contract and shall be bound to pay for them, unless written notice of rejection thereof is received by Umlozi within 3 days of delivery. Save in the circumstances referred to in Condition 8 hereof goods accepted by the Customer cannot subsequently be returned and any claim which the Customer might otherwise have shall be deemed to have been waived.

(b) If after notice of rejection has been given, the Customer deals with goods as owner thereof or if any conduct of the Customer is inconsistent with such rejection or with the ownership of the goods by Umlozi, the Customer shall be deemed to have accepted the goods and be bound to pay for them.

## **PAYMENT**

7. (a) Unless the Contract otherwise provides, the contract price for goods shall be payable not later than 30 days after the invoice date, or otherwise as by the Contract provided.

(b) Where goods are delivered by instalments, the Customer shall be obliged to pay for each instalment upon the terms set out in sub-clause (a) of this Condition.

(c) The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle Umlozi upon the expiration of 1 days notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition Umlozi shall be entitled without liability to the Customer to suspend performance of or cancel in whole or in part any other contract between Umlozi and the Customer without prejudice to any other remedy available to Umlozi in respect of each default in payment.

(d) Unless otherwise agreed in writing the Customer shall not be entitled to set off against monies due to Umlozi under the Contract, any amount claimed by or due to the Customer from Umlozi whether pursuant to the Contract or any other account whatsoever.

(e) Umlozi shall be entitled to interest before as well as after judgment on any part of the Contract price not paid by its due date from that date until actual payment, at the maximum rate permissible under the Usuary Act per cent per annum prevailing from time to time during such period.

## WARRANTY

8. (a) Where any goods are shown, to the reasonable satisfaction of Umlozi, to have been defective at the time when they left Umlozi's premises, Umlozi shall at its sole option: (1) deliver replacement goods to the Customer free of charge; and/or (2) refund to the Customer the contract price of such goods; PROVIDED that:

- (i) the Customer notifies Umlozi in writing within fourteen days of becoming aware of any such defect; and
  - (ii) if so required by Umlozi all defective goods are first returned to Umlozi's premises; and (iii) the goods have been properly and correctly stored by the Customer; and all the required packaging and ancillary items and purchase invoice has been returned and
  - (iv) the liability of Umlozi under this sub-clause (a) shall be accepted by the Customer in substitution for and to the exclusion of any and all other claims for direct loss which the Customer has or may have by reason of such defect.
- (b) Umlozi shall not be liable for any claims for economic loss, loss of profit, loss of opportunity, loss of bargain or other direct or consequential injury, loss or damage made by the Customer against Umlozi whether in contract or in tort (including negligence on the part of Umlozi, its servants or agents) arising out of or in connection with any defect in the goods or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Contract or the breach of a fundamental term thereof) of Umlozi, its employees or agents in the performance of the Contract (including, without limiting the generality of the foregoing, breach of any condition or warranty whether express or implied by statute, common law or otherwise howsoever).

## INSOLVENCY AND BREACH OF CONTRACT

9. If any of the following events occur, are threatened or in the opinion of Umlozi are reasonably likely to occur:

- (a) The Customer shall commit any breach of Contract and shall fail to remedy such breach (if capable of remedy) within a period of seven days from receipt of notice in writing from Umlozi, requesting such breach to be remedied: or
- (b) Any distress or execution is levied upon any of the goods or property of or in the possession of the Customer; or
- (c) The Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors or commits any act of bankruptcy; or (d) The Customer (being a limited company) has a Receiver appointed of the whole or any part of Its undertaking property or assets or an order is made or a resolution passed or analogous proceeding for the winding-up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by Umlozi). Umlozi shall thereupon be enlisted without prejudice to its other rights hereunder, forthwith to suspend further performance of the Contract and of any other contract between Umlozi and the Customer until the default has been made good or to terminate the Contract or any other contract between Umlozi and the Customer or any unfulfilled part thereof or at Umlozi's option to make partial supplies of goods. Notwithstanding any such termination, the Customer shall pay to Umlozi at the Contract rate for all goods delivered up to and including the date of termination and shall in addition indemnify Umlozi against any loss, damage or expense incurred by Umlozi as a result of such default.

## **SEVERANCE**

10. If at any time any one or more of these Conditions (or any paragraph sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law the same shall be deemed omitted here from and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

## **WAIVER**

11. The rights and remedies of Umlozi under the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by Umlozi nor by any failure of or delay by Umlozi in asserting or exercising any such rights or remedies.

## **LAW**

12. These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of South Africa and Umlozi and the Customer irrevocably submit to the exclusive jurisdiction of the Gauteng Courts. Umlozi shall at its election institute any action that may arise directly or indirectly from this contract either in: -

- (a) The Magistrate's Court having jurisdiction even though the amount involved may exceed the limitations contemplated in sections 29 (1) and 46 (2) (c) of the said Act, or
- (b) in the High Court having jurisdiction

13. No variation of the sale conditions shall be of force or effect unless it is in writing and is signed by Umlozi and the Customer.

14. The Customer shall be liable for all legal costs and disbursements (including attorney and client costs and collection commission) incurred by Umlozi in enforcing any of his rights or collecting monies outstanding whether or not legal proceedings are commenced.