



## Terms and Conditions of Sale

### 1. General

- 1.1 Contracts and orders are accepted by Paljet Tools (PTY) Ltd, Reg. No: 2018/227991/07 (hereinafter the "Company") only subject to the Conditions as set out herein and the Purchaser shall be bound by such Conditions. No modification of these Conditions or of the particulars contained the Company's acceptance of an order from the Purchaser will be recognized by the Company unless such modification is expressly accepted by the Company in writing. Unless so accepted, any qualification thereof or difference contained in the Purchaser's own order forms or terms and conditions of the purchase shall be inapplicable. All orders, whether based on this quotation or otherwise, shall be subject to the Company's written acceptance.
- 1.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 1.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing, addressed to such other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice is deemed to have been served if delivered personally, by fax or e-mail at the time of delivery or if posted by registered mail, at the time of expiration of 3 (three) business days after the notice is posted.
- 1.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected.

### 2. Prices and Payment

- 2.1 Unless otherwise specified, goods and/or services are supplied for payment of net cash after delivery/performance within 30 days of the invoice date. Applicable VAT will be invoiced separately where and at the rate applicable as well as any other government-imposed taxes in force at the date of invoice.
- 2.2 The Purchaser shall not be entitled to make any deductions, set-offs or counter claims against the invoice price, nor to defer payment.
- 2.3 If the Purchaser fails to make any payment on the due date then, without prejudice to any other rights or remedy available to the Company, the Company shall be entitled to cancel the contract and suspend any further deliveries or suspend the provision of the services to the Purchaser and also, subject to any provisions of the National Credit Act, 2005 that may be applicable, also to;
  - appropriate any payment made by the Purchaser to such of the goods and/or services (or the goods supplied under any other contract between the Purchaser and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Purchaser); and
  - charge the Purchaser interest (both before and after any judgment) on the amount unpaid at the rate of 5% per annum above the prime rate per annum of (First National Bank) Limited from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
  - claim reimbursement for any legal expenses incurred by the Company on an attorney and client scale (including collection commission) in the event of the Company instructing its attorneys to recover money from the Purchaser.
- 2.4 A certificate signed by the credit manager or director of the Company reflecting the amount owing to the Company in respect of the credit facilities granted to the Purchaser in terms hereof relating to the Purchaser's dealings with the Company and of the fact that such amount is due, owing and unpaid shall be proof of the effects therein stated for the purpose of any action (whether by way of provisional sentence or otherwise), or application, proof of debt on insolvency or for any purpose whatsoever where the amount of such claim is required to be established and it shall rest with the Purchaser to prove that such amount is not owing and/or due and unpaid.
- 2.5 In the event of the Purchaser defaulting in payment of any amount that has become due and owing, which action shall amount to a breach of this agreement, then the Company shall have the right to enforce the relevant provisions of this agreement, and to declare the whole balance of all amounts owing/outstanding (whether due or not) in terms hereof, to be immediately due, owing and payable, without further notice to the Purchaser.

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**3. Delivery**

- 3.1 No liability will be accepted by the Company for any delay in the dispatch or delivery of the goods and/or performance of the services (whatever the cause of the delay) or for any damage or losses caused thereby. Time for delivery shall not be of the essence of the contract unless previously expressly agreed by the Company in writing.
- 3.2 Once the goods have been delivered to Purchaser, the goods shall be at the sole risk of the Purchaser.

**4. Variation of Price**

- 4.1 Prices may be altered by the Company without notice at any time. All goods are sold, and services are performed subject to the prices agreed upon, in the absence of an express agreement, subject to the current price lists of the Company at the time of order confirmation.
- 4.2 The quoted price is also subject to adjustment if any changes are requested by the Purchaser in the specification or quantities of the goods or delivery requirements, provided that such changes are accepted by the Company.

**5. Loss or Damage in Transit**

- 5.1 Where transport of the goods is the obligation of or has been arranged by the Company and the equipment is damaged in transit or having been placed in transit has not been delivered to the Purchaser then:
- In the case of damage to the goods, the Purchaser shall give notice thereof to the Company within 3 days after delivery and in the case of non-delivery of the goods, the Purchaser shall give notice thereof to the Company within 10 days from receipt of the relevant invoice;
  - Goods subject to any claim under this clause must be stored free of charge for inspection by the Company.
- 5.2 The Company shall be under no liability whatsoever if the Purchaser fails to give such notice of damage or non-delivery or fails to store for inspection by the Company goods subject to any claim and in any of such events any damage to the goods shall be deemed to have occurred after delivery of the goods to the Purchaser.

