

TERMS AND CONDITIONS OF TRADE WITH MASTERBATCH SA (PTY) LTD

REGISTRATION NUMBER: 2004/007881/07



I / We, _____ ("the Customer"), hereby make application for credit facilities for the opening of an account with MBSA, the grant of which shall be at the entire discretion of MBSA and if granted may be withdrawn at the discretion of MBSA at any time.

1. DEFINITIONS

- 1.1 In this agreement unless the context otherwise requires, the words, expressions and phrases set out below have the meanings hereunto ascribed to them:-
- 1.1.1 "the goods" - the goods sold by MBSA to the Customer from time to time
 - 1.1.2 "MBSA" - MASTERBATCH SA (PTY) LTD, registration number 2004/007881/07, with registered offices at, and trading from 13 Spanner Road Spartan, Kempton Park Gauteng Province, Republic of South Africa;
 - 1.1.3 "parties" - MASTERBATCH SA and the Customer;
 - 1.1.4 "the Customer" - the purchaser of any goods from MBSA, irrespective of whether the goods are paid for by cash, normal cheque, bank guaranteed cheque, traveller's cheque(s), promissory notes, bills of exchange, instalments, or credit (if granted to the Customer in writing by MBSA).
- 1.2 The headings to the clauses of these Terms and Conditions of Sale are for reference purposes only and shall in no way govern or affect the interpretation, nor modify, nor amplify the terms of these Terms and Conditions of Sale, nor any clause hereof.
- 1.3 Unless the context clearly indicates a contrary intention, an expression which denotes -
- 1.3.1 any gender includes the other genders;
 - 1.3.2 a natural person includes an artificial person and vice versa; and
 - 1.3.3 the singular includes the plural and vice versa.
- 1.4 Each of the Terms and Conditions of Sale contained herein, excluding liability on the part of MBSA, shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, that term shall be severable and shall not affect the validity of the other terms.
- 1.5 These conditions together with the particulars recorded on the face hereof constitute the entire Agreement between the parties, who record that no representation or warranties other than those contained herein have induced them to conclude this contract.
- 1.6 The Customer shall not have the right to cede, assign or transfer any of its rights or delegate any of its obligations arising out of this agreement without first obtaining MBSA's written consent.

2. PRICES

- 2.1 The price of the goods sold shall be MBSA's usual selling price and shall be the price as stated in MBSA's quotation form.
- 2.2 Unless otherwise indicated, all prices are based on MBSA's current official price list
- 2.3 The agreement price includes the cost of delivery, if delivery is to be made by MBSA (who shall be the Customer's agent for this purpose), but shall not include the cost of delivery if delivery is to be made in any other manner than the standard mode of delivery used by MBSA, in which case the Customer shall refund MBSA the cost of delivery and any other costs incidental thereto, which may have been or may be payable by MBSA.
- 2.8 Discounts allowed are based on and are conditional on regular account turnover, payment record, method of payment and value of purchases. MBSA reserves the right to review discounts allowed based on a fair and regular assessment of these criteria. Discounts allowed are at the sole discretion of the directors of MBSA.

