

# **SPRAYAIR & POWER (PTY) LIMITED**

(“the Company”)

## **STANDARD CONDITIONS OF SALE PERTAINING TO GOODS SOLD**

### **1. STANDARD TERMS AND CONDITIONS**

All sales by the Company to any party (hereinafter referred to as “the Customer”) shall be subject to the terms and conditions set out hereunder notwithstanding that such sale arises from:

- 1.1 an offer to Purchase by the Customer which is accepted by the Company;  
and / or
- 1.2 a quotation furnished by the Company which is then accepted by the Customer;  
and / or
- 1.3 the placing of orders by the Customer with the Company which are subsequently invoiced to the Customer;  
and / or
- 1.4 normal cash sales across the counter.

These terms are an integral part of the contract and are deemed to be accepted by the Customer even if they have not been signed by the Customer.

### **2. PAYMENT**

- 2.1 Unless agreed to the contrary by the Company in writing, all payments are due on the basis of cash against delivery.
- 2.2 Where delivery is made in part only, the Purchase price pertaining to such part of the goods delivered shall also be payable against delivery thereof.
- 2.3 Where delivery is to be effected by any public carrier, the public carrier shall be deemed to be the agent of the Customer and the purchase price shall become due and payable upon delivery to such public carrier unless otherwise indicated on the invoice / delivery note.
- 2.4 Where the Company has entered into an agreement with the Customer for payment to be effected at a date after delivery, such payment shall become due and payable by not later than thirty days from the end of the month following that in which delivery was made.
- 2.5 The customer agrees to pay interest on all overdue amounts at the prime overdraft rate as charged by ABSA Bank, plus 2 %.
- 2.6 Any discounts to which the Customer may be entitled shall be strictly in accordance with those specified on the invoice as reflected under discount. Any amount not paid strictly on due date shall lead to forfeiture of the discount allowance specified above.

### **3. PERMITS, CONSENTS, ETC.**

Should it be necessary to obtain any permits, consents or permissions from any authority whatsoever for the importation and / or supply of any goods by the Company to the Customer, the sale shall be conditional upon the obtaining of any such permissions, permits and / or consents and shall be of no force or effect until same is obtained. The Customer undertakes to do whatever may be necessary in order to facilitate any application for such permissions / permits and / or consents.

### **4. INCREASE IN PRICES**

It is recorded that the purchase price quoted to the Customer is based on the Company’s costs and expenses at the time of the quotation or the furnishing of such prices. Should any increase occur in the costs and expenses of importing and / or obtaining the goods, whether by reason of any increase in rail road freight or shipping tariffs, sales tax, import or excise duties, difference in the rate of exchange from the date of quotation to the date of delivery, then the purchase price of the goods to the Customer may at the discretion of the Company be increased by a proportionate amount to cover such increased costs and expenses.

### **5. FORCE MAJEURE**

The Customer shall not have any claim against the Company by reason of the Company’s failure to carry out its obligations in regard to any sale which failure arises as a result of force majeure (which shall include political and / or civil disturbance, the actions of any State or Government authority which is beyond the Company’s control). Furthermore the Company shall not become liable in the event of any shortage of goods due to any trade embargo, strike, lock-out at any factory or supplier and / or natural disaster which has the effect of disrupting supply or the normal flow of freight traffic.

### **6. DELIVERY OF GOODS**

- 6.1 Unless it is agreed otherwise in writing, delivery shall be effected to the Customer at the business premises of the Company or, where applicable, by the handing over of the goods to the public carrier at the Company’s premises, or at the carrier’s premises.
- 6.2 The Customer shall be responsible for the collection of the goods from the Seller’s premises and their delivery to the destination of the Customer.
- 6.3 Whenever it is agreed that the goods are to be delivered by the Company to the Customer or to a public carrier, then it is understood that all risk in and to the goods shall pass to the Purchaser at the moment that the goods leave the premises of the Company.
- 6.4 It is understood that all dates quoted by the Company for the supply and / or delivery of the goods as the case may be are approximate only and that time shall under no circumstances be of the essence unless the Company shall have agreed thereto in writing. All deliveries shall be subject to:
  - 6.4.1 the ready availability of the goods;
  - 6.4.2 the receipt of any orders and / or specifications from the Customer;
  - 6.4.3 delivery taking place within a reasonable time of their becoming available to the Company from any importers / overseas supplier.

### **7. PASSING OF RISK**

All risk in and to the goods shall pass to the Customer upon the collection thereof by the Customer at the premises of the Company or upon the departure of the goods from the premises of the Company en route to the Customer irrespective of whether such goods are collected by the public carrier, or delivered by the Company itself.

### **8. RESERVATION OF OWNERSHIP**

Notwithstanding anything to the contrary herein contained, and notwithstanding delivery of any such goods to the Customer, the Company shall retain ownership thereof until it has received payment in full of the purchase price and all other charges and expenses in connection therewith from the Customer.

