

# Cape Town

Tel: +27 21 959 9000

27 Junction Road, Tygerberg  
Business Park, Parow, Industria

E-Mail: info@prorooft.co.za

Website: www.prorooft.co.za



# PRO ROOF

STEEL MERCHANTS

## Terms and Conditions of Sale Incorporating Warranties

Entered into between Pro Roof Steel Merchants (VRN) (Pty) Ltd 2002/008248/07  
("The Company")

and

Purchaser's Full Legal Entity: _____ _____ _____ Registration No: _____ ( "The Customer" )	Customer's Stamp
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## 1. INTERPRETATION

### 1.1 Definitions

"Acceptance of Order" means written confirmation from the Company confirming an order alternatively the performance by the Company in the supply of the goods in respect of the Customer's order;

"Agent" means a person (corporate or unincorporated) that acts for or on behalf of the Customer;

"Agreement" includes -

- (1) this document and the terms and conditions contained herein;
- (2) payment terms specified in the Company's "confirmation of credit" letter.

"Credit" means Incidental Credit as defined in section 1 of Act 34 of 2005.

"Incidental Credit Facility" is a facility in terms of which the Company affords the Customer Incidental Credit.

"Risk" means potential liability for loss, damage or injury, howsoever arising.

"The Company" means ....., and includes its successors-in-title and assigns, its agents and servants and such trade name/s and/or style/s as the Company may utilise from time to time.

"The Customer" means the party:

- (i) Whose order is accepted by the Company or the Applicant for Incidental Credit, as the case may be; and
- (iii) Includes agents and employees of such party.

"Vis Maior" includes, without limiting the generality hereof, the inability to secure electricity, water, transport, labour, materials, equipment, supplies, or by reason of an act of god, war, civil disturbance or insurrection, riot, state of emergency, strike, lockout or other labour disputes, fire, flood, drought or legislation.

"Warranty" means an undertaking, material to the Agreement, the breach of which will render the defaulting party liable to the innocent party.

"Goods" means the materials, products and/or services, including the respective data-sheets and specifications, supplied by the Company.

1.2 The terms and conditions contained in this agreement ( and as amended from time to time) supercede and take precedence over all terms and conditions as may be contained in the Customer's documentation. None of the terms and conditions contained in the Customer's documentation shall be binding upon the Company, nor shall they take precedence, nor amend, the Company's terms and conditions.

## 2. APPLICATION

(1) The Company reserves the right to vary or amend the terms and conditions of the Agreement from time to time, and the Customer agrees to abide by such amendments.

(2) Notwithstanding such variations, the Customer accepts the responsibility of obtaining the latest version of the Agreement from the Company, either by visiting the Company's website or by means of a request, in writing for same.

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(3) These terms and conditions govern all existing and future contracts with the Company and are effective from the date of

publication of each amendment, and supercede all and any terms proffered by the Customer;

(4) These terms and conditions are the Customer's agreement with the Company and apply-

(a) to all orders accepted by the Company;

(b) to all contracts arising from the aforesaid acceptance; and

(c) to any Incidental Credit Facility that the Company may grant the Customer.

### 3. **INCIDENTAL CREDIT FACILITY**

(1) The grant of Incidental Credit, and the terms and conditions applicable thereto, shall be at the sole and exclusive discretion of the Company.

(2) The customer acknowledges that the representations made in the application form are material to such grant of Incidental Credit.

(3) In the event that the Company agrees to grant the Customer an Incidental Credit Facility, the Customer shall be notified, in writing thereof, and of the terms and conditions applicable to such grant. Such written notification shall form part of the Agreement.

(4) The Company may, without incurring any form of liability, and at any time without notice to the Customer-

(a) withdraw the Customer's incidental credit facilities; or

(b) amend or vary the terms of a Customer's incidental credit facility.

### 4. **DUTIES AND OBLIGATIONS**

(1) In the terms of this Agreement,

(a) the Company will supply the Customer with the goods as requested by the Customer in its order;

(b) the Customer shall make payment for such in accordance with the terms set out in the Agreement;

(c) The Customer undertakes to comply strictly with the terms of the Agreement (including such amendments to the terms from time to time);

(d) The Customer shall not enjoy a right of set-off, nor a right to retain or withhold any monies due to the Company.