3. DELIVERY

- 3.1 MBSA will make every reasonable effort to effect delivery in accordance with its estimated delivery dates, but shall not be held liable for any claims for delays or non-performance for any reason whatsoever, and any delay in delivery shall not entitle the Customer to cancel the order.
- 3.2 MBSA shall not be liable for any damages sustained by the Customer or any other party, consequential or otherwise, arising from the non-delivery or late delivery of the goods for any reason whatsoever including the negligence and/or fault of MBSA.
- 3.3 If the Customer, having been notified that the goods are ready for Delivery or Collection fails to accept Delivery or to make Collection, MBSA, may invoice the Customer for the stated price of those goods and the Customer shall be deemed to have taken delivery thereof 48 (forty eight) hours after date of such notification.
- 3.4 It is the duty of the Customer to inspect the Goods on receipt, and by signing the Delivery Note the Customer shall be deemed to have confirmed receipt of the Goods in good order.
- 3.5 MBSA shall be entitled in its sole discretion to split the Delivery of the Goods Ordered in the quantities and on the dates it decides.
- 3.6 MBSA shall be entitled to invoice each Delivery actually made separately.
- 3.7 The delivery date shall not be of the essence of this agreement and any such date shall be construed as an estimate. MBSA shall use its best endeavours to deliver the goods or render the services within a reasonable period of any delivery date but shall not be liable for any loss or damage of whatsoever nature suffered as a result of a delivery date not being met.
- 3.8 MBSA shall be entitled at its election to terminate this agreement or to a reasonable extension of time to comply with its obligations if delayed by vis maior or by reason of directions of the purchaser, civil commotion, local combination of workmen, strike or lock-out and causes beyond the control of MBSA, and shall not be liable to the Customer by reason of such termination or delay. Further, any time limits shall be extended automatically by the length of the period between the date of this agreement and receipt by MBSA from the Customer of all documentation required by MBSA to proceed without interruption to completion of the agreement, and/or receipt by MBSA of all materials necessary for the manufacture of the goods.
- 3.9 MBSA shall be entitled to suspend any delivery while the Customer is in breach of any of the terms of this or any other agreement between it and the Customer.
- 3.10 Unless otherwise agreed to in writing by MBSA, MBSA delivers goods or services at the premises of the Customer. MBSA has the right to appoint a carrier on behalf of the Customer to store the goods at the cost of the Customer, or to store the goods itself, in which latter event the Customer shall be liable to MBSA for a daily storage charge at the rate of 1% (one percent) of the price per month or part thereof, together with all reasonable sums incurred by MBSA in respect of the storage of the goods including handling charges, cartage and insurance which storage shall be deemed to have commenced on the date on which the goods are tendered for delivery by MBSA. The storage of the goods shall be at the Customer's own risk.
- 3.11 The signature of any employee or agent of the purchaser on MBSA's delivery note or waybill or that of the carrier will constitute conclusive evidence of the receipt of the goods by the Customer.

4. WARRANTIES AND REPRESENTATIONS

- 4.1 Any recommendation, formula, figure, advice, specification, illustration, diagram, price list, dimension, weight or other information and particulars furnished by MBSA concerning the goods, is approximate and for information only and, unless otherwise expressly stated in writing, does not form the basis or any part of this agreement.

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- 4.2 MBSA shall not be liable under any circumstances whatever for any loss or damage arising out of the use by the Customer of any material or information referred to in 4.1 whether furnished negligently or otherwise.
- 4.3 Any model or sample of MBSA shown to the Customer is illustrative of the general type and quality of goods and shall not be construed as a representation that the goods conform to the model or sample.
- 4.4 It is the sole responsibility of the Customer to determine that the goods ordered are suitable for the purposes of intended use.
- 4.5 MBSA does not make any representations nor, unless expressly given in writing (whether set out on any product label, shade card insert, data sheet, circular, current printed product brochure or otherwise), give any warranty or guarantee of any nature whatever in respect of the goods or their suitability for any purpose, whether that purpose is notified to MBSA or not.
- 4.6 If any such warranty or guarantee is given by MBSA and all or any part of the goods fail for any reason whatever to comply with that warranty or guarantee, then -
- 4.6.1 the Customer must notify MBSA verbally within forty-eight hours, and thereafter in writing within seven days, of the Customer becoming aware of the fact that the goods in question do not comply with that warranty or guarantee;
- 4.6.2 MBSA shall have the right to inspect the goods in question at the Customer's premises;
- 4.6.3 the Customer shall, at its own expense, return those goods to MBSA if MBSA so directs;
- subject to compliance by the Customer with the above, MBSA shall, in its discretion, either remedy the failure by adjusting, repairing or replacing the goods, or by refunding the whole or part (as the case may be) of the agreement price paid to it by the Customer in respect of such goods; save for clause 4.6, the Customer shall not have any other claim whatever against MBSA.
- 4.7 MBSA shall under no circumstances be responsible for any consequential or other loss or damage suffered by the Customer or any third party by reason of MBSA's failure to carry out its obligations in terms hereof or by reason of the goods being defective in any manner whatsoever.
- 4.8 No representative, agent or salesman has any authority to waive or vary any of these Terms and Conditions of Sale or make any representations whatsoever on behalf of MBSA.