**6. Alterations to Specifications**

The Company reserves the right to incorporate revisions to the specifications or designs of the equipment not having an adverse impact on the Purchaser, or as necessary due to changed legal requirements without notice. In such cases the goods shall be accepted by the Purchaser as conforming to the contract.

**7. Drawings**

Drawings, specification and other information supplied

- are confidential and remain the property of the Company;
- must not be disclosed to any other party;
- must be returned to the Company if the quotation is not accepted;
- are approximate only and shall not, unless otherwise stated, be deemed to form part of the contract.

**8. Goods on Sale or Return**

- 8.1 Goods stated as being supplied on a "Sale or Return" basis are supplied entirely at the Purchaser's own risk and shall remain so until returned to the Company in satisfactory condition to the Company's then current address. The Company shall be entitled to charge at its then current rates for any work that may be necessary to restore the goods to the condition in which they were delivered.
- 8.2 Unless otherwise agreed in writing goods supplied on a Sale and Return basis shall be returned to the Company within 7 days of invoice date. The Company shall be entitled to a handling fee of 20% of the purchase price with respect to such returned goods. If goods are not returned within this period, they will be invoiced, and their prices shall become due for payment in accordance with these Conditions.
- 8.3 In the instance of any credit being granted to the Purchaser, the Company reserves the right to increase or otherwise vary the credit limit available to the Purchaser, annually or from time to time

**9. Retention of Title**

- 9.1 Property in the goods shall remain vested in the Company until payment of the purchase price thereof shall have been made by the Purchaser in full. The Purchaser shall be in possession of the goods solely as bailee for the Company until the full price is paid. The Purchaser shall always store the goods separately from his own goods and/or those of any other person and the goods shall be stored in such a manner that they are readily identifiable as the goods of the Company until the full price is paid.
- 9.2 The Purchaser's rights to possession as bailee shall cease forthwith if the Purchaser:

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- not being a company, commits an act of insolvency; or
  - being a company or Close Corporation, does anything or omits to do anything which would entitle The Master of the High Court or a liquidator or receiver or administrator to take possession of any of its assets or which would entitle any person to present an application to Court for the compulsory winding-up of the Purchaser or a receiver is appointed to take possession of any of the Purchaser's assets or a special resolution is passed for the voluntary winding up of the Purchaser or an application to Court for the compulsory winding-up of the Purchaser.
- 9.3 Whenever and as soon as the Purchaser does or omits to do anything whereby this right to possession ceases under the provisions of condition 9.2 then:
- the Purchaser shall immediately notify the Company that the Purchaser's right to possession as bailee has ceased and of the circumstances in which this has occurred, and
  - the Purchaser shall on oral or written request furnish the Company, the Company's representatives or agents with sufficient information so as to enable the Company to retake possession of the goods and such information shall include full details of the place where the goods are kept; and
  - the Company shall have an irrevocable license, without giving the Purchaser prior notice, to enter upon the Purchaser's premises by itself or through the Company's representatives or agents during normal business hours in order to retake possession of the goods; and
  - the Company shall be entitled to claim reimbursement for any legal expenses incurred by the Company on an attorney and client scale (including collection commission) in the event of the Company instructing its attorneys to recover or collect the goods from the Purchaser.
- 9.4 The Purchaser may sell the goods to a third party prior to the date on which full payment of the price is received by or made to the Company if and only if:
- none of the circumstances specified in condition 9.2 have occurred or are reasonably expected to occur; and
  - the proceeds of sale, if less than the full price of the goods, or such part of the proceeds of sale as equals the full price of the goods when received by the Purchaser and/or his agents, are placed forthwith in an interest bearing deposit account and the funds therein or the appropriate part thereof are held on trust for the Company and are payable to the Company; and
  - notice is given as soon as reasonably practicable to the Company of the sub-sale including the name and the address of the third party and the name and address of the bank with whom the deposit account has been opened and the number of the account; and
  - notice is given as soon as reasonably practicable to the Company once the proceeds of sale have been received by the Purchaser.
- 9.5 If the Purchaser shall sell the goods without complying with the provisions of condition 9.4, the Purchaser shall be in breach of bailment and liable to account to the Company for the proceeds of the sale.
- 9.6 In exercising the right of sale under condition 9.4, the Purchaser shall as regard the third-party act solely on his own behalf and shall not have or hold himself out in any way whatsoever as having the right to make representations to or contracts with the third party on behalf of the Company.
- 9.7 The Purchaser shall inform the Company immediately of any seizure or attachment of the goods, whether threatened or actual and whether lawful or unlawful.
- 9.8 The Purchaser shall, from the time when under clause 3 hereof the sole risk in the goods rests upon the Purchaser, fully insure the goods against all risks with a reputable insurance company at its own expense. Without in any way prejudicing the right of the Company to claim and receive from the Purchaser as and when due, the full purchase price of the goods, the insurance shall cover the Company's interest in the goods, and the Purchaser shall hold in a separate bank account all monies paid under such insurance in trust for the Company and shall pay the same to the Company on demand unless the Purchaser shall have previously paid the purchaser price in full. If the Purchaser shall not affect such insurance the Company shall be entitled to insure the goods and demand reimbursement for the cost of the same from the Purchaser.
- 10. Insolvency/Liquidation**
- 10.1 If the Purchaser becomes insolvent or goes into liquidation or makes any composition with his creditors or if a receiver of any of his assets is appointed pursuant to an arrangement sanctioned in terms of the Companies Act, 2008, the Company shall be at liberty either:
- to cancel the contract summarily by notice in writing without compensation to the Purchaser or
  - to have the option of completing the contract provided agreement is reached between the Company and any trustee of the insolvent or, in the case of a company or close corporation any liquidator or receiver that may be appointed.
- 10.2 The exercise of any of the rights granted to the Purchaser under condition 10.1 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Company.

