



# Terms and Conditions

## Enterprise

**WHEREAS** the Customer wishes to obtain a credit facility in respect of goods and services supplied by the Company to the Customer  
**NOW THEREFORE** the parties agree as follows:

### 1. DEFINITIONS

In these terms and conditions, unless expressly stated or when the context requires a different interpretation, a reference to:

- (a) "The Company" shall be reference to is Kliq South Africa (Pty) Ltd.
- (b) "The Customer" is the Applicant as set out in the correspondence, quote or order. The Customer also includes parties trading with the Company on a cash sale basis and a customer referred to on any application or quotation to which these terms and conditions are attached.
- (c) "Tender" means a written quotation by the Company to supply a specified quantity of specified goods and services to the Customer at a specified price.
- (d) "Goods and services" means all items including services presently being sold or supplied by the Company to the Customer, including but not limited to equipment, consultations on projects, upgrades or restorations, or maintenance schedules thereof.
- (e) "MSA" means the Master Services Agreement where applicable and concluded between the parties, which, where in conflict with this Terms and Conditions, take precedence over these Terms and Conditions.
- (f) The headings in these conditions are for convenience only and are not to be considered for the purpose of interpreting the contract.

### 2. GENERAL

Unless otherwise agreed upon in writing all goods and services sold or delivered in terms of this contract are sold or delivered by the Company subject to the terms and conditions contained herein. These terms shall override any statement that conflicts with such terms and which statements may be contained in order or other documents submitted by the Customer. The Customer shall be bound by these standard terms and conditions of sale in all transactions for the purchase of the goods and services, except where the Company and the Customer concluded a MSA in which case the MSA takes precedence.

### 2. OFFER OF ACCEPTANCE

- (a) Validity

Initial \_\_\_\_\_

Quotations shall be subject to withdrawal or revision by the Company. Unless otherwise stated herein or previously withdrawn, every tender from the Company is open for acceptance within one calendar month from the date submitted.

**(b) Acceptance**

Acceptance of any tender must be in writing and accompanied by sufficient information to enable the Company to proceed with the order forthwith, failing which the Company may attend such tender prices as to allow for any increase in the cost of labour or materials according between the date of acceptance of the tender and the date on which sufficient information is received by the Company.

**(c) Deemed Acceptance**

Alternative to the provisions of 3(a) and 3(b) above, the Customer agrees that any invoice sent to it by the Company pursuant to a verbal or written order by the Customer shall be deemed to the binding on the Customer in terms of the Company's Conditions of Sale.

**(d) Right to Decline**

The company reserves the right to reasonably decline any order and/or to suspend delivery and/or to decline to supply the goods and services or services to the Customer.

**3. PERFORMANCE OF CONTRACT**

**(a) Passing of Ownership**

(i) Ownership of the goods and services passes to the Customer on receipt of payment of the full purchase price of the goods and services by the Company.

(ii) All risk in the Goods and services shall vest in the purchaser once the Goods and services leave the Company's premises.

**(b) Time of Delivery**

(i) If the time of the delivery is stated then such time shall be reckoned from the date of the Company's acknowledgement of the order but, whilst every effect will be made to effect delivery by the date, time shall not be of the essence and the Company shall not be under any liability whatsoever in respect of any delay, howsoever accessioned.

(ii) In the case of sale for delivery during a certain period, delivery may be by instalment at the discretion on convenience of the Company,

(iii) In cases where the Company over-delivers by an amount plus or minus 10 percent either in value, volume or quantity of the total order, the delivery of such lesser amount of goods and services shall be deemed to be delivery under the contract and shall be paid for by the Company at the contract rate.

(iv) Where the Customer in his order does not specify any particular tolerances concerning dimensions, length or distance; or if the Customer's specification is only partially complete in any respect, the goods and services will be supplied in accordance with the Company's manufacturing standards, consequently, the company will not be liable should the specifications or dimensions not be correctly stated.

(v) Should there be any conflict between the description of the equipment, specifications and dimensions or other terminology of a technical nature set out in the quotation and that used by the customer, those set out in the quotation shall prevail.

(vi) The company reserves the right to make alterations and improvements, without notice, in the design or method of manufacturing of the equipment.

**(c) Transport and Packing**

If the Company undertakes any special delivery or packing methods at the request of the Customer, the Company shall have the right to change the Customer for any extra expenses arising from such methods.

**(d) Acceptance of Goods and services**

(i) The Customer shall only be entitled to reject goods and services if, upon examination, they prove to be defective in any material aspect. All goods and services sold or delivered shall, for all purposes, be resumed to be free of defects if the Customer fails to notify the Company in writing that the goods and services are defective within 10 days from the date of delivery.

(ii) If shortages, defective or damaged Goods and services are not reported to the Company within 10 days of delivery then the company will not be obliged to entertain any claim arising out of the aforesaid events.

