

TRUCK EQUIPMENT (PTY) LTD – GENERAL TERMS AND CONDITIONS OF SALE

1. **PAYMENT**
 - 1.1 All goods and services are supplied on cash on delivery (C.O.D.) basis in the absence of prior arrangements with the director of Truck Equipment (Pty) Ltd.
 - 1.2 All accounts as rendered by Truck Equipment (Pty) Ltd shall be paid without deduction and / or discount, and free of bank exchange, within 30 (THIRTY) days of the date of invoice, unless otherwise specifically agreed to in writing between the parties and signed by a director of Truck Equipment (Pty) Ltd.
 - 1.3 All payment in respect of aforesaid invoices are to be made to Truck Equipment (Pty) Ltd at the address stated on the relevant invoice and in the currency of the Republic of South Africa.
 - 1.4 Interest is payable by the Purchaser on all invoices not paid within 30 (THIRTY) days of date of invoice, at 2% (TWO PERCENT) above the prime overdraft rate in accordance with the National Credit Act, calculated from date of invoice.
2. **SECURITY FOR PAYMENT**
 - 2.1 Each person who signs this document on behalf of the Purchaser, binds and interposes himself as surety and co-principal debtor on behalf of the Purchaser unto and in favour of Truck Equipment (Pty) Ltd.
 - 2.2 In addition to the foregoing, Truck Equipment (Pty) Ltd serves unto itself the right to impose such further conditions as to security or terms of payment as it deems fit, and Truck Equipment (Pty) Ltd shall be entitled to terminate any further facilities, having giving the Purchaser twenty days written notice, Truck Equipment shall not be obliged to furnish the Purchaser with any reason for such termination and / or imposition.
 - 2.3 The Purchaser shall notify Truck Equipment (Pty) Ltd, in writing, at Truck Equipment (Pty) Ltd's address, immediately upon any changes being made in respect of the information as contained in the Application for Credit Facilities to which the Standard Terms and Conditions apply, and / or any changes in the address details as contained therein.
 - 2.4 The Purchaser acknowledges that the failure to notify Truck Equipment (Pty) Ltd of any changes as contemplated in clause 2.3 herein above, so entitles Truck Equipment (Pty) Ltd to exercise its right in terms of Clause 2.2 herein above. The Purchaser hereby indemnifies Truck Equipment (Pty) Ltd against any loss or damage which may result from such change(s) and in accordance with the National Credit Act, including all costs to instruct tracing agents and / or any attorney and own client legal costs incurred by the Seller.
3. **PRICES AND QUOTATION**
 - 3.1 Prices quoted by Truck Equipment (Pty) Ltd to the Purchaser will be at the ruling price as at the date of quotation, which prices shall be calculated on the current prices of component parts, raw materials, wage rate determination, transportation costs, and the like.
 - 3.2 Any fluctuations in the costs upon which quotations are based, will be for the Purchaser's account, and the Purchaser shall have no recourse to Truck Equipment (Pty) Ltd in respect of such fluctuations.
 - 3.3 All quotations are subject to fluctuation, provided the Purchaser has received written notification of such changes from Truck Equipment (Pty) Ltd. Orders are accepted by Truck Equipment (Pty) Ltd from the Purchaser on the understanding and agreement that prices charged will be the ruling price as at the date of delivery or collection as the case may be.
4. **DELIVERY**
 - 4.1 The Purchaser shall be responsible for receiving and inspecting the goods in the presence of the representative of Truck Equipment (Pty) Ltd so delivering such goods. In the event of shortages and / or damages, the delivery note is to be endorsed by the Purchaser in respect of such shortages and / or damages and signed by such representative of Truck Equipment (Pty) Ltd.
 - 4.2 Whilst every effort shall be made to ensure delivery on due date, Truck Equipment (Pty) Ltd shall not be responsible for any delays and / or losses resulting from machinery breakdowns, strikes, labour disputes, war, riots, shortages of materials and / or labour, delays of carriers or other manufacturers, transportation, accidents, regulations or orders of any Government, force majeure or any other cause whatsoever reasonable beyond Truck Equipment (Pty) Ltd's control. Truck Equipment shall where ever possible notify the Purchaser of such delays.
 - 4.3 **In the event that the Purchaser arranges his own transportation, and / or instructs Truck Equipment (Pty) Ltd to arrange such transportation, delivery shall take place upon collection of the goods from Truck Equipment (Pty) Ltd, and such transportation and insurance of goods shall be solely at the Purchaser's risk.**
5. **RISK AND OWNERSHIP**
 - 5.1 Save as provided for in Clause 4 hereinabove, risk in and to the goods shall pass on delivery to the Purchaser and the Purchaser shall be responsible for the safe custody of the goods until payment has been affected by the Purchaser to Truck Equipment (Pty) Ltd.
 - 5.2 Ownership in and to the goods sold by Truck Equipment (Pty) Ltd to the Purchaser shall remain vested in Truck Equipment (Pty) Ltd until the purchase price, and any overdue interest and / or any other costs as provided for hereinabove and / or herein below has been paid in full.
 - 5.3 Should it come to Truck Equipment (Pty) Ltd's knowledge that the purchaser has sold the goods purchased, Truck Equipment (Pty) Ltd shall be entitled to inform the Purchaser's Purchaser of its ownership of the goods and its right in and to such goods.
