

# TERMS AND CONDITIONS

## 1. IN THIS AGREEMENT:

"the goods" means any product provided and/or services rendered by any division or branch of the Company, indicated on any company forms, price lists, quotations, delivery notes, orders and invoices.

"the Company" means Astral Operations Limited (Registration number 1947/027453/06) or any division or branch thereof.

"the Consumer" also means "the Applicant", "the Debtor" or "the Client" stipulated on page one paragraph A and/or B of this document.

"the Act" will be the National Credit Act 34 of 2005.

## 2. PRICE

2.1 The price of the goods shall be the price as per the Company's written quotation in respect of the specific order, or, in the absence of a written quotation, the usual price as per the Company's price list prevailing at the time of the dispatch of the goods;

2.2 The Company price lists shall be considered merely as a guide to the Consumer and the Company has the right, from time to time, for any reason and without notice to the Consumer, to change the prices of any of its goods, whether such prices are reflected on price lists or not.

## 3. PAYMENT

3.1 Payment must be made according to the payment terms contained in the Company's confirmation of credit letter, which the Consumer shall receive on approval of any credit facility by the Company;

3.2 Should the Consumer fail to make payment timeously or withhold payment or any portion thereof for any reason whatsoever, the Company shall be entitled to withdraw or reverse any agreed discount or rebate, and claim immediate payment of all amounts owing, or alternatively, at the Company's sole discretion, to set off the amount of such discount or rebate against any rebate or other credits or allowances or payments due to the Consumer;

3.3 The Consumer shall not claim the right to rebates and/or discounts on any basis of whatsoever nature unless a Manager or Director of the Company shall have agreed to such rebates and/or discounts in writing, and further provided always that such amount shall not be allowed on any goods despatched if payment for any goods whatsoever involved prior thereto is overdue;

3.4 In all cases where the Consumer uses a postal, banking, electronic or similar method or service to effect payment, the supplier of such method or service shall be deemed to be the agent of the Consumer;

3.5 The Consumer shall not be entitled to claim set off or deduction in respect of any payment due by the Consumer to the Company for goods delivered or services rendered and the Consumer will not be entitled to stay any action instituted by the Company pending the adjudication of any counter claim of the Consumer;

3.6 Should any amount not be paid by the Consumer on due date the whole amount in respect of all purchases by the Consumer shall immediately become due, owing and payable irrespective of the dates when the goods were purchased. The Consumer agrees that interest at the maximum rate determined in terms of section 103 of the Act and or any other applicable act as prescribed by the Minister from time to time, shall be charged on all amounts that are not paid on due date;

3.7 The Company shall have the right to suspend all service until all amounts due and payable by the Consumer are paid in full.

## 4. CREDIT FACILITIES

4.1 The Company reserves the right to withdraw any credit facilities at any time without prior notice and the nature and extent of such facilities shall at all times be at the Company's sole discretion;

4.2 For the purpose of opening an account and the establishment of the requested credit limit, the Consumer hereby authorises the Company to do a complete and extensive creditworthiness assessment of the Consumer, as required by the Act;

4.3 Should the Consumer require an increase in the agreed credit limit, a written request must be submitted to the Company together with authorisation for the Company to do a complete assessment of the Consumer's ability to service the new increased limit in terms of section 119 of the Act;

4.4 The Consumer may, at any stage after entering into the contract of credit with the Company, request a temporary increase in the credit limit to accommodate a particular transaction or specified occurrence, on condition that the request is in writing and the Company is given authority to do a complete assessment of the Consumer. It is explicitly agreed that the credit limit so increased will revert back to the original agreed credit limit immediately after the specified occurrence has taken place;

4.5 In the event that an assessment mentioned in any of the paragraphs above proves that the Consumer is not capable of servicing the credit limit which has been applied for, the Company reserves the right to offer the Consumer a reduced credit limit;

4.6 Should the Consumer require a decrease in the agreed credit limit, a written request must be submitted to the Company. Such decrease shall become effective 30 business days after the receipt of the written request by the Company. In the event that the balance outstanding on the account after the implementation of the new decreased credit limit exceeds the new credit limit, the amount in excess shall not be determined as reckless credit, in terms section 118 (4) of the Act.

