

TERMS AND CONDITIONS OF SALE

of

***Jasco Trading (Pty) Ltd, trading as
Webb Industries (“the Company”)***

1. Delivery:

- 1.1 Any given delivery date is approximate only and time is not of the essence of the sale.
- 1.2 If the company cannot make any delivery for any reason which is either wholly or partly beyond its control, then the obligation to make that delivery shall be suspended until the company can make it.
- 1.3 The company shall be entitled to suspend any delivery while the customer is in breach of any of the terms of any contract between it and the customer.
- 1.4 The company may effect delivery of any of the goods at different times and the customer shall accept such partial delivery and be obliged to pay for all such goods delivered on due date and notwithstanding that all goods in terms of any order placed have not yet been delivered.

2. Ownership and Risk:

- 2.1 Ownership of the goods will only pass to the customer against payment of the whole of the contract price. In the meantime, the customer shall insure the goods, at its own expense, against the risk of loss, damage or destruction and shall cede the policy of insurance to the company as security for customer’s obligations to the company.
 - 2.2 The goods shall be at the customer’s risk as soon as they leave the company’s premises irrespective of who is responsible for the delivery of the goods provided that if the customer fails to take delivery of the goods when tendered then the risk therein shall pass to the customer as soon as delivery is tendered by the company even if the goods have not left the company’s premises and all costs, directly or indirectly, incurred by the company in storing, caring for and invoicing the goods after such tender shall be paid by the customer to the company on demand.
 - 2.3 The customer shall not have any claim whatever against the company:
 - 2.3.1 If the goods fail to arrive at their destination; or
 - 2.3.2 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.



2.3.3 Notwithstanding delivery and the passing of risk, the ownership in the goods shall remain in the company until the customer has paid all monies owed by the customer to the company under this or any other contract or otherwise.

2.3.4 Until such payment is made, the customer shall, in respect of the said goods, owe a fiduciary duty to the company and if the company so requires the customer shall store such goods and materials at no cost to the company so that they are clearly identified as belonging to the company.

2.3.5 The company may at any time (without prejudice to any of its other rights and remedies to recover money owed to it by the customer) recover and resell any or all of the said goods and may enter upon the customer's premises for that purpose.

2.4 The customer may sell the said goods but so that:

2.4.1 The customer shall as against the purchaser of such goods and materials sell as sole principal; and

2.4.2 the customer shall be under a fiduciary duty to account to the company for the proceeds of the sale to the extent that any monies are owed by the customer to the company; and

2.4.3 the customer shall, on demand, assign to the company all its rights to recover from the purchaser of such goods and materials the goods and materials or unpaid purchase monies in respect thereof provided that the company shall pay to the customer any monies recovered in excess of the sum of the amount owed by the customer to the company and the costs and expenses incurred by the company in making such recovery.

2.5 If any of the said goods are processed into, incorporated in, used as materials for, or mixed with other goods or materials whilst the ownership therein is retained by the company, the provisions hereof relating to the sale and storage of the said goods shall apply to the product of such incorporation used to mixture as if the property in the whole of the said product was vested in the company.

2.6 Nothing in this clause shall give the customer the right to return the goods to the company.

3. **The Contract Price / Payment Terms:**

3.1 Is based, inter alia, on the cost of manufacturing process including, but not by way of limitation, cost of materials, components, accessories, labour, insurance, freight, railage, delivery, import duties and rates of exchange prevailing at the date on which the contract is entered into. The contract price shall automatically be varied by the company to take account of any increase entered into. The contract price shall automatically be varied by the company to take account of any increase in any of those or any other costs prior to the payment in full of the contract price. The amount of the variation shall be determined, in the absence of written agreement to the

contrary with the customer, by the company's auditors for the time being acting as experts and not as arbitrators and their decision shall be final and binding on the customer;

- 3.2 Shall be paid by the customer, free of exchange, set off or other deduction in South African currency at the company's address on the face hereof.
- 3.3 Shall be received by the company within 30 (Thirty) days after date of the company's statement, failing which the full balance then outstanding shall become immediately due and payable together with interest thereon at the rate of 2% (Two Percent) per month on the overdue amount owing by the customer or the maxim rate of interest laid down in terms of the Usury Act (or other relevant legislation) for similar outstanding amounts, whichever rate is the higher.
- 3.4 Includes the cost of delivery if delivery is taken at the company premises which 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, in which case the customer shall refund to the company the cost of delivery and any other costs, including postage, packing, distribution and freight, incidental thereto which may be paid by the customer.
- 3.5 All quotes are subject to the availability of the goods or services and subject to correction of bona fide errors by the company.
- 3.6 The customer agrees that the amount due and payable to the company may be determined and proven by a certificate issued and signed by any manager of the company whose authority need not be proven. Such certificate shall be prima facia proof of the indebtedness of the customer and shall be binding on it.
- 3.7 Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Computer Evidence Act have not been met.
- 3.8 Unless otherwise specifically agreed to in writing, all prices are net of any discounts. All discounts shall be forfeited if payment in full is not made on the due date.