 - 5.4 In the event that Truck Equipment (Pty) Ltd is required to drive in the vehicle of the Purchaser in order to deliver same to the Purchaser and / or to test any goods fitted thereto, then the Purchaser hereby indemnifies Truck Equipment (Pty) Ltd in respect of any loss the Purchaser may suffer as a result of fire, theft and / or loss, and the Purchaser shall have no claim as against Truck Equipment (Pty) Ltd in respect of any loss and / or damage suffered as a result of any cause beyond the reasonable control of Truck Equipment (Pty) Ltd.
 - 5.5 The client should be aware that if the vehicle is left on Truck Equipment (Pty) Ltd's premises, the insurance of the vehicle should be in order and we cannot be held responsible if the client neglects or fails to insure his/her vehicle adequately.
6. **WARRANTY TERMS**
 - 6.1 Any goods sold by Truck Equipment (Pty) Ltd to the Purchaser shall be subject to a standard **12 (twelve) month warranty**, provided that such goods are installed by Truck Equipment (Pty) Ltd. In the event that the Purchaser installs such goods itself / himself, then the aforesaid warranty shall be of no force and effect. Products will however be subject to a six month warranty provided that it can be proven that the defect was inherent due to faulty materials. Products are warranted to be correct for intended purpose only. Customer is responsible to ensure that products are utilised within the technical parameters as specified on the relevant product information documentation.
 - 6.2 If purchased, an **optional 12 (twelve) month extended warranty** will only apply for Power Take Off components and control system installed to new vehicles if registered with NATIS within one month of installation date, provided that such goods are installed by Truck Equipment (Pty) Ltd, thereby **extending the warranty to a total period of 24 months**.
 - 6.3 Warranty directly related to installation of components and anything consequential thereto will in all cases be limited to either **SIX MONTHS OR the period up until the FIRST SCHEDULED MAINTENANCE SERVICE** of the vehicle concerned as prescribed by the manufacturer; - whichever is first. It will be assumed thereafter that all related maintenance has and will be taken care of by the end-user or his appointed agent. This will include but not be limited to checking that all mounting bolts, nuts and plugs are secure and / or correctly torqued, oil levels are checked and visual inspection carried out to ensure that there are no sign of any damage to gaskets or seals and no oil leakage or loss.
 - 6.4 In the event that the Purchaser requires Truck Equipment (Pty) Ltd to manufacture and / or supply goods to the Purchaser's written specification and / or drawings and diagrams, it is agreed that Truck Equipment (Pty) Ltd makes no representations and / or warranties as to the suitability and / or workability of such goods manufactured and / or services rendered, and shall such manufacturing be at the Purchaser's own risk.
 - 6.5 Any verbal advice, recommendations and / or opinions expressed by representatives of Truck Equipment (Pty) Ltd shall be given in good faith. The purchaser shall have no claim as against Truck Equipment (Pty) Ltd in respect of any loss or damage suffered by it as a result of such advice, recommendations and / or opinions expressed.
- 6.6 In the event that Truck Equipment (Pty) Ltd is called upon to make good in respect of the warranty, should it transpire that the goods were correctly supplied and / or fitted and / or the claim is found to be without merit, the Purchaser shall be obliged to pay Truck Equipment (Pty) Ltd a penalty of 10% (TEN PERCENTUM) of the value of the goods supplied, in addition to the costs of attending to such warranty claim.
- 6.7 Warranty repairs to be undertaken at Truck Equipment (Pty) Ltd workshop premises, unless agreed otherwise.
7. **WARRANTY CLAIMS**
 - 7.1 The warranty shall only be effective should it transpire that the goods supplied by Truck Equipment (Pty) Ltd to the Purchaser are defective as a direct result of faulty workmanship and / or faulty materials.
 - 7.2 Should it transpire that the warranty claim is a bona fide claim in terms of the warranty, Truck Equipment (Pty) Ltd shall be entitled to:
 - 7.2.1 Replace the defective goods at its own cost; or
 - 7.2.2 Make a price adjustment in respect of the defective goods; or
 - 7.2.3 Make a limited contribution towards labour costs of removing and replacing goods.
 - 7.3 It is agreed that the warranty as contained hereinabove, shall be of no force and effect unless and until the Purchaser has paid for the goods supplied by Truck Equipment (Pty) Ltd to the Purchaser, and in addition thereto, that the account held with Truck Equipment (Pty) Ltd by the Purchaser is up to date. The Purchaser shall not be entitled to withhold and / or claim set off against the account under any circumstances whatsoever.
 - 7.4 The liability of Truck Equipment (Pty) Ltd in terms of the warranty afove referred to, shall be limited to the obligations as contained in Warranty Terms hereinabove..
 - 7.5 Identification Marks and Serial Numbers SHOULD NOT be removed from Truck Equipment (Pty) Ltd's products. **Truck Equipment (Pty) Ltd cannot be held liable for any loss or damage if the client removes any of Truck Equipment (Pty) Ltd's Identification Marks and / or Serial Numbers from the manufactured parts or components.**
 - 7.6 It is the responsibility of the Purchaser to ensure that all other parts that might have an adverse effect on Truck Equipment (Pty) Ltd's products are in good working condition.
8. **RETURNS**