## 5. ORDERS

5.1 Orders by the Consumer for the Company's goods shall be made in writing to such address as may be nominated by the Company from time to time;

5.2 Oral orders shall similarly be capable of acceptance by the Company, but the Company will not be responsible for any errors or misunderstandings occasioned by the Consumer's failure to make orders in writing;

5.3 Orders shall constitute irrevocable offers to purchase the goods in question and shall be capable of acceptance by the Company by the delivery of the goods or by the written acceptance or confirmation of the order;

5.4 In the event of a negotiated deal or quotation for the price and volume of goods and services, the period for acceptance of the negotiated deal or quotation will be the period as stated on the deal sheet or quotation. The price per the deal sheet or quotation will, on acceptance of the consumers order, apply in respect of sales and services. In the event of the deal sheet or quotation not specifying the aforementioned periods:

5.4.1 the deal sheet or quotation is open for acceptance for a period of three (3) days calculated from the date of the deal sheet or quotation;

5.4.2 the price will, on acceptance, only apply in respect of sales and services for a period of thirty (30) days calculated from the date of acceptance or as stipulated in the agreement;

5.4.3 any price quoted by the Company is subject to a minimum purchase stated in the quotation or deal sheet.

## 6. DELIVERY

6.1 The Consumer is liable for any transport costs of goods from the premises of the Company to any delivery address/es of the Consumer;

6.2 In the event that the Company transports the goods to the Consumer, delivery and passing of the risk in the goods shall be deemed to have taken place when the goods are off-loaded at the Consumer's premises. The signature of any employee of the Consumer on a Company's delivery note or invoice shall be prima facie proof of proper delivery;

6.3 In all cases where delivery to the Consumer occurs by carrier, the carrier shall be the Consumer's agent, and delivery to such carrier by the Company shall be deemed to be delivery to the Consumer. The signature of any employee of the carrier shall be prima facie proof of proper delivery to the Consumer;

6.4 Should the Company, at the Consumer's request, agree to engage a carrier to transport goods to the Consumer, such carrier shall be the Consumer's agent and the Company shall engage the carrier on such terms and conditions as it deems fit and the Consumer indemnifies the Credit Provider against all demands and claims which may be made against it by the carrier so engaged and all liability which the Company may incur;

6.5 Delivery of goods to any delivery address given by the Consumer, shall constitute proper delivery of the goods, despite the fact that such address may not have been the address or premises of the Consumer;

6.6 Whilst every effort will be made to despatch goods as advised, the Company does not guarantee despatch on any specific date and shall not be liable for any damages for failure to effect delivery/despatch timeously for any reason beyond the Company's reasonable control, including but not limited to, inability to secure transport, labour, power, materials, equipment or supplies or by reason, due to so called "acts of God", war, civil unrest, riots, state of emergency, strikes, exclusion and or any other labour dispute, fire, floods, drought or legislation;

6.7 In the event that the Company makes delivery to the Consumer in instalments, each instalment shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery of any instalment shall not affect the balance of the contract or entitle the Consumer to cancel the contract;

6.8 When goods are delivered in part, invoices relating to separate deliveries shall be paid as if such goods were the subject of a separate order and no payment shall be postponed until such time as all the goods ordered have been delivered;

6.9 If the Consumer fails to take delivery of the goods ordered, or in any way delays the delivery of goods ordered, then the risk in the goods shall immediately pass to the Consumer and the Consumer shall be liable to pay the Company the reasonable costs of storing, insuring, and handling the goods, until delivery takes place;

6.10 The Consumer shall be barred from lodging any claim in respect of discrepancies between goods charged and goods delivered, unless the Consumer has specified on the delivery note the nature of the discrepancy when taking delivery.

## 7. OWNERSHIP & RISK

7.1 Notwithstanding that all risk in and to all goods sold by the Company to the Consumer shall pass on delivery, ownership in all goods sold and delivered shall remain vested in the Company until the full purchase price has been paid. In the event of breach of these terms and conditions by the Consumer, or if the Consumer is sequestrated or placed under liquidation or judicial management or commits any act in insolvency or enters into any compromise with its creditors or fail to satisfy a judgement granted against it within 7 days of the date of judgement or changes the structure of its ownership, the Company shall be entitled to take possession of the goods without prejudice to any further right vested in the Company.

7.2 Goods in the possession of the Consumer bearing the Company name, trademarks and labels shall be deemed to be those for which payment has not yet been made;

7.3 The Consumer shall fully insure the goods purchased from the Company against loss or damage, until the full price has been paid by the Consumer for such goods. Pending payment to the Company for goods purchased, all benefits in terms of the insurance policy relating to the insurance of such goods are ceded to the Company;

7.4 The Consumer will ensure that the Landlord of the premises rented by the Consumer waives its rights of hypothec on all goods supplied to the Consumer by the Company. The consumer is obliged to supply the Company with a copy of the written waiver of the Landlord's Hypothec;

7.5 The Company has the right to pack goods into returnable containers and these crates remain the property of the Company.