(iii) The company shall be under no obligation to accept the return of said Goods and services sold and delivered by it to the Customer for credit. In the event of the Company agreeing to accept Goods and services for credit in writing, a 10% (ten percent) handling fee shall be levied.

#### 4. PRICE VARIATIONS

##### (a) Basis for prices

Tender and contract prices are based on the cost of labour and material, sea freight and marine insurance, customs tariffs and dumping duties, (if any), importing charges, rail age, rate of exchange of currency between South Africa and the relevant foreign countries ruling at the date of tender or contract.

##### (b) Price Increase

If any of these costs are afterwards increased, for any reason beyond the company's control or arising in the ordinary course of its business, then the purchase price shall be increased by the excess or if the excess cannot be determined exactly, by a reasonable allowance for it. If the customer disputes any increase in the purchase price as, the increase shall be determined by the company's then auditors, acting as experts and not as arbitrators and their decision shall be final and binding on the company and the customer. The auditors' charges for determining such increase shall be paid by the customer.

#### 5. CANCELLATION

##### (a) Cancellation by the Customer

Orders placed cannot be cancelled except with the consent of the Company in writing. Goods and services returned without the consent of the Company will not be accepted for credit and all risk in and liability therein remains with the Customer.

##### (b) Cancellation by the Company

(i) If the contract is not fulfilled or is hindered by circumstances beyond the control of the Company, including acts of God, Governmental or Administrative acts, labour disputes and damage to machinery, the Company shall be entitled to cancel the contract forthwith upon written notice to the Customer, the Customer shall have no claim for damages of whatsoever nature against the Company.

(ii) The company may cancel a contract, or any uncompleted part of it, if the customer commits a breach of any of the terms or conditions of the contract; or being an individual, dies or is provisionally or finally sequestered or surrenders his estate; or being a partnership, the partnership is terminated; or being a company, is placed under provisional or final order of liquidation or judicial management; or compromises or attempts to compromise generally with the customer's creditors.

(iii) The company's rights in terms of paragraph 6(b)(i) & (ii) above shall not be exhaustive and shall be in addition to its other rights under this document or otherwise.

(iv) No relaxation which the company may permit on any one or more occasion in regard to any of the customer's obligations shall prejudice or be regarded as a waiver of the company's rights to enforce those obligations on any subsequent occasion.

(v) Upon the cancellation/termination of a contract for any reason whatsoever: all amounts then owed by the customer to the company whether under the contract or otherwise shall become due and payable forthwith; and the company may retake possession of any components sold where ownership has not passed.

#### 6. PAYMENT

##### (a) Terms

All orders will be preceded by a payment of a 50% deposit by the Customer of the total order to the Company. The balance of the order is strictly payable on delivery. If any amount is not paid on due date the Company shall be entitled to withhold or suspend performance in whole or in part. Interest will also be levied automatically in respect of overdue amounts at the providing legal rate, in terms of the Prescribed Rate of Interest Act No. 55 of 1975 as amended.

##### (b) Allocation of Payment

The Company reserves the right to allocate any payments made by the Customer to

(i) Previously unpaid orders

(ii) Interest

(iii) Costs,

Regarding these monies owed by the Customer to the Company for any amounts outstanding.

##### (c) COD Sales

Transactions based on Cash on Delivery (COD) means that the Customer shall pay the Company on delivery of the goods and services. If payment is not made, the Company has the right not to deliver the goods and services.

**(d) Payment in Advance**

The Company receives the right to request a payment in advance of manufacture and/or delivery of the goods and services from the Customer at the sole and absolute discretion of the Company.

**(e) Failure of Payment**

(i) If the Customer fails to meet demands of payments all goods and services will be returned to the Company immediately;

**7. BREACH**

If the Customer is in breach of any of the terms set out herein, the Company may give the Customer 14 (fourteen) days written notice to remedy such breach, failing which the Company may without prejudice to any of the rights, cancel this agreement in writing and demand the immediate return of any of its goods held and suspension of services to the Customer at the date of such breach.

**8. CERTIFICATE OF INDEBTNESS**

The Customer acknowledges that a certificate signed by a general manager of the Company, shall be *prima facie* proof of its indebtedness to the Company, and shall be sufficient evidence to enable the Company to obtain a judgement against the Customer.

**9. NOTICE OF LANDLORD**

The Customer further acknowledges that in the event of it not being the owner of the premises where the goods and services are to be kept or rendered, it shall inform the owner of such premises and/or its landlord that the ownership of the goods supplied by the Company to the Customer is reserved, does not form part of the Customer's assets and is there for not subject to a landlord's hypothec. The Customer shall therefor forward a copy of the aforesaid letter, together with proof of service therefor to the owner of the premises and/or its landlord to the Company within five days of signature hereof, failing which the Customer agrees that the Company may contact the owner of the premise and/or the Customer's landlord and advise him of each reservation of ownership.

