



## TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

In this agreement –

- 1.1 Clause headings are for convenience and shall not be used in its interpretation;
- 1.2 Unless the context clearly indicates a contrary intention –
  - 1.2.1. an expression, which denotes –
    - 1.2.1.1. any gender includes the other genders;
    - 1.2.1.2. a natural person includes an artificial person and vice versa;
    - 1.2.1.3. the singular includes the plural and vice versa;
  - 1.2.2. the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –
    - 1.2.2.1. 'CPA' means the Consumer Protection Act No. 68 of 2008, as amended and any Regulations promulgated in respect thereof;
    - 1.2.2.2. 'Customer' – shall mean the person whose name appears on the invoice which is annexed hereto, or if no invoice is annexed hereto, or no name appears thereon, or in any other circumstances, any person or persons at whose request or on whose behalf Clarke's Crane and Grab Sales CC undertakes to supply any goods, do any business, or provide any advice or service;
    - 1.2.2.3. 'Clarke's Crane and Grab Sales CC' – shall mean Clarke's Crane and Grab Sales CC;
    - 1.2.2.4. 'Goods' – any items or services of whatsoever nature that are supplied by Clarke's Crane and Grab Sales CC to the Customer in terms of this agreement;
    - 1.2.2.5. 'Protected Consumer' means a consumer as defined in section 1 of the CPA and whose annual turnover and assets value falls below the threshold contemplated in section 5 of the CPA read in conjunction with the Regulations;
    - 1.2.2.6. 'Signatory' – shall mean the individual who signs this agreement and the annexed invoice or delivery note on behalf of the Customer;
- 1.3 These conditions of sale will, where applicable, will be subject to the CPA.

### 2. THESE TERMS AND CONDITIONS TO PREVAIL

- 2.1 It is recorded that the only basis upon which Clarke's Crane and Grab Sales CC is prepared to do business with the Customer is that, notwithstanding anything in the Customer's enquiry, specification, acceptance, order or other documentation or any other discussion/s to the contrary, the terms and conditions contained herein shall constitute the sole terms of the agreement between Clarke's Crane and Grab Sales CC and the Customer.
- 2.2 and shall operate in respect of any and all business between the Customer and Clarke's Crane and Grab Sales CC.
- 2.3 Any and all business undertaken, including any advice, information or service provided, whether gratuitously or not, by Clarke's Crane and Grab Sales CC is and shall be subject to the terms and conditions contained herein, and each term and condition shall be deemed to be incorporated in and to be a term and condition of any agreement between Clarke's Crane and Grab Sales CC and the Customer.

### 3. NO VARIATIONS OR AMENDMENTS

- 3.1 This agreement constitutes the whole agreement between the Customer and Clarke's Crane and Grab Sales CC relating to the subject matter hereof.
- 3.2 No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or



relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by an authorized representative of Clarke's Crane and Grab Sales CC. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating to the matter in respect whereof it was made or given.

- 3.3** No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against Clarke's Crane and Grab Sales CC in respect of its rights under this agreement, nor shall it operate so as to preclude Clarke's Crane and Grab Sales CC thereafter from exercising its rights strictly in accordance with this agreement.
- 3.4** Clarke's Crane and Grab Sales CC shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract between Clarke's Crane and Grab Sales CC and the Customer or not.
- 3.5** No person other than a duly authorized representative of Clarke's Crane and Grab Sales CC has any authority to delete, amend or in any respect vary any of these conditions or accept any other conditions or agree to a consensual cancellation hereof.

#### **4. QUOTATIONS**

- 4.1** Any quotation given is not an offer by Clarke's Crane and Grab Sales CC to sell the goods but constitutes an invitation by Clarke's Crane and Grab Sales CC to the Customer to do business with Clarke's Crane and Grab Sales CC.
- 4.2** A quotation is only valid for the period specified and may be revoked at any time by Clarke's Crane and Grab Sales CC in the event of non-availability of the specified goods. Clarke's Crane and Grab Sales CC may accept or reject in whole or in part any order placed upon it by the Customer pursuant to the quotation. Accordingly, a contract shall only come into force between Clarke's Crane and Grab Sales CC and the Customer if after receipt by Clarke's Crane and Grab Sales CC of the Customer's order or acceptance of the quotation, Clarke's Crane and Grab Sales CC confirms to the Customer that such a contract has been concluded or if Clarke's Crane and Grab Sales CC supplies, or tenders to supply, the goods in question to the Customer.
- 4.3** The quotation is based on rates of exchange, freight charges, insurance, costs of labor and materials and other charges ruling at the date/term of the quotation. Any variations occurring subsequent to the date/term of the quotation in any of the aforesaid rates or charges shall entitle Clarke's Crane and Grab Sales CC to vary the amount of the quotation accordingly.