### 5. **PRICE**

(1) "Price" means the price stated on the Company's invoices, which is the Company's normal and usual price for the goods supplied to the Defendant at the time of the acceptance of the Customer's order.

(2) The Customer acknowledges and agrees that the Company may vary its prices without notice.

(3) (a) The calculation of the price excludes, without limitation, fluctuations in the rate of exchange, Value Added Tax, labour, materials, packaging, insurance, freight, transport, surcharges and import duty between the date of the acceptance of the order and the date of delivery of goods;

(b) any discount that the parties may, in writing, agree.

(4.) All prices (including those reflected in any price-list) and any changes therein, are determined at the Company's discretion. Such price-list is not binding upon the Company, and shall be construed by the Customer as a guide.

### 6. **DISCOUNT**

(1) Any discounts shall only be granted at the sole and exclusive discretion of the Company.

(2) Any discount allowed -

(a) shall be recorded in writing, and signed by an authorised representative of the Company;

(b) shall be allowed only in the event that timeous payment is made of all amounts by the due date;

(c) where payment is made by means of Electronic Funds Transfer ("EFT"), cheques or any other negotiable instruments, **after** the EFT, cheques or negotiable instruments have been cleared by the Company's bank; and

(d) is calculated on the nett price of the goods supplied.

### 7. **PAYMENTS**

(1) Unless otherwise agreed with the Company, the Customer shall pay-

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- (a) the full price, in Rands, together with such amounts as may be applicable as referred to in clause 5(3)(a) above; and
- (b) within 30 days of the end of the month in which goods were delivered; and
- (c) at an address determined by the Company;
- (2) Where goods are supplied piece-meal, payment of each invoice shall be effected as is described in clauses 5 and 7(1) above.
- (3) A Customer shall not set-off, nor deduct, any amount in respect of any monies due to the Customer by the Company.
- (4) If the event that the Customer makes payment by means of services by the Post Office, banking, electronic or similar services, then-
  - (a) such service-providers are deemed to be the Customer's agents; and
  - (b) the Customer is liable for any risk or loss arising from such payment.
- (5) In the event that the Customer fails to pay on due date-
  - (a) The whole amount in respect of all purchases made by the Customer will become due, owing and payable immediately, irrespective of the dates when the goods were purchased; and
  - (b) the Company may suspend or cancel delivery to the Customer or any goods; and
  - (c) the Company may exercise any remedy for breach of contract as set out in clause 14.
- (6) The Company may appropriate, at its sole discretion, any payments made by the Customer to the oldest outstanding amounts due, firstly to interest and thereafter to capital.

### 8. **ORDERS**

- (1) An order for goods constitutes an irrevocable offer to purchase.
- (2) The order must-
  - (a) be in writing and addressed to the Company;
  - (b) provide the following details:
    - (i) a clear description of the goods required;
    - (ii) an address for delivery or provision of the goods;
    - (iii) the means of transporting the goods; and
    - (iv) an order number.
- (3) The acceptance of an order is at the Company's discretion, and will be confirmed by:
  - (a) delivering the goods ordered; or
  - (b) commencing work in response to the order;
  - (c) the despatch to the Customer of a written acceptance of the order alternatively an oral confirmation from an authorised representative of the Company.
- (4) Where the Customer wishes to vary an order that has been approved but not yet delivered, the Customer must -
  - (a) Give written notification of its intention to vary the order in question;
  - (b) Give full and complete details of the intended variation.
  - (b) Should the Company approve such variation, such approval will be written, and sent to the Customer.
- © The Customer agrees to make payment of all wasted cost and expense incurred by the Company from the variation of the order.
- (5) Where the Customer utilises the services of an agent or broker when the order is placed with the Company, all commissions, brokerage fees and the like shall be for the Customer's account.