### **9. COMPANY’S OBLIGATION MAY BE SUSPENDED**

If the Customer should fail to pay the Company on due date any amount due to the Company or breach any other terms or condition of these conditions of sale then the Company shall have the following rights:

- 9.1 The Company may require that all amounts then owed by the Customer to the Company from any cause whatsoever and whether or not immediately due and payable shall become immediately due and payable by the Customer;

- 9.2 The Company may retain in its possession any part of any shipment of any goods due to the Customer which have not been dispatched;
- 9.3 The Company may terminate all and any credit facilities afforded to the Customer by the Company in respect of that particular purchase or of any other purchase;
- 9.4 The Company may retain any payment made by the Customer in connection with any other matter and appropriate such payment to the outstanding balance due in respect of the instant matter.

10. **CANCELLATION**

- 10.1 The Company may at its entire and absolute discretion, cancel the contract or any portion thereof which has not been completed should:
- 10.1.1 The Customer commit any of the acts of insolvency as set out in the insolvency Act Number 24 of 1936 as amended;
- 10.1.2 The Customer fail to pay any amount due in terms of the contract on due date.
- 10.2 Such cancellation shall not be without prejudice to the Company's rights at common law to claim, in addition any damages which it may have suffered as a result of such breach and / or of the cancellation by the Company.

11. **NO RELAXATION, ETC.**

No action by the Company in permitting late payment or in accepting late payment at any stage shall stop the Company from requiring strict and punctual performance by the Customer of its obligations and there shall be no waiver or novation of this contract by reason of such indulgence of or acceptance of late payment by the Company.

12. **LAW OF THE CONTRACT**

The law applicable to the interpretation and enforcement of this contract shall be the law of the Republic of South Africa, notwithstanding where the sale may have been concluded.

13. **ARBITRATION**

Should there be any dispute as to the amount of any balance due by the Customer to the Company or in respect of any price increase, such dispute shall be referred to the Company's auditors who shall arbitrate upon the matter. It is hereby expressly agreed that the arbitration shall be an informal one with a view to obtaining an expeditious determination of the matter. The auditor so acting shall not be bound by the formal rules laid down in the Arbitration Act and shall be entitled to set his own rules in regard to the procedures to be used and the admissibility of the evidence. The amount so decided upon by the Arbitrator shall be final and binding upon the parties and shall not be subject to appeal.

14. **JURISDICTION**

The Customer agrees that the Company may at its option, institute any action against the Customer in any Magistrate's Court in the Republic of South Africa having jurisdiction in regard to the person of the Customer in terms of Section 28 of the Magistrate's Court Act Number 32 of 1944 as amended, notwithstanding that the amount in dispute may otherwise be beyond the jurisdiction of that Court. Notwithstanding the above, the Company may at its entire option institute action in the Supreme Court of South Africa, in the Division having jurisdiction in regard to the dispute or claim.

15. **COSTS**

It is agreed that in the event of the Company having to obtain any legal advice or having to institute action against the Customer for any breach of the Customer's obligations in terms of these Conditions of Sale, the Company shall be entitled to recover all its legal costs from the Customer including costs as between attorney and client as actually incurred by the Company.

16. **SPECIAL EXCLUSIONS**

16.1 **Specifications and prices**

The Company issues quotations, catalogues and price lists in respect of its goods in terms of the latest available manufacturer's specifications and description of the goods. Under no circumstances shall the Company be liable for any changes made to such specifications and / or descriptions. Furthermore all prices quoted in any price lists and / or catalogues furnished by the Company are based on the ruling prices and shall not bind the Company, in respect of the contract price charged by the Company to the Customer at the time of invoicing.

16.2 **Return of goods**

The Company shall under no circumstances be obliged to accept the return of any goods from the Customer for any reason whatsoever. Should any goods be returned, this will be at the sole and entire discretion of the Company and a handling charge equal to 10 % of the invoice price shall be payable by the Customer to the Company in respect thereof.

17. **WARRANTIES / GUARANTEES**

The Company does not warrant to the Customer that the goods are fit for the purpose sold and / or are free from any defects whether latent or patent. Wherever possible, the Company will endeavour to pass on the benefit of any manufacturer's guarantee but apart therefrom there shall be no liability whatsoever attaching to the Company in respect of goods sold to the Customer. Under no circumstances shall the Company be liable for any consequential loss whatsoever. The Customer is provided with detailed operating and where applicable installation instructions together with each item purchased. It is the Customer's responsibility to fully acquaint himself with these instructions and act in accordance therewith with specific emphasis being drawn to safety and service aspects contained therein.

18. **SURETYSHIP**

The signatory/ies, having renounced the benefits of excussion and division, hereby bind himself/themselves jointly and severally as surety and co-principal debtor in solidum with the customer unto and in favour of the Company, its order or assignee, for the due performance by the Customer for all its obligations to the Company.