

## PART B: TERMS AND CONDITIONS OF PURCHASE AND SALE

### 1. THESE TERMS AND CONDITIONS PREVAIL

Notwithstanding anything to the contrary contained in the Applicant's enquiry, specification, acceptance of quotation, order or any other documentation to the contrary, these Terms and Conditions (from herein referred to as "Conditions") alone shall constitute the contract between Steel Pipes and the Applicant and further constitute the only basis upon which Steel Pipes is prepared to do business with the Applicant.

### 2. QUOTATION

- 2.1. A quotation is not an offer by Steel Pipes to sell its products to the Applicant but constitutes an invitation by Steel Pipes to the Applicant to do business with Steel Pipes. Accordingly, notwithstanding the acceptance by the customer of a quotation and the receipt of such acceptance by Steel Pipes in a form acceptable to Steel Pipes, a contract between the Applicant and Steel Pipes shall only come into force if, after receipt by Steel Pipes of a quotation, it accepts and subsequently confirms to the Applicant that such a contract has been concluded in writing.
- 2.2. A quotation shall be deemed to include acceptance by Steel Pipes of an order from the Applicant where no quotation has in fact been given by Steel Pipes.
- 2.3. Where goods are imported (those manufactured in any country other than in the Republic of South Africa), the prices quoted are based on the export prices of the manufacturing plants from which the goods are obtained in effect on the date on which the quotation is given by Steel Pipes plus foreign exchange rates, ocean freight rates, marine insurance rates, war risk insurance rates, custom duties, clearing charges, dock dues and railage rates in effect at the date when the quotation was given, and save for any agreement to the contrary between Steel Pipes and the Applicant, the price of such goods shall be subject to adjustment for the amount of any increased cost to Steel Pipes resulting from an increase to any such items. The increased price payable in accordance with this provision shall be certified by Steel Pipes' auditors for the time being if required and shall thereupon be binding upon both Steel Pipes and the Applicant.
- 2.4. The adjustment in price resulting from each of the foregoing provisions may be invoiced by Steel Pipes to the Applicant as soon as the amount thereof is ascertainable and shall thereupon become payable by the Applicant in accordance with Clause 4 hereof.

### 3. PLACING OF ORDERS

- 3.1. Any order placed by the Applicant to Steel Pipes, including any order placed accepting any quotation as contemplated in Clause 2 above, shall be placed in such form as Steel Pipes may require from time to time in its sole discretion. If the Applicant places a telephone order, Steel Pipes may require such order to be confirmed in writing in such form as Steel Pipes specifies.
- 3.2. Steel Pipes may accept or reject, in whole or in part, any order placed by the Applicant.
- 3.3. All orders, whether oral or in writing, placed with Steel Pipes will be regarded as firm and irreversible and may not be cancelled without the prior written consent of Steel Pipes.

### 4. PRICE AND PAYMENT

- 4.1. All prices are exclusive of Value Added Tax, which will be levied unless the Applicant has provided proof of an exemption acceptable to Steel Pipes.
- 4.2. Payment of all amounts outstanding to Steel Pipes shall be strictly due within THIRTY (30) days of the date of invoice unless otherwise agreed in writing.
- 4.3. Should any amount not be paid timeously then the Applicant shall be liable to pay interest on all outstanding amounts, from the date of invoice at the maximum rate permitted by law.
- 4.4. The interest shall be calculated monthly in advance and is payable by the Applicant on the first day of each month following the month in which the account is overdue.
- 4.5. Should a quotation or agreement with Steel Pipes include a discount, such discount will be allowed only if payment is made on or before the due date for payment, failing which the full amount quoted will be due and payable by the Applicant.
- 4.6. A certificate issued by any director of Steel Pipes shall be prima facie proof of the amount due by the Applicant and shall be valid as a liquid document in any competent court for legal purposes including provisional sentence or judgment (summary or in default).