#### **5. PLACING OF ORDERS**

- 5.1** Orders must be placed in writing and accompanied by sufficient information to enable Clarke's Crane and Grab Sales CC to proceed with the order forthwith, failing which Clarke's Crane and Grab Sales CC shall not be held responsible for executing orders not confirmed by an official order from the Customer.
- 5.2** Any such order shall upon acceptance thereof by Clarke's Crane and Grab Sales CC be irrevocable by the Customer. In the event of the Customer wishing to cancel or vary the order, Clarke's Crane and Grab Sales CC, at its sole discretion, may agree to the cancellation or variation of an order. The Customer shall be liable for any financial implications that may arise due to the cancellation or variation of the order.

#### **6. PURCHASE PRICE**

- 6.1** Orders are accepted by Clarke's Crane and Grab Sales CC on the basis that the prices charged are those ruling at the date of the order of the goods or term of quotation period, unless otherwise expressly stated.



- 6.2** Unless otherwise expressly stated, prices are exclusive of value added tax which shall be for the account of the Customer unless the Customer has given acceptable proof to Clarke's Crane and Grab Sales CC that the supply is a zero rated or an exempt supply.
- 6.3** The Customer shall be obliged to pay to Clarke's Crane and Grab Sales CC in addition to the contract price herein –
- 6.3.1.** the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on a date after the date on which any price charged is determined.
- 6.3.2.** Any other additional costs of any nature whatsoever arising due to factors beyond the control of Clarke's Crane and Grab Sales CC. In particular, but without limiting the generality of the foregoing, Clarke's Crane and Grab Sales CC shall be entitled to increase the purchase price in respect of any goods supplied in order to make provision for any increases in cost arising as a result of or during the period of any delay caused by the Customer.
- 6.4** Any expense incurred by Clarke's Crane and Grab Sales CC at the instance of the Customer in modifying or otherwise altering or making additions to the design, quantities or specifications for the standard Goods, and any expenses arising as a result of suspension of work by Clarke's Crane and Grab Sales CC due to instructions given, or a failure to give instruction by the Customer, shall be added to the purchase price in respect of the relevant goods.

## **7. PAYMENT**

- 7.1** The decision of whether or not to grant credit facilities to the Customer is at the sole discretion of Clarke's Crane and Grab Sales CC. Clarke's Crane and Grab Sales CC reserves the right to review or amend any credit facilities at any time which may have been granted to the Customer.
- 7.2** If the Customer is granted credit facilities by Clarke's Crane and Grab Sales CC, the Customer consents to adhere to Clarke's Crane and Grab Sales CC's standard payment terms of 30 (thirty) days from date of statement, unless otherwise agreed in writing by Clarke's Crane and Grab Sales CC.
- 7.3** Clarke's Crane and Grab Sales CC reserves the right to raise interest on any overdue amount at a rate of prime plus 2% per annum apportioned for overdue periods.
- 7.4** The Customer has no right to withhold payment for any reason whatsoever. The Customer is not entitled to set off any amount due to the Customer by Clarke's Crane and Grab Sales CC against any debt owed by the Customer to Clarke's Crane and Grab Sales CC nor shall the Customer withhold any payment by virtue of any alleged counterclaim against Clarke's Crane and Grab Sales CC.

## **8. RISK**

- 8.1** The risk of damage to, destruction or theft of the Goods passes to the Customer as per the Incoterms 2010 stipulated on the quotation. If no terms are stipulated on the quotation, the Incoterms 2010, 'Ex-works Clarke's Crane and Grab Sales CC Highbury Premises' will apply.
- 8.2** Clarke's Crane and Grab Sales CC shall not be responsible or held liable for theft, damage or any other incident for equipment left on Clarke's Crane and Grab Sales CC premises. All equipment remains the responsibility of the owner.

## **9. REPAIRS**

- 9.1** Any repair times given by Clarke's Crane and Grab Sales CC are merely estimates and Clarke's Crane and Grab Sales CC shall not be bound thereby.
- 9.2** The Customer hereby agrees that any item handed in for repair may be sold by Clarke's Crane and Grab Sales CC to defray the cost of such repair and Clarke's Crane and Grab Sales CC's storage cost of the item if not collected within three months of date of quotation or of the repair being completed.



## 10. IMPORTED GOODS

Where the Goods or any part thereof are to be imported, this agreement is subject to the condition that the Customer's order is accepted and confirmed by Clarke's Crane and Grab Sales CC's own suppliers and that delivery is made thereunder in due course.