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**11. Warranty and Liability**

- 11.1 It is recorded that the Company acts in the capacity as an agent or reseller of any goods sold and consequently it is accepted that all goods are sold on a 'voetstoets' basis and additionally, the Purchaser indemnifies and holds the Company harmless against any claim that may be brought against the Company as a consequence of such goods being defective and causing any damage whatsoever, whether through accident, negligence, gross negligence or any other cause howsoever arising. Notwithstanding this exclusion of liability, the Company undertakes to assist the Purchaser to pursue any valid claim that it may have against the manufacturer of good purchased. Such assistance is however limited to corresponding with the manufacturer and excludes legal and other assistance.
- 11.2 Neither Purchaser nor Company shall be liable to the other for any incidental, special, consequential, or punitive cost, expense, loss or damage including but not limited to loss of production, loss of use, loss from business interruption, indirect loss of profit, loss of business, loss of goodwill or reputation, or wasted expenditure. Any claim shall be made by Purchaser by written notice, setting forth fully the facts on which it is based, immediately after the date when the facts were discovered or should have been discovered.
- 11.3 The Purchaser hereby warrants that no representative of the Company at any time before or during the conclusion of this agreement or any action connected therewith, induced purchase of any goods or misrepresented the sale in any manner or form, upon which the Purchaser relied, to his detriment. At all times whilst dealing with the Company and / or its representatives, the Purchaser acknowledges full understanding of this agreement and / or takes full responsibility for all / any consequences pertaining to the purchase of goods connected herewith.

**12. Force Majeure**

Should the Company be prevented from delivering at the agreed date by strikes, lockouts, act of God, war, fire, tempest, flood, accident or damage to goods, or delay in obtaining or inability to obtain through scarcity of materials or for any other cause beyond the Company's control, the Company may suspend delivery until a reasonable time after the end of the happening and during such time as is reasonably incidental to the resumption of normal production of goods or cancel or vary the contract without compensation.

**14. Pledge**

In addition to any other security right to which the Company may by law be entitled, the Company shall have a general right to retain in pledge all goods of the Purchaser in the possession of the Company (whether or not payment for such goods or some of them may have been received for) for the unpaid price of any other goods sold and delivered to the Purchaser by the Company under the same or other contracts.

**15. Waiver**

The Company's rights shall not be affected or restricted by any indulgence or forbearance granted to the Purchaser. No waiver by the Company of any right arising from any breach by the Purchaser shall operate as a waiver of any later breach of the same of any other provision by the Purchaser.