### 9. **DELIVERY**

- (1) The delivery of the goods is agreed to be complete when the goods are off-loaded at the address specified by the Customer in the order. In the event that a third-party carrier is appointed by either the Company and/or the Customer, then delivery of the goods to the address of the third party carrier shall be deemed to be delivery sufficient for the purposes of the Agreement.
- (2) In case of delivery by the Company, the signature of an employee or agent of the Customer upon the Company's delivery note or invoice shall constitute delivery sufficient for the purposes of this Agreement;
- (3) Where a third party carrier is appointed then:
  - (a) The carrier shall be deemed to be the Customer's agent;
  - (b) The Customer hereby authorises the Company to engage a third party carrier on such terms and conditions as the Company deems fit;

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- (c) The Customer indemnifies the Company against all claims of whatsoever nature arising out of the transportation of the goods.
- (d) The Customer shall be liable for all insurances, taxes, duties and other levies and the third party carrier may charge.
- (4) If the Company delivers in instalments -
- (a) Each instalment shall be deemed to be the subject of a separate Agreement; and
- (b) Defective delivery or delay in delivery of any instalments does not entitle the Customer to cancel of the Agreement.

### 10. DEFECTIVE DELIVERY

- (1) Defective delivery includes discrepancies in quantity delivered, non-delivery and shortages.
- (2) The Customer shall advise, in writing, of all defective delivery/ies. Such written notice shall be given to the Company within 3 (THREE) working days from the date when the Customer received the goods. Where the Customer fails to give timeous written notice of such defective delivery, the Customer shall waive all rights and benefits contained in this clause 10.
- (3) Such written notice shall contain specific reference to the relevant invoice, packing slip and batch numbers.
- (4) The Company will, at its discretion:
- (a) remedy such defective delivery within 30 (THIRTY) working days from the date of receipt of the written notice referred to above; or
- (b) credit the Customer with the value of the defective delivery.
- (5) The Company's liability for defective delivery will be limited to remedying the defect where it is possible to do so and only after the Company, at its discretion, agrees that the delivery is defective.

### 11. DELAY IN DELIVERY

- (1) Time is not of the essence of the Agreement, nor of any performance by the Company of its obligations arising from the Agreement.
- (2) If the event that delivery is delayed, which delay is caused by reasons beyond the Company's control, including:
- (a) *Vis Maior* the Company will not be liable for any damages resulting from the delay; and the Customer will not be entitled to cancel and order by reason of the delay.
- (3) Where the Customer's conduct, including failure to take delivery of the goods ordered, is the cause of the delay, then-
- (i) The risk in the goods shall immediately pass to the Customer; and;
- (ii) The Customer must pay reasonable costs of storing, insuring and handling the goods, until delivery.

### 12. RETURNED GOODS

- (1) Delivered goods may only be returned with the prior written approval of the Company.
- (2) If the Company approves the return of goods already delivered, the following conditions shall apply:
- (a) The goods must be complete, clean, saleable, undamaged and in their original packaging; and
- (b) The value of credit for the goods returned will be calculated at the invoice value when the goods were purchased, less a handling charge of 10% (excluding Value Added Tax thereon);
- (c) All goods shall be returned at the Customer's expense and all the risk to and in the goods remains with the Customer until the Company receives the goods.

### 13. OWNERSHIP AND RISK

- (1) Upon delivery of goods, risk passes to the Customer.
- (2) Until full payment of the contract price-
- (a) Ownership of the goods vests with the Company;
- (b) In the event of the cancellation of the Agreement, the Customer expressly agrees and consents to Company's repossession of the goods, and consequent thereupon, to the entering of the premises at which the goods are kept, without a Court Order, in order to repossess the goods, including any other goods in the possession of the Customer bearing the Company's name, trade-marks and labels.
- (c) The Company may enter any premises, vehicles or vessels at which it reasonably thinks the goods are situated;
- (d) The Customer shall insure the goods against loss or damage, and do all things to ensure that all benefits in terms of the insurance policy are ceded to the Company.

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- (e) The Customer shall inform the Landlord of the premises at which the goods are stored, that such goods are the property of the Company.
- (f) for purposes of "accession" the goods-
- (i) shall not accede to any other property, whether movable or immovable;
- (ii) shall be deemed to be the principal items to any other goods or equipment.
- (3) The Company shall not be responsible for any loss, harm or damage caused by or arising out of the repossession of the goods and the Customer hereby indemnifies, and holds the Customer harmless in the event of such a claim arising.