## 11. DELIVERY AND RETURNS

**11.1** Any delivery date indicated by Clarke's Crane and Grab Sales CC shall merely be regarded as the estimated date of delivery and shall not bind Clarke's Crane and Grab Sales CC to effect delivery on such date.

**11.2** The Customer shall accept delivery whenever it is tendered and shall not be entitled to resile from the agreement nor to withhold or defer any payment nor to a reduction in price nor to any other right or remedy against Clarke's Crane and Grab Sales CC, its servant, agents or any other persons for whom it is liable in law (in whose favour this constitutes a stipulatio alteri) whether for losses, costs, damages, expenses, interest or otherwise on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent act or omission on the part of Clarke's Crane and Grab Sales CC, its servants, agents or any other persons for whom it is liable in law, or not.

**11.3** If delivery of any particular order is to be effected in consignments, Clarke's Crane and Grab Sales CC shall not be obliged to deliver any part of the order until the purchase price, which is due in respect of the part of the order that has already been delivered has been paid.

**11.4** The Customer shall be obliged to inspect all Goods upon delivery and shall endorse the delivery note as to any missing or damaged Goods. No claims for missing or damaged Goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition, the Customer notifies Clarke's Crane and Grab Sales CC in writing within 7 (seven) days of the delivery of the Goods of the claim in question and the Goods relating to such claim, furnishing full details in regard thereto. The Customer shall bear the onus of proving that upon delivery, any Goods are missing or damaged or that the Customer's order was in any way not complied with.

**11.5** Where the goods have been specially ordered, or manufactured, the Customer remains liable for payment. However, Clarke's Crane and Grab Sales CC will attempt to re-sell the goods on behalf of the Customer. Clarke's Crane and Grab Sales CC will not accept return of any such goods that could not be sold by, or on behalf of, the Customer.

**11.6** Where goods have been correctly supplied, Clarke's Crane and Grab Sales CC **MAY**:

**11.6.1. Accept** return of the goods under the following conditions:

**11.6.1.1.** Goods in a new and re-stockable condition must be returned in the original packaging including all relevant documentation.

**11.6.1.2.** All subject to the Customer's liability for the costs of any repair work or replacement of missing parts and accessories.

**11.6.1.3.** All subject to a re-stocking fee of 15% of the original purchase price.

**11.6.2. Not Accept** return of the Goods under the following conditions:

**11.6.2.1.** Goods showing signs of use, wear and tear.

**11.6.2.2.** Goods damaged by the Customer.

**11.6.2.3.** Goods damaged in transit from the Customer to Clarke's Crane and Grab Sales CC.

**11.7** If Clarke's Crane and Grab Sales CC is unable to deliver the Goods to the Customer due to any act or omission on the part of the Customer, it shall be entitled to charge the Customer for the storage of the Goods. The Customer shall be obliged to furnish information necessary to enable delivery of the relevant Goods to be effected and if the Customer fails or refuses to do so, or if it fails or refuses to take delivery, the Goods shall without prejudice to the provisions of clause 8, be deemed to have been delivered to the Customer upon notification by Clarke's Crane and Grab Sales CC to the Customer to that effect.



**11.8** If the Customer agrees to engage a third party to transport the Goods, Clarke's Crane and Grab Sales CC is hereby authorized to engage a third party on the Customer's behalf and on the terms deemed fit by Clarke's Crane and Grab Sales CC. The Customer hereby indemnifies Clarke's Crane and Grab Sales CC against any claims that may arise from such agreement against Clarke's Crane and Grab Sales CC.

## **12. WARRANTIES AND GUARANTEES**

**12.1** No Warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this agreement shall be binding on Clarke's Crane and Grab Sales CC, the Customer irrevocably waiving any right (common law or otherwise) it may have to rely thereon, and the Goods are purchased on the basis that they are taken as is and with the exclusion of all common law and other remedies, whether as to the suitability of the Goods sold for any specific purposes or (without limiting the generality of the foregoing) otherwise.

**12.2** The parties agree that Clarke's Crane and Grab Sales CC shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the Goods. Without limiting the foregoing Clarke's Crane and Grab Sales CC does not warrant that the Goods will be fit for the purposes for which they are to be used by the Customer (notwithstanding that the use to which the Customer intends to put the Goods is known to Clarke's Crane and Grab Sales CC). For the purposes hereof, any reference to Clarke's Crane and Grab Sales CC shall include its servants, agents or contractors or any persons the benefits of which may be accepted by them at any time.

**12.3** The Customer warrants that it has satisfied itself as to the nature of the Goods and that it has satisfied itself that the Goods are suitable for their intended purpose.