5 CANCELLATIONS AND RETURNS

- 5.1 Once an order has been accepted by MBSA the Customer shall not be entitled for any reason whatsoever to cancel or vary any order without MBSA's written consent.
- 5.2 A minimum of 10% (ten percent) handling fee will be charged and paid by the Customer, to recover costs incurred, which MBSA elects in its sole discretion to accept for return and credit at the Customer's request due to an error in ordering by the Customer.
- 5.3 Where goods are specially manufactured, all incurred costs additional to those above, will be charged, unless any faults are reported in writing to MBSA within 7 (seven) days from date of delivery. The payment terms stipulated are applicable.
- 5.4 Cash refunds will only be issued against goods supplied on COD and then only after 14 (fourteen) days.
- 5.5 Goods returned, for any reason whatsoever, shall only be accepted by prior agreement with MBSA, and provided they are in the same good condition as when they were supplied.
- 5.6 Return of goods correctly supplied to order will not be accepted for credit.
- 5.7 Goods incorrectly supplied will not be accepted for return after 7 (seven) days from delivery.

6. PAYMENT TERMS

- 6.1 Payment is required:
- 6.1.1 in cash against delivery;
- 6.1.2 within 30 (thirty) days, or such other period as negotiated and agreed to in writing between the parties, from date of statement, where MBSA has granted credit facilities in writing to the Customer.
- 6.2 MBSA reserves the right to suspend any sales, delivery and/or services relating to the Customer, if payment is not received within 15 (fifteen) days of the date provided for under the provisions of clause 8.1.2 hereof. This action by MBSA will not constitute a breach of these Terms and Conditions of Sale.
- 6.3 All payments by the Customer are to be effected:
- 6.3.1 by way of electronic transfer or direct deposit into MBSA's banking account held with NEDBANK Limited, Edenvale Branch, current account number 1910230537, branch code 191042, or
- 6.3.2 at MBSA's head office in Spartan Kempton Park, unless credit facilities have been granted to the purchaser, in which event, payment shall be made in accordance to terms granted.
- 6.4 Where goods were delivered and invoiced to a purchaser by MBSA during a period of a month which falls after the financial cut-off date of that Customer, payment will still be due under the provisions of clause 7.1 hereof; and MBSA reserves the right to only deliver and invoice such goods, as ordered by the Customer between such financial cut-off date and the calendar month-end, during the first week of the following calendar month.
- 6.5 Where the last day of the month during which payment is due under the provisions of clause 7.1 above, falls on a weekend, payment must be effected on the last business day of such a month, as payment on the first business day after the weekend will not comply with the provisions of clause 7.1, being then in a new calendar month.
- 6.6 All cheque payments are deemed provisional payments, and such payments shall not be deemed to have been paid until the amount in question has been credited to MBSA's bank account and is unconditionally available to MBSA.
- 6.7 The Customer hereby waives notice of dishonor, and protest (where applicable) in respect of any promissory note, bill of exchange or other negotiable instruments delivered by the Customer to MBSA.
- 6.8 In all cases where the Customer uses the postal service to effect payment, such postal service shall be deemed to be the agent of the Customer.
- 6.9 Nothing herein contained shall be interpreted as obliging MBSA to afford the Customer any indulgence to effect payment after due date.
- 6.10 MBSA shall be entitled to appropriate any payment received by the Customer to the debt of the Customer which, MBSA may in its sole election determine, notwithstanding the Customer's stipulation to the contrary.
- 6.11 The Customer shall not be entitled to withhold any sum payable to MBSA or to make any deductions therefrom or to set any such sum off against any sum, which is actually or allegedly owed to the Customer by MBSA.
- 6.12 All accounts which are in arrears may be handed to a professional debt collection agency and all legal costs incurred, inclusive of debt collection commission, will be for the account of the Customer and by placing his signature hereon, the Customer agrees to his account being debited with such costs.
- 6.13 In the event of MBSA instructing its attorneys to collect any amounts, all legal fees, collection charges and tracing agents' fees as between attorney and own client shall be borne by the Customer.
- 6.14 Once an account has been handed over for collection, all payments made shall firstly be allocated towards such collection/tracing fees and charges, thereafter to interest and finally to capital.
- 6.15 A certificate under the hand of any director, manager or accountant of MBSA in respect of any indebtedness of the Customer to MBSA or in respect of any other fact, shall be prima facie evidence of the Customer's indebtedness to MBSA and prima facie evidence of such other fact.