#### 14. VARIATION, CANCELLATION, BREACH

- (1) The Company may vary, amend or cancel the terms of this agreement for any reason, including the Customer's breach of this agreement.
- (2) The Customer shall be deemed to have breached the Agreement in the event that the Customer-
- (a) makes a false representation in making application for the Incidental Credit Facility;
- (b) fails to pay timeously;
- (c) fails to comply with any terms of this agreement;
- (d) fails to comply with any warranty given;
- (e) if the Customer is a natural person, and the Customer dies, or is provisionally or finally sequestered;
- (f) if the Customer is a company, close corporation or trust, and is placed under provisional or final liquidation or judicial management;
- (g) commits any act of insolvency;
- (h) enters into any compromise with its creditors;
- (i) fails to satisfy a judgment granted against it within 7 (SEVEN) days of the date of judgment; or
- (j) changes the structure of its ownership without giving written notice of such change to the Company.
- (k) Requests the Company to furnish security in contravention of the provisions of clause 17(5).
- (3) If the Customer breaches any terms of this agreement, the Company shall be entitled, without prejudice to any of its rights arising from the Agreement, or in terms of the common law, to -
- (a) Forthwith cancel the agreement, and claim immediate payment of all amounts outstanding, whether such amounts are due for payment or not;
- (b) vary or amend the agreement;
- (c) suspend further deliveries until a breach is remedied;
- (d) charge interest according to the terms set out in paragraph 15;
- (e) give the Customer notice to remedy the breach within 14 (FOURTEEN) days of receiving the notice.
- (4) Any variation or amendment to the Agreement must be in writing, signed by an authorised representative of the Company.

#### 15. INTEREST

Interest, compounded and calculated monthly in advance on all overdue amounts, at the maximum rate possible in accordance with the provisions of Act 34 of 2005 (as amended) shall be payable by the Customer, without demand.

#### 16. WARRANTIES AND INDEMNITIES

- (1) The Customer warrants that-
- (a) the information contained in any application for an Incidental Credit Facility is true and correct;
- (b) The Company shall receive written notification of any changes to such information within 7 (SEVEN) day of such change occurring;
- (c) In purchasing the goods, the Customer has taken all reasonable steps to satisfy itself of the fitness and suitability of the goods for their intended purpose.
- (d) The authority of the person who signs the Agreement on behalf of the Customer, to bind the Customer in terms of this Agreement.
- (2) The Company warrants that the goods are guaranteed according to the Company's product specific warranties only. All other warranties and guarantees, including all Common Law warranties, are expressly excluded. Such liability is limited, at the Company's sole and exclusive discretion, to the cost of replacing the defective goods, or the passing of a credit in the invoiced-value of the defective goods. No claim shall arise unless the Customer has given, by pre-paid registered post, written notification of the alleged breach, within 3 (THREE) days of the occurrence of the alleged breach.

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(3) Without derogating from the generality hereof, the Company shall not be liable for loss or damage caused by, or arising out of, the following-

- (a) workmanship, materials, fitness for purpose, merchantability or product liability;
- (b) defects whether latent or patent;
- (c) defects arising through fair wear and tear or neglect;
- (d) any loss incurred by the Customer including profits, use, production, contracts, custom or goodwill, or any special direct, indirect or consequential loss, howsoever arising;
- (e) any damages incurred by the Customer as a result of advice given by the Company's employees;
- (f) Where the Company sub-contracts to a third party, any loss or damage caused by, or arising out of such third-party's conduct .

(4) Time is not of the essence in respect of any order placed by the Customer.

### 17. LEGAL PROCEEDINGS

(1) This agreement is governed by the laws of the Republic of South Africa.

(2) In the event of a dispute arising out of the Agreement, the Company may elect to institute legal action out of the Magistrate's Court having jurisdiction over the Customer, regardless of the amount forming the subject-matter of the dispute.

(3) The Customer agrees to be liable for all legal costs and charges calculated on the attorney and client scale plus collection commissions, tracing fees and the like.