Goods correctly supplied will be subject to a 10% handling fee if returned after 7 days.
9. **BREACH**

Should any party (the defaulting party) commit a breach of any of the provisions of this Standard Terms and Conditions, then the other party (the aggrieved party) shall be obliged to give the defaulting party 14 (FOURTEEN) days written notice to remedy the breach. If the defaulting party fails to comply with such notice, the aggrieved party shall be entitled to cancel this Standard Terms and Conditions against the defaulting party or to claim payment and / or specific performance by the defaulting party of all the defaulting party's obligations whether or not the due date for payment and / or performance shall have arrived, in either event without prejudice to the aggrieved party's rights to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have in law; provided always that, notwithstanding anything to the contrary contained in this Standard Terms and Conditions, the aggrieved party shall not be entitled to cancel this Standard Terms and Conditions for any breach by the defaulting party unless such breach is a material breach going to the root of this Standard Terms and Conditions and is incapable of being remedied by payment in money, and the defaulting party fails to pay the amount concerned within 14 (FOURTEEN) days after such amount has been finally determined.
10. **VARIATION**

No addition to, or variation, consensual cancellation or novation of this Standard Terms and Conditions and no waiver of any right arising from this Standard Terms and Conditions or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.
11. **RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Standard Terms and Conditions and no single or partial exercise of any right by any party shall, under any circumstances, be construed to be an implied consent by such party to operate as a waiver or novation of, or otherwise affect any of that party's rights in terms of or arising from this Standard Terms and Conditions or stop such party from enforcing, at any time, strict and punctual compliance with each and every provision or term hereof.
12. **JURISDICTION**

The parties hereby consent to the jurisdiction of the Magistrate's Court in terms of Section 45(1) of the Magistrate's Court Act, 32 of 1944, as amended, in respect of any dispute or claim arising between Truck Equipment (Pty) Ltd and the Purchaser out of, or in connection with, this agreement or in respect of any action which any party hereto may institute.
13. **COSTS**

The costs of, and incidental to, the drafting of this agreement and the documents necessary to give effect thereto, together with all stamp duties, if any, shall be paid by Truck Equipment (Pty) Ltd on the scale as between attorney and own client.
14. **NOTICES AND DOMICILIUM**
 - 14.1 The parties choose as their *domicilium citandi et executandi (physical address where all notices and processes of court will be delivered and served)* their respective addresses set out in this clause for all purposes arising out of, or in connection with, this Standard Terms and Conditions, at which address all the processes and notices arising out of, or in connection with this Standard Terms and Conditions, its breach or termination, may validly be served upon or delivered to the parties.
 - 14.2 For the purpose of these Standard Terms and Conditions, the parties respective addresses shall be:
 - 14.2.1 As regards the SELLER, at **10 Cosmic Street, Linbro Business Park, Sandton, Gauteng.**
 - 14.2.2 Purchaser's address as reflected on the reverse side of this document.
 - 14.3 Any notice given in terms of this Standard Terms and Conditions shall be in writing and shall:
 - 14.3.1 If delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
 - 14.3.2 If posted by prepaid registered post, be rebuttably presumed to have been received by the addressee on the 8th (eighth) BUSINESS day following the date of such posting.
 - 14.3.3 If given by telegram, be rebuttably presumed to have been received by the addressee 1 (one) BUSINESS day after despatch.
 - 14.4 Notwithstanding anything to the contrary contained in the Standard Terms and Conditions, a written notice or communication actually received by one of the parties from another, including by way of E-mail or facsimile transmission, shall be adequate written notice or communication to such party.