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- 6.16 Where the Customer has been afforded credit facilities, credit terms are strictly 30 (thirty) days from date of statement regardless of whether or not the invoice has been received by the Customer. In the event of the Customer disputing the amount due reflected on any statement then, pending MBSA's investigation of the Customer's dispute, the Customer shall immediately be obliged to make payment to MBSA of the amount of the goods already received, which are reflected in that statement.
- 6.17 In the event of the Customer failing to make payment of any amount due by it to MBSA in terms hereof or in terms of any agreement or agreements made between it and MBSA on due date, then the full amount owed by the Customer to MBSA from whatsoever cause arising shall forthwith and without notice become due and payable notwithstanding that the due date for payment thereof shall not otherwise have arrived.

7. EXCLUSIVE REMEDIES AND LIABILITY OF MBSA

- 7.1 The remedies provided in this agreement herein are the Customer's sole and exclusive remedies. Notwithstanding anything to the contrary contained in these terms and conditions, neither MBSA nor its directors, employees or contractors shall be liable for any direct, indirect, special, incidental, or consequential damages, including but not limited to loss of profits, whether based on contract, or delict (including negligence of any degree on their part) under any circumstances and in respect of whatsoever claim and howsoever arising.
- 7.2 Customer hereby indemnifies MBSA against any claim for loss or damage of whatever nature arising from the use of the goods by the Customer, its employees, agents and/or its representatives. Should the goods sold by MB SA to the Customer be second hand, such goods shall be deemed to be bought voetstoots, and the Customer accepts that it has noted the fact that the goods may not comply with the prescribed requirements including the requirements of health and safety standards and agrees that it shall take appropriate steps to ensure that the goods as far as is reasonably practicable comply with all prescribed requirements pertaining to health and safety requirements. The Customer undertakes to take such steps as are sufficient, necessary and reasonably practicable in order to ensure that the goods supplied in terms of this contract will be safe and without risks to health when properly used, and herewith releases MBSA from any duties imposed on MBSA by Section 10 of the Occupational Health and Safety Act, Act 85 of 1993, and Section 21 of the Mine Health and Safety Act, Act 29 of 1996.
- 7.3 MBSA shall under no circumstances assume any liability for any health and safety hazards arising out of the misuse or abuse of the products manufactured, sold, imported or supplied by MBSA.
- 7.4 MBSA shall not be liable for any loss or damage whatever suffered by the Customer or any other person as a result of -
- 7.4.1 the goods or any part thereof being defective in any way or failing to conform wholly or partly, with any warranty or guarantee given by MBSA;
- 7.4.2 any delay in delivering the goods or any part thereof.
- 7.5 MBSA shall not be liable to the Customer or any other person for any loss of profit or other special damages or any consequential damages whatever arising out of any breach by MBSA of any of its obligations, including gross negligence under these Terms and Conditions of Sale or out of any other cause whatever.
- 7.6 The Customer indemnifies MBSA against any claim, which may be made against MBSA by any other person in respect of any matter for which the liability of MBSA is excluded in terms of 4.1 or 4.2
- 7.7 Subject to the other provisions of these Terms and Conditions of Sale, the Customer may not claim any reduction of the agreement price for any short delivery of, or defect in, any of the goods unless MBSA is notified thereof -
- 7.7.1 verbally within forty-eight hours; and
- 7.7.2 thereafter in writing within seven days, of the Customer receiving the goods.

