

Starrate Conditions of Sale

APPLICABILITY OF CONDITIONS

- 1.1. All business undertaken by STARRATE (PTY) LTD ("Starrate") is subject to Starrate's standard terms and conditions ("the conditions") hereinafter set out and each condition shall be deemed to be incorporated in and to be a condition of any agreement between Starrate and its customer.
- 1.2. Even if these conditions are not signed by the customer, it will be deemed that the customer has agreed to them when accepting delivery of any goods from Starrate.
- 1.3. These terms supersede all previous conditions without prejudice to any securities or guarantees held by Starrate.
- 1.4. These terms apply to all servants and subcontractors of Starrate.

2. QUOTATIONS

- 2.1. Unless otherwise stated in the quotation or price list, all quotations and price lists are exclusive of VAT and will remain valid for a period of 21 (TWENTY ONE) days from the date of the quotation or until issue of a new Price List, whichever occurs first. Prices quoted are subject to confirmation at date of order.
- 2.2. All quotations are subject to the availability of the goods and raw materials and subject to the correction of bona fide errors by Starrate and the prices quoted are subject to change without prior notice due to any increases in the cost price, including fluctuations and inflation, to Starrate before acceptance of order.
- 2.3. Any independent auditor shall certify the amount of the increase and such certificate shall be binding on the Customer.

3. ORDERS

- 3.1. The Customer must place orders with Starrate's sales department by letter, fax or e-mail.
- 3.2. Notwithstanding the provisions of section 2 above, all orders, whether in oral or in writing, shall be binding and subject to these standard conditions of agreement and may not be cancelled unless agreed in writing by Starrate.
- 3.3. If Starrate does not have sufficient stock of the goods which are ordered by the Customer, the goods will be supplied as soon as Starrate receives stock thereof.

4. PRICE

All goods are sold at Starrate's usual prices alternatively the agreed price ("the prices") which exclude VAT and delivery costs.

5. PAYMENT

- 5.1. The Customer shall make payment for all goods purchased from Starrate within the granted period as specified on the Credit Application form.
- 5.2. In the event of the Customer failing to make payment on the due date, the Customer shall be liable to Starrate for interest at the maximum rate permissible by law, calculated from the due date to date of payment and compounded monthly in arrears.
- 5.3. All payments due by the Customer shall be made in South African Rands or in the currency specified in the relevant accepted Starrate quotation or price list, without demand, deduction or set-off, in cash, by bank guaranteed cheque or by electronic funds transfer.
- 5.4. All direct payments must be deposited into the following bank account, which may be changed by Starrate, from time to time, on written notice to the Customer:

Account Name:	STARRATE
Bank :	First National Bank
International Branch:	262650
Swift Code:	FIRNZAJJ
USD Account Number :	0183229
Euro Account Number:	0189049
AUD Account Number:	0364908
ZAR Account Number:	58880049392

- 5.5. The Customer acknowledges that Starrate is entitled in its sole discretion to appropriate any payment made by the customer to any part of the account that Starrate elects.

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5.6. All invoices and statements not queried within fifteen (15) days from receipt thereof will be deemed final and correct.

6. DELIVERY

- 6.1. The goods are deemed to be delivered to the Customer when the terms of sale ("the Incoterms") have been fulfilled. The Incoterms specified on the Starrate Quotation or Price List shall be valid for all Customer Orders.
- 6.2. When it receives an order from the Customer:
 - 6.2.1. Starrate will deliver the goods to the destination specified as per the Incoterms on the Starrate Quotation or Price List ("the delivery destination"); or
 - 6.2.2. The Customer must collect the goods from Starrate within 7 days of the date of any notice by Starrate that the goods are ready for collection, failing which Starrate may, but is not obliged to, deliver the goods to the Customer.
- 6.3. Any delivery note or waybill (a copy or original) signed by the Customer or third party engaged to transport the goods and held by Starrate shall be prima facie proof that delivery was made to the Customer.
- 6.4. Unless the Customer notifies Starrate in writing within ten days of delivery of the goods of any damage to the goods, then the said product shall be deemed to be in good order and condition as at the date of delivery and no claim shall lie against Starrate in respect thereof.
- 6.5. The Customer will be liable for all delivery charges.
- 6.6. Starrate shall be entitled in its sole discretion to split the delivery of the goods ordered in the quantities and on the date it decides.
- 6.7. Starrate shall be entitled to invoice each delivery / performance actually made separately.
- 6.8. Delivery times given are merely estimates and are not binding on Starrate.
- 6.9. If Starrate agrees to engage a third party to transport the goods on the Customer's behalf, Starrate is hereby authorised to engage a third party on the Customer's behalf and on terms deemed fit by Starrate.
- 6.10. The Customer indemnifies Starrate against any claims which may arise from any such agreement in terms of clause 6.9, against Starrate.

