



**DEPOTEX**

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## **GENERAL TERMS AND CONDITIONS**

*revised November 2022*

### **1.1 In these Conditions:**

“Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

“Goods” means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions and any goods supplied in substitution for or in replacement of or in addition to such goods. “Seller” means DEPOTEX.

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

“Contract” means the contract for the purchase and sale of the Goods.

“Writing” includes letter, cable, facsimile transmission, email and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted, or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2. Basis of the sale**

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations that are not so confirmed.



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2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 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 Seller shall be subject to correction without any liability on the part of the Seller

### 3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim of infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods (in this case the price of Diesel is subject to change without prior notice and the Buyer will be informed of such changes as soon as the Seller becomes aware thereof) which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of any cancellation. However, from the date of the order, a 14-day cooling off period will be allowed during which cancellations or reducing the order will be accepted by the seller without penalty. Without prejudice to the generality of the foregoing, should the Buyer purport without the agreement in Writing of the Seller to cancel any order which has been accepted by the Seller or refuse to accept delivery of any of the Goods such action shall constitute a breach of the agreement and, at the option of the Seller, the Seller shall be entitled to require the



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Buyer to pay to the Seller by way of liquidated damages an amount equivalent to 50% of the invoice value of the order so purported to be cancelled or 50% of the invoice value of the Goods delivery of which is so refused (as the case may be). In the event of the Seller so requiring the Buyer shall pay such amount to the Seller (without any deduction) within 7 days of receiving from the Seller written notification of the amount required to be paid. The Seller and the Buyer hereby agree that such amount represents a genuine pre-estimate of the monetary value of the loss and damage likely to be suffered by the Seller as a result of such breach of agreement on the part of the Buyer. For the avoidance of doubt, in the event that the Seller opts to require the Buyer to pay liquidated damages as set out above, and the Buyer duly pays such liquidated damages, neither party shall have any further liability to the other in relation to the Goods in respect of which such liquidated damages are paid.

#### 4. Price of the goods

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. The price of Diesel is subject to change without prior notice.

4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) or to any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller are exclusive of delivery charges. Delivery charges will be added to the quotation or as discussed with the Buyer.

4.4 The price is exclusive of any applicable value added tax that the Buyer shall be additionally liable to pay to the Seller.

#### 5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time before or after delivery of the Goods.

5.2 All Invoices are payable immediately by credit/debit card or on a pro-forma invoice basis, unless otherwise stated or agreed upon. The Buyer shall pay all invoices without any other deductions



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notwithstanding that delivery may not have taken place and the property in the Goods has not been passed to the Buyer. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to.

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and

5.3.3 charge the Buyer interest on the amount unpaid, at the rate of 15 percent per month, until payment in full is made.

5.4 In the event that the Seller shall cancel the contract under the provisions of Clause 5.3.1 above the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation. Without prejudice to the generality of the foregoing, at the option of the Seller, the Seller shall be entitled to require the Buyer to pay to the Seller by way of liquidated damages an amount equivalent to 50% of the invoice value of the contract so cancelled. In the event of the Seller so requiring, the Buyer shall pay such amount to the Seller (without any deduction) within seven days of receiving from the Seller written notification of the amount required to be paid. The Seller and the Buyer hereby agree that such amount represents a genuine pre-estimate of the monetary value of the loss and damage likely to be suffered by the Seller as a result of such cancellation.

## 6. Delivery

6.1 Delivery of the Goods shall be made by the Seller at the Buyer's premises or, if some other place for delivery is agreed by the Seller, the Seller will deliver the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods for any reason, other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's



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liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection: or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and payment in full of all sums due from the Buyer to the Seller whether under the Contract or by virtue of any other liability of the Buyer to the Seller (unless otherwise agreed upon).

7.3 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

## 8. Warranties and liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification subject to such tolerances as are reasonable and as are normally accepted in the trade and will be free from defects in material and workmanship at the time of delivery.





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8.2 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 30 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.

8.3 Any claim by the Buyer which is based on short delivery or non-delivery shall be notified to the Seller in Writing (in the case of short delivery) within 7 days of delivery and (in the case of non-delivery) within 30 days of receipt by the Buyer of the Seller's Invoice for the goods which the Buyer claims have not been delivered. If the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject any goods that have been delivered and the Seller shall have no liability for such short delivery or non-delivery.

8.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.4.1 Act of God, explosion, flood, tempest, fire or accident;

8.4.2 war or threat of war, sabotage, insurrection, civil disturbance, or requisition;

8.4.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.4.4 import or export regulations or embargoes;

8.4.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.4.6 difficulties in obtaining raw materials labour, fuel, parts or machinery;

8.4.7 power failure or breakdown in machinery.

## 9. Insolvency of buyer

9.1 This clause applies if:

9.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or



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9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered, but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 10. Data Protection

10.1 We may transfer information about you to our financiers, who:

10.2 may use, analyse and assess information about you, including the nature of your transactions, and exchange such information with other members of their group of companies and others for credit or financial assessment, market research, statistical analysis, insurance claim, underwriting and training purposes and in making payments and servicing their agreement with us;

10.3 from time to time, may make searches of your record at credit reference agencies where your record with such agencies may include searches made and information given by other businesses; details of their searches will be kept by such agencies but will not be seen by other organisations that may make searches;

10.4 may give information about you and your indebtedness to the following:

10.4.1 our or their insurers for underwriting and claims purposes;

10.4.2 any guarantor or indemnifier of your or our obligations to enable them to assess such obligations;

10.4.3 their bankers or any advisers acting on their behalf;

10.4.4 any business to which your indebtedness or our arrangements with our financiers may be transferred – to facilitate such transfer;

10.5 may monitor and/or record any phone calls you may have with them, for training and/or security purposes;

10.6 in the event that they transfer all or any of their rights and obligations under their agreement with us to a third party, may transfer information about you to enable the third part to enforce their rights or comply with the obligations.

10.7 We will provide you with details of our financiers on request, including a contact telephone number if you want to have details of the credit reference agencies and other third parties referred to above from whom they obtain and to whom they may give information about you. You also have a



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right to receive a copy of certain information they hold about you if you apply to them in writing, however, a fee will be payable.

## 11. General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that 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 given the notice

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 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 provision in question shall not be affected thereby.

11.4 The contract shall be governed by the laws of South Africa.

For any queries, feel free to contact us directly:

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