8. OWNERSHIP AND RISK

- 8.1 The Customer purchases the product subject to the special condition that neither the Customer nor any person on its behalf nor any other person whomsoever shall have any claim whatsoever against MBSA for loss of life or personal injury or pecuniary loss, damage, or expense of any nature suffered or incurred or which may be suffered or incurred arising out of the purchase and / or use of the product, irrespective of the nature or cause of such loss or injury, and the Customer hereby indemnifies MBSA and holds MBSA harmless against any and all such loss, damage, or expense, or any claims arising thereof.
- 8.2 Ownership of the goods will, notwithstanding delivery, only pass to the Customer against payment of the whole of the agreement price and/or associated costs and/or charges. The risk in specific goods shall pass to the Customer on delivery and in non-specific goods on their appropriation by MBSA to the Customer.
- 8.3 The Customer shall not have any claim whatever against MBSA -
- 8.3.1 if the goods fail to arrive at the destination; or
- 8.3.2 for any loss of or damage to the goods, arising from any cause whatever, while they are in transit, irrespective of who is responsible for their delivery
- 8.4 In the event of the goods being stored by the Customer at its premises, which are leased by the Customer, the Customer undertakes to notify MBSA of this fact and to notify the landlord of the premises in writing of the fact that the goods stored are the property of MBSA and hereby authorises MBSA to give notice of ownership in the goods to the landlord.

9. BREACH

- 9.1 If the Customer -
- 9.1.1 commits a breach of any of these Terms and Conditions of Sale; or
- 9.1.2 being an individual, dies, surrenders his estate or applies for an administration order under the provisions of section 74 of the Magistrate's Courts Act, Act 32 of 1944, as amended; or
- 9.1.3 being an individual or trust is provisionally or finally sequestered; or
- 9.1.4 being a partnership, is dissolved; or
- 9.1.5 being a juristic person, is placed under a provisional or final order of liquidation or placed under judicial management; or
- 9.1.6 commits an act of insolvency as defined in any statute or according to any common law in force in the Republic of South Africa from time to time; or compromises or attempts to compromise generally with its creditors; or
- 9.1.7 changes its controlling shareholding and/or management without informing MBSA of the fact, thereby denying MBSA the opportunity to re-assess its risk and credit exposure in the event of credit having been granted to the Customer; then in any of those events MBSA may summarily cancel the agreement by giving the Customer written notice to that effect, without prejudice to any rights which it may have as a result of that breach or cancellation
- 9.2 Upon the cancellation of the agreement for any reason whatever, MBSA may repossess the goods if ownership has not been passed to the Customer in terms of clause 8 hereof, and to recover all amounts owing by the Customer whether or not the amounts are due.
- 9.3 In any of the events mentioned above MBSA shall incur no liability to the Customer for damages and the Customer shall be liable to MBSA for such damages as MBSA may have suffered by reason of the Customers breach and/or the exercise of MBSA's rights aforesaid.

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10 DISPUTES

- 10.1 Should the parties be unable to settle any dispute, which may arise between them directly or indirectly from this agreement, such dispute shall at the sole election of MBSA be referred, either to a South African Court having jurisdiction in respect of the matter, or to arbitration in accordance with the provisions of the Arbitration Act, 42 of 1965, as amended, provided that the arbitration shall take place in Johannesburg and the arbitrator shall be an independent third party agreed between the parties or failing such consensus within 5 (five) days of the dispute having been declared, the arbitrator shall be nominated by the Chairman of the Johannesburg Bar Council at the request of MBSA.
- 10.2 These Terms and Conditions of Sale are governed by South African Law and are subject to the jurisdiction of the South African courts.
- 10.3 MBSA is allowed to institute legal proceedings for the recovery of any amount owing hereunder in the Magistrate's Court of any district which by virtue of Section 28 of the Magistrate's Court Act has jurisdiction over the Customer irrespective of the amount of the claim, but this does not preclude MBSA at its own discretion from instituting legal proceedings in the High Court of South Africa which has jurisdiction over the Customer.