**12.4** Clarke's Crane and Grab Sales CC warrants that the Products and/or Supplies are of good quality, in good working order and free from any defects in materials and workmanship

**12.5** Clarke's Crane and Grab Sales CC's sole obligation under this warranty is to, at its discretion, repair, replace or otherwise correct the defects in the Products and/or Supplies

**12.6** Customers who acquire Goods for the purpose of on-selling those Goods, whether that Customer is permitted to do so or not (and nothing herein contained shall be deemed to allow that Customer to on-sell Goods acquired from Clarke's Crane and Grab Sales CC whilst ownership vests in Clarke's Crane and Grab Sales CC), shall not advertise or issue or in any other way give or make any warranties, guarantees or representations as to the Goods in any form whatsoever or offer to do so, which could result in liability being imposed upon Clarke's Crane and Grab Sales CC

**12.7** These warranties do not apply where the non-conformance is due to accident, fire, explosion, power failure, power surge or other power irregularity, lightning, alteration, abuse, misuse or repair not performed by Clarke's Crane and Grab Sales CC, improper storage, failure to comply with all specified applicable environmental requirements for the Products and/or Supplies, improper installation, maintenance, operation or other service in connection with the Products and/or Supplies except where performed by Clarke's Crane and Grab Sales CC

## **13 OWNERSHIP**

Ownership of the Goods shall not pass to the Customer until the contract price (including interest if any) in respect of the Goods in question has been paid. The provisions hereof shall apply notwithstanding the installation of such Goods in the Customer's premises or the accession thereof to any of the Customer's Goods or that the Goods may be incorporated into or form part of other Goods or change their essential character. All Goods, whether fixed to immovable property or not, shall be deemed to remain movable property.

## **14 DOCUMENTATION**

All specifications, descriptive matter, drawings and other documents furnished by Clarke's Crane and Grab Sales CC do not form part of the contract and may not be relied upon, unless they are agreed in writing by Clarke's Crane and Grab Sales CC to form part of this contract. All descriptive matter, specifications, drawings and



particulars given by Clarke's Crane and Grab Sales CC which form part of the contract are approximate only and Clarke's Crane and Grab Sales CC cannot be held responsible for loss due to discrepancies therein.

## 15 BREACH

15.1 Subject to clause 15.2, if the Customer breaches any of the terms or conditions hereof or any other agreement with Clarke's Crane and Grab Sales CC or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice Clarke's Crane and Grab Sales CC's rights hereunder or at all, or allows any judgement against it to remain unsatisfied for 7 (seven) days or is placed into provisional or final liquidation or judicial management or under provisional or final sequestration or if his estate is voluntarily surrendered, Clarke's Crane and Grab Sales CC shall have the right, without prejudice to any other right which it may have against the Customer, to elect to –

15.1.1 Treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the agreement and to claim such amounts as well as any other amounts in arrear including interest and to cease performance of its obligations hereunder as well as under any other contract with the Customer until the Customer has remedied the breach; or

15.2 Cancel this agreement and retake possession of any of the Goods sold.

15.3 Clarke's Crane and Grab Sales CC shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the Customer is indebted to Clarke's Crane and Grab Sales CC in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to Clarke's Crane and Grab Sales CC, whether arising out of this contract or otherwise. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in stages, Clarke's Crane and Grab Sales CC shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered, has been paid.

15.4 No claim under this contract will arise against Clarke's Crane and Grab Sales CC unless the Customer has given Clarke's Crane and Grab Sales CC 30 (thirty) day's written notice sent by prepaid registered post to rectify any defect or breach of contract.

15.5 The Customer agrees that the amount due and payable to Clarke's Crane and Grab Sales CC shall be determined and proven by a certificate issued by Clarke's Crane and Grab Sales CC and signed on its behalf by any person duly authorized by Clarke's Crane and Grab Sales CC, which authority need not be proven. Such certificate shall be binding and shall be *prima facie* proof of the indebtedness of the Customer, unless manifestly incorrect.

15.6 Either party shall have the right to institute an action in the relevant Magistrate's Court or higher Court as deemed necessary or appropriate.

## 16 DOMICILIUM AND NOTICES

16.1 The parties choose *domicilium citandi et executandi* ('domicilium') for the purpose of the giving of any notice, the payment of any sum, the serving of any process and for any purpose arising from this agreement at their addresses and tele-facsimile numbers as set out in the Customer order or invoice.

16.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address which is not a post office box or *poste restante*.