4. Warranties and Representations:

- 4.1 Any recommendation, formula, figure, advice, specification, illustration, diagram, price list, dimension, weight or other information furnished by the company is approximate and for information only and, unless otherwise expressly stated in writing, does not form the basis or any part of the sale.
- 4.2 The company 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 4.1.1. whether furnished negligently or otherwise.

- 4.3 It is the sole responsibility of the customer to determine that the goods or services ordered are suitable for the purposes of intended use.
- 4.4 The company does not make any representation nor, unless expressly given in writing, 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 the company or not.
- 4.5 If any such warranty of guarantee is given by the company and all or any part of the goods fail, for any good reason whatever, to comply with that warranty or guarantee, then:
 - 4.5.1 The customer must notify the company orally within 48 (Forty Eight) hours and thereafter in writing within 7 (Seven) days, after the customer becomes aware of the fact that the goods in question do not comply with that warranty or guarantee;
 - 4.5.2 The company may inspect the goods in question at the customer's premises;
 - 4.5.3 At its own expense, the customer shall return those goods to the company if the company so requires;
 - 4.5.4 Subject to compliance by the customer with the above, the company shall, in its discretion, either remedy that failure by adjusting or replacing those goods, or refund the whole or part (as the case may be) of the contract price paid to it by the customer in respect of such goods;
 - 4.5.6 Save for 4.3.4, the customer shall not have any other claim whatever against the company;
 - 4.5.7 The company reserves the right, at its sole discretion, to provide alternative similar products to those ordered by the customer, should any equipment manufactured or supplied be superseded, replaced or terminated by the company at any time.

5. **Exclusion of Liability:**

- 5.1 The company shall not be liable for any loss or damage whatever suffered by the customer or any other person as a result of:
 - 5.1.1 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 the company;
 - 5.1.2 Any delay in delivering the goods or any part thereof, it being agreed that time is not of the essence to delivery of the goods;
 - 5.1.3 Any failure to deliver the goods or any part thereof.
- 5.2 The company and its directors, servants, agents and employees 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 the company of any of its obligations under these conditions or out of any other cause whatever.

5.3 The customer indemnifies the company against any claim which may be made against the company by any other person in respect of any matter for which the liability of the company is excluded in terms of 5.1 or 5.2.

5.4 Subject to the other provisions of these conditions, the customer may not claim any reduction of the contract price for any short delivery of, or defect in, any of the goods unless the company is notified thereof:

5.4.1 Orally within 48 (Forty Eight) hours; and

5.4.2 Thereafter in writing within 7 (Seven) days;

After the customer receives the goods.

5.5 Notwithstanding anything to the contrary contained elsewhere in these conditions or in any other agreement between the company and the customer or at law, the customer agrees that under no circumstances shall the company be liable for any claims or damages for any amounts in excess of the value of the goods or services purchased and paid for by the customer.

5.6 The customer acknowledges all designs, trade marks, trade names and/or copyrights in any goods supplied, vest in the company and the customer shall not infringe any such rights or duplicate and/or copy any such designs, material or the like or attempt to do so.

5.7 The customer indemnifies the company against any claims, costs and expenses arising out of the infringement by it or its servants, agents or employees of any copyright, patent, trade mark or design.

6. **Breach:**

6.1 If the customer:

6.1.1 Commits a breach of any of these conditions;

or

6.1.2 being an individual, dies or is provisionally or finally sequestrated or surrenders his estate; or

6.1.3 being a partnership, is dissolved; or

6.1.4 being a company, is placed under a provisional or final order of liquidation or judicial management; or