11 DOMICILIUM CITANDI ET EXECUTANDI

- 11.1 MBSA and the Customer choose as their respective domicilium citandi et executandi the physical address contained herein, and/or the physical address contained in the purchaser's Application to Open an Account lodged with MBSA, for the purpose of giving or sending any notices provided for or required hereunder, or such other address as may be substituted by notice given as required.
- 11.2 Each of the parties will be entitled from time to time to vary its domicilium by written notice to the other to any other address within the Republic of South Africa which is not a post office box or poste restante. The Customer undertakes to notify MBSA within 7 (SEVEN) days of any change of its address.

12. WAIVER

- 12.1 No variation of these Terms and Conditions of Sale shall be binding or effectual for any purpose unless reduced to writing and signed by MBSA and the Customer giving effect to the same, and any such waiver shall be effective only in the specific instance and for the purpose given.
- 12.2 No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercising of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 12.3 No indulgence, extension of time, relaxation or latitude which MBSA may permit at any time in regard to the carrying out of any of the Customer's obligations shall prejudice MBSA in any manner whatever or be a waiver by MBSA of any of its rights against the Customer.

13 GENERAL AGREEMENTS WITHIN AND OUTSIDE OF THE STANDARD TERMS AND CONDITIONS OF TRADE

- 13.1 All agreements concluded between MBSA and the Customer shall be deemed to have been concluded at the place from which MBSA dispatches the goods concerned, or where no goods are dispatched, at Kempton Park.
- 13.2 The Customer hereby lawfully binds itself not to invoke prescription.
- 13.3 In the event that the Customer changes its name during the existence of the business relationship between itself and MBSA, these Terms and Conditions of Sale and securities (if applicable) are equally enforceable by MBSA against the Customer irrespective of the fact that the Customer, trading under a new trading name, has or has not acknowledged these Terms and Conditions of Sale to be applicable.
- 13.4 Any other agreement concluded within and outside of the ambit of these Standard Terms and Conditions of Trade, with any representative of MBSA, shall be of no force and effect and shall be null and void unless confirmed in writing by a director of MBSA.
- 13.5 MBSA in its discretion will only accept orders for goods made on an official company order.
- 13.6 The Customer agrees that any credit facilities afforded to it may be revised or withdrawn by MBSA without notice and in MBSA's absolute discretion.
- 13.7 So long as the Customer is in breach of any of its obligations to MBSA, the Customer's rights under the agreement shall be suspended and unenforceable.
- 13.8 No variation, amendment or cancellation of these standard trading terms shall be of any force or effect unless such variation is reduced to writing and signed by a director of MBSA and the Customer or its duly authorised representative.
- 13.9 Failure to object to any item appearing on any of MBSA's statements of account within ten (10) days of the date of dispatch of such statement, shall be deemed to be acceptance by the Customer that all amounts reflected in such account shall be in order and delivery of each and every item appearing on such statement shall be deemed correct and to have been received and the Customer shall be deemed to have waived any rights it may otherwise have had to dispute the correctness of such statement of account or non-delivery or exclusion of any item reflected thereon.
- 13.10 The Customer hereby irrevocably and in rem suam cedes, pledges, assigns, transfers and makes over unto and in favour of MBSA all its right, title and interest, claim and demand in and to all claims of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all or any person, companies, corporations, firms, partnerships, associates, syndicates and other legal personae whomsoever (the Customer's "debtors") without exception (or in the event of it having already ceded same to a third party, this cession shall act as a second and reversionary cession in favour of MBSA as continuing covering security for the payment of every sum of money which may now or at any time hereafter be or become owing by the Customer to MBSA from whatsoever cause or causes arising and for the due performance of every other obligation howsoever arising which the Customer may be or become bound to perform in favour of MBSA.
- 13.11 The Customer irrevocably and in rem suam authorizes MBSA in its absolute discretion to claim from all or any of its debtors the whole or any portion of the indebtedness of any one or more of them, give a valid receipt or discharge for such indebtedness, to take any action in its name in any Court or competent jurisdiction and to proceed in execution thereunder against all or any of the said debtors, to cede transfer, negotiate, pledge or otherwise deal with all or any of the said debtors, to exchange promissory notes, cheques, agreements, documents of title or any other security held by the Customer.

SIGNATURE _____ FULL NAME _____

DESIGNATION _____ DATE _____