7. OWNERSHIP AND RISK

- 7.1. Ownership in any goods sold by Starrate to the customer shall remain vested in Starrate until payment in respect of such goods has been made in full.
- 7.2. The risk of damage to, destruction of or theft of goods shall pass to the Customer upon fulfilment of the Incoterms by Starrate. The customer undertakes to comprehensively insure the goods it has received until fully paid for.

8. RETURN OF GOODS

All goods are made to order and may not be returned save for goods falling under the provisions of Clause 9 hereof.

9. WARRANTY

- 9.1. Starrate warrants, that at the time of delivery, all goods sold shall comply with the specifications and standards as certified on the manufacturer's certificate of analysis provided with each delivered lot of goods.
- 9.2. Starrate gives no other warranty or guarantee either express, implied or tacit of any nature as to the fitness, suitability or performance of the product.
- 9.3. To be valid, the Customer must provide the applicable Starrate Commercial Invoice to support any claim. For any defect claim, the Customer must also provide sufficient physical evidence of the defective goods along with a report confirming the type and quantity of the defective goods.
- 9.4. The customer acknowledges that any claims for defective goods will be processed by the manufacturers thereof in accordance with their policies and procedures which may be published by the manufacturer from time to time and which can provided upon request.

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10. EXCLUSION OF LIABILITY

10.1 The Customer acknowledges that Starrate is not the manufacturer of the goods.

10.2 Save for the warrantee in terms of clause 9 above, where Starrate's liability shall be limited to the replacement or cost of the goods, neither Starrate nor any of its directors, employees or agents shall be liable for any loss or damage whether direct, indirect, consequential or otherwise suffered by the Customer arising from any cause in connection with any business or transaction concluded with Starrate, whether such loss or damage results from a breach of the agreement (whether total, fundamental or otherwise), delict, negligence or any other cause without limitation.

10.3 It is the sole responsibility of the Customer to determine that the goods ordered are suitable for the purpose of its intended use.

10.4 The Customer agrees to pay all costs resulting from any acts or omissions of the customer including suspension of work, modification of requirements, failure or delay in giving the particular requisites to enable delivery to occur on schedule or requirements that delivery to be completed earlier than agreed.

10.5 All warranties are immediately null and void should the goods have been altered, stored or used outside of the manufacturer's written specifications or guidelines.

11. COPYRIGHT

11.1 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and agrees that each attempt to duplicate the copyrighted material shall immediately render the full prevailing price payable to Starrate.

11.2 The Customer hereby indemnifies Starrate against any claims, costs and expenses arising out of any infringement of copyright, patent, trademark or design.

12. REPRESENTATIONS

The Customer acknowledges that it does not rely on any representations made by Starrate in regard to any goods and services of any of its qualities unless these were reduced to writing and signed by an authorised employee of Starrate. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Starrate in respect of the goods or services orally or in writing will not form part of this Agreement in any way unless agreed to in writing by Starrate.

13. PARTNERSHIP

In the event of the Customer being a partnership, the individual partners agree that all partners shall be jointly and severally liable for payment of all amounts due to the customer by Starrate. The partners further agree that their liability to Starrate shall be unaffected by any dissolution of the partnership in respect of any goods sold and delivered after such dissolution unless a written notice enclosing proof of such dissolution has been duly delivered to Starrate.

14. LANDLORD'S LIEN

14.1. If the Customer leases its premises, then the customer shall notify its landlord that any goods bought from Starrate belong to Starrate until they are fully paid for. Starrate also has the right to notify the landlord thereof.

14.2. The Customer shall provide Starrate with the name and contact details of its landlord. The Customer shall notify Starrate of any changes to its landlord or its contact details and immediately provide Starrate with the new information.

15. BREACH

15.1. The Customer will be in breach if it:

15.1.1. Fails to pay any amount of money due to Starrate on the due date; or

15.1.2. Is sequestrated or placed in liquidation (whether voluntary, compulsory, provisional or final) or under judicial management; or

15.1.3. Commits any act of insolvency or what would be an act of insolvency if committed by a natural person; or

15.1.4. Enters into an arrangement or compromise with its creditors generally; or

15.1.5. Fails to satisfy any judgment granted against it within 7 days of the date of judgment; or

15.1.6. Fails to strictly adhere to any other term or condition of this agreement.

15.2. If the Customer is in breach:

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15.2.1. All amounts which are owed to Starrate will immediately become due and payable, despite any agreement for credit with such Customer;

15.2.2. Starrate may suspend all deliveries to the Customer;

15.2.3. Starrate may cancel the customer's orders without notice to such Customer.

15.2.4. Starrate will be entitled without prejudice to its other rights in law to cancel this agreement without notice to the Customer.

15.2.5. A certificate by a director of Starrate reflecting the amount due and owing by the customer to Starrate in respect of capital and interest shall be sufficient and satisfactory prima facie proof of the facts therein stated for the purposes of all proceedings against the Customer for the recovery of the said amount.

15.2.6. The Customer will be liable for all expenses incurred by Starrate in exercising any rights arising out of breach of the customer's obligations in terms hereof, including legal charges between attorney and client, collection charges and tracing fees.