- 6.1.5 compromises or attempts to comprise generally with any of its creditors;
- 6.1.6 has a default judgment entered against it and fails to rescind or satisfy same within 7 (Seven) days thereof;
- 6.1.7 then, in any of those events, the company may summarily cancel the contract 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.
- 6.2 Upon the cancellation of the contract for any reason whatever, the company may repossess the goods from wherever they may be situated if ownership has not been passed to the customer in terms of 2.
7. **General:**
- 7.1 No alteration, variation, amendments to or consensual cancellation of these conditions shall be of any force or effect unless in writing and signed by the company's authorized officer for the time being.
- 7.2 No representative, agent or salesman has any authority to waive or vary any of these conditions or make any representations whatever on behalf of the company.
- 7.3 No indulgence, extension of time, relaxation or latitude which the company may permit at any time in regard to the carrying out of any of the customer's obligations shall prejudice the company in any manner whatever or be a waiver by the company of any of its rights against the customer.
- 7.4 If any provision hereof is held to be unlawful invalid or unenforceable for any reason, such provision shall be deemed to be pro non scripto, but without affecting, impairing or invalidating any of the remaining provisions of this agreement which shall continue to be of full force and effect.
- 7.5 The customer shall be solely responsible for obtaining any licenses or permits required for the installation or use of any goods by the customer or anyone else. The customer shall not be entitled to delay or refuse payment of any amounts due to the company by reason of it not being in possession of any such permits or licenses.
- 7.6 The customer hereby consents to the storage and use by the company of the personal information that it has provided to the company for establishing the credit rating and to the company disclosing such information to credit control companies, banks and other institutions involved in rating credit. The customer agrees that the company will not be held liable for the bona fide disclosure of any of this information to such a third party and that no further special consent need to be obtained for the transfer of such information to a specific third party.
8. **Domicile and Notices:**
- 8.1 For all purposes of this agreement including, but not by way of limitation, the

giving of any notice, the making of any communication and the serving of any process, the company and the customer respectively choose domicilium citandi et executandi ("domicile") at their respective addresses appearing on the face hereof. Each of the company and the customer shall be entitled, from time to time, to carry its domicile to any other address within the Republic of South Africa, provided that such other address may not be a post office box or poste restante. Any notice which either party may give to the other which is posted by prepaid registered post to a party's domicile for the time being shall be presumed, unless the contrary is proved, to have been received by such party on the seventh day after the date of posting.

9. Interpretation:

The company and the customer agree that:

- 9.1 This contract shall be interpreted according to and governed in all respects by the laws of the Republic of South Africa;
- 9.2 The clause headings in this agreement are for reference purposes only and shall not be used in the interpretation thereof.
- 9.3 Unless the context clearly indicates a contrary intention :
 - 9.3.1 Expressions which denote :
 - 9.3.1.1 any gender shall include the other genders;
 - 9.3.1.2 a natural person shall include an artificial person and vice versa;
 - 9.3.1.3 the singular shall include the plural and vice versa;
- 9.4 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 9.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.
- 9.6 When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 9.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 9.8 Schedules or annexures to this agreement shall be deemed to be incorporated in and form part of this agreement.

9.9 If the customer is part of a group of companies then any reference to the customer in terms hereof shall be deemed to be and include a reference also to any holding company and/or subsidiary and/or any associated company of the customer all of whom shall be bound by these condition of sale.

10. **Acceptance of Quotation:**

Quotations not accepted by the company in writing within 30 (Thirty) days thereof shall be deemed withdrawn and cancelled.

11. **Force Majeure:**

Any contract is subject to cancellation or to variation by reason of force majeure from any and every cause whatsoever beyond the company's control including, inter alia, inability to secure labour, materials, power or supplies, or by reason of Act of God, war civil disturbances, riot, state of emergency, strike, lockout or other labour dispute, fire, flood, drought or legislation.

12. **Legal Proceedings:**

12.1 In the event of the company instructing its attorneys to proceed against the customer for monies owed or any other reason whatsoever, the customer shall be liable for payment of the attorney and own client costs incurred by the company, including, but not limited to, collection commission thereon.

12.2 The customer consents to the company instituting any proceedings arising out of any goods sold by the company on the instructions of the customer or in respect of any other claim which the company may institute against the customer, in any Magistrate's Court having jurisdiction over the customer irrespective of the amount of the claim.

13. **Applicability:**

13.1 The conditions contained herein shall be the sole contract and conditions applicable between the company and the customer and none of them shall be bound by any undertakings or representations, warranties, promises or the like not recorded herein. These conditions shall apply to all and any orders placed by the customer at any time.

13.2 The conditions contained herein shall apply to any order placed by the customer at any time. The company shall be entitled, in its sole discretion, to amend these conditions from time to time by giving to the customer 7 (Seven) days written notice of its intention to do so and specifying in such notice the amended terms and conditions of sale.

13.3 These conditions shall be binding on the customer and their heirs, executors, trustees and successors-in-title.

- 13.4 Any conflicting conditions stipulated by the customer are expressly excluded.
- 13.5 These conditions supersede and replace any previous conditions stipulated by the company without prejudice to any securities or guarantees held by the company.