16.3 Any notice given and any payment made by any party to any other ('the addressee') shall be in writing and if –

16.3.1 Delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

16.3.2 Posted by prepaid post from an address to an addressee at the addressee's domicilium for the time being shall be presumed until the contrary is proved by the addressee, to have been received by the addressee on the 4 (fourth) day after the date of posting;



**16.3.3** Transmitted by facsimile from an address to the addressee at the addressee's facsimile address for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the first business day after the date of transmission.

## **17 NO CESSION**

The Customer shall not be entitled to cede or assign any rights and/or obligations, which it may have in terms of this agreement to any third party.

## **18 SECURITY FOR OBLIGATIONS**

Clarke's Crane and Grab Sales CC reserves the right to require satisfactory security from the Customer for the due performance of any of the Customer's obligations hereunder including but not limited to the payment of the purchase price. If Clarke's Crane and Grab Sales CC so requires, the Customer shall deliver to Clarke's Crane and Grab Sales CC prior to Clarke's Crane and Grab Sales CC complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institute acceptable to Clarke's Crane and Grab Sales CC. If such security or guarantees or letters of credit are not furnished within seven (7) days after any such demand, Clarke's Crane and Grab Sales CC shall be entitled to withdraw from the contract in whole or in parts thereof.

## **19 COSTS**

The Customer shall be liable for all costs incurred by Clarke's Crane and Grab Sales CC in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own Customer scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgement has been granted in connection with the satisfaction or enforcement of such judgement.

## **20 EXEMPTIONS AND INDEMNITY**

The Customer shall have no claim of any nature whatsoever whether for damages, a remission of the purchase price, cancellation or otherwise, against Clarke's Crane and Grab Sales CC, its servants, agents or others on whose behalf Clarke's Crane and Grab Sales CC would be liable, in respect of any loss or damage sustained by the Customer of any nature whatsoever or any damage caused to the assets of the Customer or assets kept on its premises by any third parties or in regard to the Customer's business or sustained by any of its Customers, howsoever caused including the negligent (including grossly negligent) acts or omissions of Clarke's Crane and Grab Sales CC, its servants, agents or others for whom it may be liable in law. This constitutes also *stipulatio alteri* in favour of such persons the benefits of which may be accepted by them at any time.

## **21 CONSEQUENTIAL LOSS**

Under no circumstances whatsoever including as a result of its negligent (including grossly negligent) acts or omissions of Clarke's Crane and Grab Sales CC, its servants, agents or others for whom in law it may be liable, shall Clarke's Crane and Grab Sales CC be liable for any consequential loss sustained by the Customer. This constitutes also *stipulatio alteri* in favour of such persons the benefits of which may be accepted by them at any time.

## **22 PROTECTED CONSUMERS**

To the extent that the Customer is an individual or a company, CC, partnership, trust or other association of persons which has an annual turnover or asset value **below the threshold (as determined from time to time by the Minister)**, the Customer is entitled to the rights set out in the CPA and the following parts of provisions of this agreement may not apply -

**22.1** Clause 5.2 insofar as it contravenes section 17 of the CPA;

**22.2** Clause 6.3.2 shall not apply to the extent that it allows Clarke's Crane and Grab Sales CC to unilaterally increase the price agreed upon with the consumer, without giving the consumer the right to terminate the agreement in contravention of section 23(6) and Regulation 44(3)(i) of the CPA;





**22.3** Clause 7.4, 11.2 and 15.3 to the extent that these clauses restrict Customer's legal rights and remedies in the event of a total or partial breach by Clarke's Crane and Grab Sales CC or any third party, including the right to set off a debt owed by Clarke's Crane and Grab Sales CC against any claim which the Customer has, in contravention of Regulation 44(3)(b) of the CPA;

**22.4** Clause 11.1, 11.2 and 11.7 to the extent that it dictates when delivery takes place and provides that the Customer may not cancel an order as a result of a delay in delivery in contravention of section 19 of the CPA; and

**22.5** Clause 12.1, 20 and 21 insofar as such indemnity or limitation of liability relates to claims for death, injury, illness, damage to property and associated economic loss suffered as a result of using defective Goods supplied by Clarke's Crane and Grab Sales CC, in contravention of Section 61 of the CPA.

### **23 SEVERABILITY**

Each paragraph or clause in this agreement is severable the one from the other and if any paragraph or clause is found by any competent court to be defective or unenforceable for any reason whatever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.

### **24 FORCE MAJEURE**

Neither party shall be liable for any delays or failures in performance (other than payment obligations hereunder) due to circumstances beyond its reasonable control including acts of God, inclement weather, fire, explosions, floods, disease of epidemic proportions, strikes, work stoppages, slowdowns or other industrial disputes, riots, war or civil disturbances, power outages and acts of government.