### 5. DELIVERY

- 5.1. Any delivery date given by Steel Pipes, whether in a quotation or agreement, will be an estimation only and will not be binding on Steel Pipes, the Applicant agreeing that a delivery date or time is not of the essence in this contract.
- 5.2. The Applicant shall not be entitled to withhold or defer payment or to a reduction in the price or any other remedy against Steel Pipes incurred as a result of delay in delivery of the goods through delays in manufacturing or delivery of the goods to Steel Pipes, or any cause which is entirely or partly beyond the control of Steel Pipes or that of the manufacturer of the

goods, and the Applicant shall be obliged to accept delivery of all or any part of a consignment of goods when Steel Pipes tenders delivery.

- 5.3. If the Applicant is unable to take delivery of the goods or any part thereof, or fails to furnish such information as may be necessary for Steel Pipes to affect delivery thereof, the goods shall be deemed to have been delivered to the Applicant upon notification by Steel Pipes to the Applicant to such effect.
- 5.4. The signature of any employee of the Applicant, or any person purporting to be an employee of the Applicant where goods have been delivered to the address for delivery given by the Applicant in the credit application, on Steel Pipes' official delivery note, or a delivery note of any independent carrier authorised by Steel Pipes to deliver goods, will constitute effective delivery of the goods ordered.

## 6. **WARRANTIES AND INDEMNITIES**

- 6.1. Steel Pipes shall not be liable under any circumstances whatsoever for any loss of profit or damage of whatever nature and kind, whether direct or indirect, consequential or otherwise alleged to have been sustained by the Applicant as a result of, but not limited to:
  - 6.1.1. Any delay in manufacturing or delivery of the goods by Steel Pipes or any manufacturer from whom Steel Pipes has ordered the goods for delivery to the Applicant; and/or
  - 6.1.2. Failure by Steel Pipes to deliver goods as a result directly or indirectly of force majeure, delay in manufacture or transportation, shortage of material or labour, any act, demand or requirements of any state of government or any other authority whatsoever, lack of shipping space, embargoes, strikes, lockouts, fire, explosion, theft, floods, riot, civil commotions, war boycotts, malicious mischief, sabotage, rebellions, or any other cause of whatsoever nature and kind, nothing excepted, which is directly or indirectly or entirely or partly beyond the control of Steel Pipes or the manufacturer of the goods.
- 6.2. Where Steel Pipes supplies goods to the specifications furnished by the Applicant, no liability whatsoever shall attach to Steel Pipes in the event of the goods failing to perform the services or the function for which they were acquired to the satisfaction of the Applicant, or at all.
- 6.3. Steel Pipes gives no guarantees or warranties, expressed or implied, nor makes any representation of any nature whatsoever in respect of the goods supplied by it or the materials utilised in the manufacture of any goods supplied by it, nor as to the fitness of any such goods for any purpose for which they are required, whether such purposes be communicated to Steel Pipes or not.
- 6.4. Without derogating from what is set out in the remainder of Clause 6, Steel Pipes will not be liable in respect of any claim for shortfalls in its performance of the contract unless such a claim is made in writing to Steel Pipes within 7 days of delivery of the goods in question. Goods shall only be returnable with Steel Pipes' prior written consent.

## 7. **BREACH**

Should the Applicant fail to make any payment on the due date for such payment; be placed in liquidation or commit an act of insolvency; have any of its cheques returned or unpaid by its bankers for any reason; fail to notify Steel Pipes of any change in information furnished in the Credit Application form, in accordance with Clause 11 of the Conditions; and/or generally commit any other breach of the conditions herein then, without prejudice to Steel Pipes, all amounts owing to Steel Pipes by the Applicant at the date thereof from whatsoever cause arising shall immediately become due and payable without notice to the Applicant. Steel Pipes shall further have the right to refuse to deliver goods to the Applicant and/or immediately cancel the agreement between itself and the Applicant, in which event Steel Pipes shall not be liable for loss of any kind sustained by the Applicant as a result of the cancellation or refusal to deliver the goods to the Applicant.

## 8. **RISK**

The risk in and to the goods shall pass to the customer upon the dispatch thereof from the premises or warehouse of Steel Pipes or upon the deemed delivery thereof as set out in Clause 5.3 hereof.