16. DOMICILIUM

16.1 The customer hereby chooses the address set forth on page 1 of this agreement as its domicilium citandi et executandi for all purposes in terms of this agreement as follows:-

All notices which are given in terms of or in connection with this agreement shall be deemed to have been received as follows:-

16.1.1. if posted by pre-paid post, three (3) days after the date of posting; or

16.1.2. if delivered by hand, on date of delivery; or

16.1.3. if by email, on date of successful transmission.

16.2. The Customer undertakes to inform Starrate in writing within seven (7) days of any change of Director, Member, Shareholder, Owner or Partner or address: or fourteen (14) days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this Agreement.

17. DISPUTES

If the National Credit Act applies, the Customer has the right to, inter alia, refer a complaint to a dispute resolution agent, the Consumer Court or the ombud with jurisdiction; or file a complaint with the National Credit Regulator in respect of any alleged contravention of the National Credit Act.

18. FORCE MAJEURE

18.1. Starrate shall not be liable to the customer for any delay or non-performance of its obligations in terms of this Agreement arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: Act of God, Governmental Act, War, Fire, Flood, Explosion or Civil Commotion.

18.2. In the event of a Starrate being so delayed or prevented from performing its obligations they shall:-

18.2.1. Give notice in writing of such delay or prevention to the customer as soon as reasonably possible stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

18.2.2. Use all reasonable endeavours to mitigate the effects of such delay or prevention upon the performance of its obligations under this Agreement; and

18.2.3. Resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

19. USE OF INFORMATION

19.1 Starrate may hold and process by computer or otherwise any information obtained about the Customer and or Sureties as a result of this application and/or agreement. Starrate may conduct a credit enquiry and/or credit information search about the Customer and or Sureties with a credit information bureau, persons acting as their agents and/or other credit grantors. Starrate may transmit details of how the Customer and or Sureties have performed in meeting their obligations in terms of this application/agreement concluded between Starrate and the Customer and or Sureties and share information with other credit grantors for the purposes of making any risk management related decisions.

19.2 If the Customer and or Sureties fail to meet their obligations as defined in this Agreement, Starrate may record the Customer and or Sureties' non-performance with a credit information bureau. Any information conveyed to a credit information bureau will be available to other credit grantors and used in making risk management decisions.

19.3 Starrate may:

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- 19.3.1 Monitor the Customer and or Sureties payment behaviour by researching the Customer and or Sureties record at one or more credit bureau/x;
 - 19.3.2 Use new information and data obtained from a credit bureau in respect of the Customer and or Sureties future credit applications;
 - 19.3.3 Record existence of the Customer and or Sureties account with any credit information bureau;
 - 19.3.4 Record and transmit details of how the Customer and or Sureties have performed in terms of this agreement reflecting how the account has been conducted by the Customer and or Sureties in meeting their obligations in terms of this account.
- 19.4 The Customer and or Sureties acknowledge and agree that any information regarding their credit worthiness, defaults in payments to Starrate, and details of how they have conducted the account with Starrate may be disclosed to any other creditor of the Customer and/or one or more credit information bureau.

20. GENERAL PROVISIONS

- 20.1. These conditions and any documents referred to herein constitute the whole agreement between Starrate and the customer.
- 20.2. Neither party will be bound by any variation of these conditions or any waiver of any rights under these conditions unless the variation or waiver is in writing and signed by both Starrate and the customer.
- 20.3. Starrate is not bound by any oral statements, figures, specifications, prices quoted, acceptances or representations.
- 20.4. No relaxation or indulgence which Starrate may give at any time in regard to the carrying out of any of the customer's obligations will prejudice or be a waiver of any of Starrate's rights.
- 20.5. The customer consents and submits to the jurisdiction of the Magistrate's Court in respect of all disputes arising out of the sale of goods to which these conditions relate. Neither party is obliged to institute proceedings in that court.
- 20.6. The amounts referred to in this application do not limit the amount recoverable by Starrate.
- 20.7. In this agreement, unless the context otherwise requires:
- 20.7.1. the masculine gender includes the feminine gender and vice versa;
 - 20.7.2. both masculine and feminine genders include the neuter and vice versa;
 - 20.7.3. the singular includes the plural and vice versa;
 - 20.7.4. headings of clauses shall be deemed to have been included for the purposes of convenience only and shall not affect the interpretation of this Agreement.
- 20.8. If any provision of this Agreement, including the suretyship, is found or held to be invalid or unenforceable such provision/s will be severable from the remaining provisions, which will continue to be valid and enforceable.
- 20.9. The provisions of this Agreement shall be given by and interpreted in accordance with the Law of the Republic of South Africa, including its private international Law.
- 20.10. In the event of any clause in these terms and condition agreement being construed as being illegal, pro non scripto or invalid for any reason whatsoever the remainder of the terms and conditions shall not be invalidated as a result thereof, and shall remain of full force and effect.

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