**10. INFRINGEMENTS OR RIGHTS OF THIRD PARTIES**

**THE CUSTOMER WARRANTS**

(a) That any design, specification, drawing or model or instruction given by the Customer to the Company does not infringe any patent registered design trademark or copyright.

(b) That it will indemnify the Company against any claim or damage for infringement referred to above using any goods and services supplied to the Customer.

**11. LIABILITY**

The Company undertakes to repair or replace, free of cost, any goods and services sold by the Company which prove to be defective in materials or workmanship after delivery (misuse, fair wear and tear excepted) provided that the Customer shall have complied with the provisions and paragraph 4(d) hereof and provided further that the defective goods and services are returned to the Company two weeks from notification of such defect. This guarantee shall not apply in the case of any goods and services or components in relation to which the Company has provided an alternative written guarantee. The liability of the Company in respect of all goods and services supplied in terms of the contract shall be limited to the terms of the above guarantee and/or to the terms of any other written guarantee supplied by the Company and the Company shall have no further liability whatsoever, in particular, the Company shall not be liable for any injury or damage caused by goods and services, for loss of profits or any other consequential damages as a result of replacing supplied goods and services.

**12. PRESERVATION OF SECRECY**

The Customer hereby warrants that it shall not reveal or disclose to any party whatsoever the content of any design, specification drawing or model provided to the Customer by the Company.

### 13. VALUE ADDED TAX

Value added tax will be levied to all sales to Customers.

### 14. JURISDICTION

(a) The Customer hereby submits to the jurisdiction of the Magistrate's Court in respect of any action that the Company may institute against the Customer. This consent is given in terms of Section 45 of the Magistrate's Court Act No. 32 of 1946 as amended.

(b) Irrespective of (a) above, the Company shall always be entitled to proceed with litigation or by way of appointment of an expert referee at its sole and absolute discretion. Any such appointment of an expert referee ("the referee") will be governed by the provision of the clause 15. The expert referee shall hold the hearing:

(i) Informally, with the form of the proceedings to be determined by the referee;

(ii) In Pretoria;

It being the intention that as far as possible it shall be concluded within twenty-one (21) business day after it has been demanded. The referee shall be a practicing attorney as agreed between the parties or failing agreement, nominated by the Company.

Should such nomination be necessary, such nomination shall be brought by the parties jointly or by any party to the dispute not later than seven (7) days after the hearing has been demanded and the parties shall be asked to make each a nomination within seven (7) days of the date of the request. The expert referee shall be empowered to appoint such an assistants/expert he deems fit in the event of the subject matter of the dispute requiring expertise in any particular field for its proper resolution. The referee's award shall be in writing unless the parties otherwise agree and shall be final and binding upon the parties. The parties may agree that it shall be made an order of court. No provision in this expert referee clause shall be taken as prohibiting the right of either party to approach the appropriate court for the purposes of any urgent interim relief.

### 15. DOMICILE

The customer hereby choose as its *domicilium citandi et executandi* for purposes hereof, the address that appears on the Quotation.

### 16. NON-VARIATION

These conditions of Sale constitutes the sole recordal of the contract between the Customer and the Company and may only be varied, altered or amended in writing and such variations, amendments, or alternations will only be of force and effect if signed by the duly authorized representative of the Customer and the Credit Controller of the Company.

### 17. NON-WAIVER

No indulgence given by the Company to the Customer shall be construed to operate as a waiver of any of the Company's rights in endorsing the terms of this agreement and such indulgence shall not be capable of operating as an estoppel against the Company

### 18. PERMISSION TO CONSULT WITH CREDIT BUREAU TO OBTAIN CONSUMER CREDIT INFORMATION REGARDING

#### THE APPLICANT IN TERMS OF THE NATIONAL CREDIT ACT OF 2005

The Customer agrees, on its own behalf and on behalf of its directors, partners, shareholders, members and associates, that the Company is entitled at any time to communicate with any registered credit bureau to obtain any information relating to the Customer and his director, partners, shareholders, members and associates payment behaviour, creditworthiness, defaults and further personal information.

### 19. LEGAL COSTS

Any action instituted by the Company against the Customer including but not limited to consultation with the Company's attorneys, as a result of any breach of any of the terms herein, by the Customer, shall entitle the Company to recover all its attorney and own client legal cost occasioned by such breach from the Customer.

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_

KLIQ'S SIGNATURE (Please sign in full)

Full names of Signatory: \_\_\_\_\_

Capacity: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Place of Signature: \_\_\_\_\_

\_\_\_\_\_

RECIPIENT'S SIGNATURE (Please sign in full)

Full names of Signatory: \_\_\_\_\_

Capacity: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Place of Signature: \_\_\_\_\_

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WITNESS 1

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WITNESS 2

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WITNESS 1

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WITNESS 2