(4) A certificate signed by any director or manager of the Company stating the Customer's indebtedness, shall be *prima facie* proof of such indebtedness, and sufficient for the purposes of Summary Judgement and/or Provisional Sentence proceedings in any competent court.

(5) In the event of the Company instituting legal action against the Customer, and notwithstanding the provisions of any relevant legislation and the Rules of the Courts, it is agreed that:

(i) The Company shall not be required to provide security in respect of such proceedings, in any form whatsoever;

(ii) The Customer shall make payment of all of the Company's legal expenses, on the attorney and own client scale, including Counsel's fees as on brief, tracing costs, collection commissions and all other outgoings incurred.

### 18. NOTICES AND SERVICE

(1) The address provided by the Customer on the front of this agreement will be used by the Company for all communications with the Customer, including -

- (a) Service of any court process;
- (b) Notices;
- (c) Payment of any amount; or
- (d) Communication of any kind.

### 19. DISCLOSURE OF INFORMATION

(1) For purposes of this agreement, a Customer's personal information includes-

- (a) The addresses, both residential and place of business;
- (b) Credit worthiness;
- (c) Information regarding the monthly amounts purchased from other suppliers;
- (d) Length of time Customer has dealt with those suppliers;
- (e) Type of goods supplied;
- (f) The manner and time of payment;

(2) The Customer is responsible to ensure that Company's records of its personal details are accurate at all times.

(3) The Company may, at any time, request, from Credit *Bureaux*, banks and the like, the Customer's personal information relevant to the Customer's credit assessment. The personal information obtained from a third party, shall not be disclosed to any third party.

(4) The Company may, upon request, provide trade references, credit information and personal information to a third party seeking such.

### 20. GENERAL

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- (1) No warranties, representations or guarantees have been made by the Company or on its behalf to induce the Customer to sign this document.
- (2) No relaxation or indulgence which the Company may give at any time in regard to the carrying out of the Customer's obligations in terms of the Agreement shall prejudice nor waive of any of the Company's rights arising from the Agreement or the Common Law (if applicable).
- (3) The headings in this document are included for convenience and are not intended for the purpose of interpreting this Agreement.
- (4) Each of the terms shall be separate and divisible, one from the other. In the event that any such term become unenforceable for any reason whatsoever, then such term shall be severable and shall not affect the validity of the remainder of the Agreement.
- (5) No conduct by or on behalf of the Company shall operate as, or be deemed to constitute, a novation the terms of the Agreement or any part thereof.
- (6) No amendment of any kind will be binding unless reduced to in writing and signed by duly authorised representative of the Company and the Customer.

### 21. **NEGOTIABLE INSTRUMENTS**

- (1) Acceptance of a negotiable instrument by the Company shall not be deemed to be a waiver of the Company's rights under this agreement. In relation to the cheques furnished by the Customer to the Company, the Customer waives its rights to insist on a notice of dishonor or protest being given to it in the event that the cheque is dishonored.

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Signature.....

**By his signature hereto, the representative of the Customer warrants that no impediments, legal or otherwise, exist which shall give rise to the inability of the Customer to fulfil all its obligations arising out of this Agreement.**

Full Names (print) \_\_\_\_\_

\_\_\_\_\_

ID No: \_\_\_\_\_ Position/Capacity: \_\_\_\_\_

Place \_\_\_\_\_ Date: \_\_\_\_\_

Witness (Name and Signature)

1. \_\_\_\_\_ (Sign) ID No: \_\_\_\_\_

\_\_\_\_\_ (Full Names)

Signature.....

**By his signature hereto, the representative of the Customer warrants that no impediments, legal or otherwise, exist which shall give rise to the inability of the Customer to fulfil all its obligations arising out of this Agreement.**

Full Names (print) \_\_\_\_\_

\_\_\_\_\_

ID No: \_\_\_\_\_ Position/Capacity: \_\_\_\_\_

Place \_\_\_\_\_ Date: \_\_\_\_\_

Witness (Name and Signature)

1. \_\_\_\_\_ (Sign) ID No: \_\_\_\_\_

\_\_\_\_\_ (Full Names)

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**For office use only**

**THE SELLER** \_\_\_\_\_ **Date** \_\_\_\_\_ **Place** \_\_\_\_\_

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