**16. Addresses for Service**

The Company and the Purchaser each respectively chooses as the place at or to which all statements of account and notices and all summonses and other legal process shall be served upon or delivered or sent to the Company or the Purchaser, as the case may be, and as the place to which or at which the execution of any judgement or warrant of attachment may be served or delivered or executed or performed in relation to any claim or other matter, the following physical addresses;

- 16.1 The Purchaser's choice for all such documents intended for it is: the place of business of the Purchaser as specified in the order.
- 16.2 The Company's choice for all such documents intended for it is: the place of the Registered Office of the Company that it is required to register in terms of the Companies Act, 2008.

**17. Applicable Law**

- 17.1 The rights and obligations of the parties hereunder and all the terms and conditions hereof and any disputes arising out thereof or in connection therewith shall be construed in accordance with the laws of The Republic of South Africa under the exclusion of the United Nations Convention on the International Sale of Goods. They shall be subject to the exclusive jurisdiction of the courts having jurisdiction at the address of the registered office of the Company. The Company shall however, at its sole discretion, have the right to bring claim against the Purchaser at any other court provided by law.

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- 17.2 Notwithstanding the amount which may at any time be owing by the Purchaser to the Company, the parties do hereby consent, in terms of Section 45 of the Magistrates' Court Act (No 32 of 1944 as amended), to the Magistrates' Court having jurisdiction for the determination of any action or proceeding otherwise beyond the jurisdiction of the said court which may be brought by the Company against the Purchaser arising out of any transaction between the parties. It being recorded that the Company shall be entitled, but not obliged, to bring any action, application or proceeding in the said court and that all costs incurred in any action or application against the Purchaser in any competent court shall include costs on an attorney/client scale and attorneys' collection commission, payable by the Purchaser. In the event that the Company employs the services of counsel in any action, application or proceedings, which decision will be within the sole discretion of the Company, the Purchaser hereby agrees to pay counsel's fees in any action or application brought by the Company against it, on the Bar Council Tariff as determined by the relevant bar council and such costs are to include counsel's preparation costs and costs of preparing pleadings.
- 17.3 The Company shall be entitled, but not obliged, whether legal action has commenced or not, to submit any dispute between the parties to arbitration.
- 17.4 The arbitration shall be held in the town/city of the principal place of business of the Company, from where the goods were ordered, and shall be held within 60 (sixty) days after it has been demanded. The arbitration shall be held before a mutually agreed person, and failing agreement, the arbitrator shall be selected by the President of the Law Society of the relevant province. The arbitration shall be held in a summary manner and the strict rules of evidence shall not apply.
- 17.5 The arbitrator shall decide on the issues of pleadings and discovery but shall do so on the basis that the matter is to be expedited and brought to arbitration within the 60 (sixty) day period and in an informal manner. The arbitrator shall decide the matter submitted to him according to what he considers just and equitable in the circumstances and therefore the strict rules of law need not be observed or taken into account by him in arriving at his decision.
- 17.5 The parties hereto agree that the decision of the arbitrator shall be binding on each of them and shall be made an Order of any court of competent jurisdiction, should it be necessary in order to execute under the arbitrator's order. The arbitrator's decision shall further be final and binding upon the parties and the arbitrator shall be entitled to make an order for costs in regard to the arbitration. There shall be excluded hereby, any right to appeal against any such decision.
- 17.6 The Company shall be entitled to all costs incurred in any such arbitration proceeding brought against it by the Purchaser, on an attorney/client scale, which costs shall include attorneys' collection commission, all of which is payable by the Purchaser.
- 17.7 The parties hereto agree that in the event that a bill of costs is required to be taxed, they will refer same to the Arbitration Forum's Taxation Service and the unsuccessful party thereto shall at no time prior to submission of the bill, withhold their consent to referral.
- 17.8 In the event that the Company employs the services of counsel in the arbitration proceedings, which decision will be within the sole discretion of the Company, the Purchaser hereby agrees to pay counsel's fees in any such matter brought by the Company against it, on the Bar Council Tariff as determined by the relevant bar council. Such costs are to include counsel's preparation costs and costs of preparing pleadings.
- 18 **Conflict of Terms**
- Where there is a conflict of any term of this agreement and any other agreement that has been signed by the parties, the provisions and terms of this agreement shall prevail.