## 9. **OWNERSHIP**

- 9.1. Ownership in any goods delivered to the Applicant or held by Steel Pipes on behalf of the Applicant shall not pass to the Applicant, but shall remain vested in Steel Pipes, until all amounts, including interest, have been paid in full in respect of the entire order.
- 9.2. Notwithstanding this provision, the Applicant shall have the right to dispose of the goods or materials in the ordinary course of business provided the Applicant and Steel Pipes expressly agree that the claim to any right to recovery of the purchase price shall be ceded to Steel Pipes as security for the payment of any amount outstanding on such goods and materials.

## 10. **WAIVER OF PRESENTMENT**

Any promissory note, bill of exchange, cheque or other instrument made, drawn, accepted, endorsed or discounted by the Applicant ("the instruments"), will be deemed to have been accepted by Steel Pipes without prejudice to its claim against the

Applicant in respect of the original cause of the debt, and the applicant hereby waives presentment (presentation for payment), notice of dishonour and protest of the instruments.



**11. CHANGE OF DETAILS**

11.1. The Applicant will notify Steel Pipes of any change of whatsoever nature in the information furnished by the Applicant in its credit application or, should the Applicant be a company, any share transaction where the majority shareholders are affected.

11.2. Notification of a change shall be furnished to Steel Pipes in writing within 10 (ten) working days of such a change.

**12. JURISDICTION**

The Applicant hereby consents to the jurisdiction of the Magistrates' District Court in terms of Section 45 of Act 32 of 1944 as amended, for any claim arising under the credit application. Notwithstanding this, Steel Pipes shall not be obliged to institute legal proceedings in the Magistrates' Court.

**13. COSTS**

The Applicant agrees that, in the event of Steel Pipes instituting any legal proceedings against the Applicant in connection with this credit application, it will pay the costs of such legal proceedings on the attorney and client scale.

**14. WHOLE AGREEMENT**

This credit application constitutes the whole agreement between the parties, to the exclusion of any terms and conditions of the Applicant. No party will have any right or remedy arising from any undertaking, warranty or representation which is not included in this credit agreement.

**15. NO VARIATION**

No variation, amendment, addition, deletion or change to this credit application shall be valid and binding on the parties hereto unless reduced to writing and signed by or on behalf of the parties.

**16. SEVERABILITY**

All terms and conditions of this credit application are severable and in the event of any term or condition or portion thereof being declared to be void, illegal or unenforceable, the remainder shall remain of full force and effect.

**17. DOMICILIUM CITANDI ET EXECUTANDI**

The Applicant appoints the physical address as set out in Part A of the Credit Application as its chosen *domicilium citandi et executandi* for all purposes in connection with this credit application.

**18. NO WAIVER**

No waiver or indulgence of any part of this credit application, of whatever nature, shall be of any force or effect, including a waiver or indulgence in respect of this clause, unless it is reduced in writing and signed by or on behalf of the parties.

**19. FURNISHING OF INFORMATION BY CUSTOMER AND CONSENT**

19.1. The Applicant shall forthwith upon demand, in respect of any contract entered into between Steel Pipes and the Applicant, furnish Steel Pipes with all information reasonably required by Steel Pipes to enable it to comply with its obligations.

19.2. Subject to the provisions of the National Credit Act 34 of 2005, the Applicant hereby grants consent to Steel Pipes to contact and request such information as Steel Pipes considers relevant in respect of the application for credit facilities from any persons, credit bureaus or trade references including those listed in the application for credit facilities form.

19.3. The Applicant hereby authorises any bank or other financial institution where it conducts an account to disclose to Steel Pipes such details of the account as Steel Pipes may require.

**20. AUTHORITY**

The signatory hereto warrants that he or she is authorised by the Applicant to sign and submit to Steel Pipes this application for credit facilities, that the information set out therein is true and correct, that he or she has read the credit application, the General Terms and Conditions of Purchase and Sale and the Suretyship and that he or she agrees and consents thereto for and on behalf of Applicant.

**SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_.**

**As Witnesses:**

Full Name: \_\_\_\_\_

Identity No: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**Signed for and on behalf of the Applicant**

Full name: \_\_\_\_\_

Identity No: \_\_\_\_\_

Capacity: \_\_\_\_\_