## 8. LEGAL PROCEEDINGS

8.1 Regardless of the place of execution or performance in terms of this agreement, these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and construed and in accordance with the laws of the Republic of South Africa;

8.2 The Consumer hereby consents to the non-exclusive jurisdiction of the High Court of South Africa (north Gauteng High Court, Pretoria). Notwithstanding the above the Company shall in its discretion be entitled to bring any action or proceedings to enforce its rights under this agreement in the Magistrate's Court, notwithstanding that any such action or proceedings may otherwise be beyond the jurisdiction of such Court, for which purposes this clause shall constitute a consent as contemplated in section 45 of the Magistrate's Court Act, No 32 of 1944. The provisions of this clause shall also not preclude the Consumer to bring an action or proceedings to enforce its rights under this agreement in the Magistrate's Court where such court has jurisdiction.

8.3 The Consumer shall pay all legal costs, including attorney/own client costs, tracing agent's fees and collection charges which the Company may incur in taking any steps pursuant to any breach of these terms and conditions by the Consumer;

8.4 The Consumer agrees that any payments made on an account shall in the first instance be offset against accrued interest charges, thereafter against collection fees and legal fees, and finally against the deferred capital balance on the account;

8.5 The Consumer's physical address as given in paragraph A of this document shall be recognised as the Consumer's domicilium citandi et executandi (domicilium) for the service of any court process resulting from this agreement. The Consumer's postal address as shown in paragraph A of this document, will be deemed to be the Consumer's domicilium citandi et executandi for all purposes regarding written notices for payment of any amount or any other written communication or notices of whatsoever nature resulting from this agreement.

8.6 In terms of the National Credit Act, unless the Consumer objects to the correctness of any entry on any statement, delivery note or invoice in writing within five (5) business days before the due date of payment of such statement, delivery note or invoice, it will be deemed that the Consumer accepts that the entries are correct and he does not dispute such entries;

8.7 Unless the Consumer, in the event of the Act not been applicable, object to the correctness of any entry on any statement, delivery note or invoice in writing within 5 (five) business days before the due date of payment of such statement, delivery note or invoice, it will be deemed that the Consumer accepts that the entries are correct and that the Consumer does not dispute such entries.

8.8 A certificate signed by any director or manager of the Company, whose appointment as such need not be proved, shall constitute prima facie proof of the Consumer's indebtedness.

8.9 The Law of the Republic of South Africa will apply for the agreement in all respects and the purchaser/customer agrees to the partial jurisdiction of the Transvaal Provincial Division of the High Court of South Africa.

## 9. ARBITRATION

9.1 The Company has the sole option to refer any dispute arising from or in connection with this agreement to a Dispute Resolution Agent or to a Debt Counsellor for arbitration, which arbitration shall bind both Company and the Consumer;

## 10. NEGOTIABLE INSTRUMENTS

10.1 Acceptance of a negotiable instrument by the Company shall not be deemed to be a waiver of the Company's rights under this agreement regarding cheques/bills furnished by the Consumer to the Company. The Consumer waives his right to insist on notice of dishonour or protest given to it in the event that the cheque/bill is dishonoured.

## 11. BREACH

Should the Consumer:

- 11.1 fail to comply with any term or condition of this agreement; and/or
- 11.2 be sequestrated, liquidated or placed under judicial management; and/or
- 11.3 enter into a settlement or negotiation with creditors; and/or
- 11.4 allow the granting of a judgement; and/or
- 11.5 fail to comply with such judgement within 7 (seven) days; and/or
- 11.6 commit or allow any act that may endanger or prejudice the rights of the Company, the Company will immediately be entitled to claim payment of the total amount, plus interest and costs payable by the Consumer in terms of this agreement.

## 12. WARRANTIES & INDEMNITY

12.1 The Company hereby excludes all warranties, either expressed or implied in respect of tests done or the results of such tests.

12.2 The Company disclaims all liability to the Customer and/or anybody else in respect of the test done and/or the results of such tests and in no event will the Company be liable to the customer and/or anybody else for delictual, special and/or consequential damages of any nature.

12.3 In the event of breach of contract, any amount for which the Company may be liable for damages, costs, fees and expenses will not exceed the total price paid or due to be paid by the customer for the services rendered in respect of the testing.

## 13. CONFIRMATIONS

13.1 The Consumer and the signatories hereof, appending signatures to this document, agree and confirm that the information supplied is true and correct and undertake to notify the Company immediately in writing of any change in ownership or detail herein, and further confirm, warrant and declare that:

13.1.1. all goods supplied subject to the Terms and Conditions set out above and on the reverse side of each invoice or test summary sheet.

13.1.2. the signatories are duly authorised to represent the Consumer and to bind the Consumer to this agreement.

13.1.3. the directors/partners/members/sole proprietors/trustees/sureties have never been insolvent or associated with any business failure.

13.1.4. it has read and is conversant with the terms and conditions of this agreement and accept and agree that same will be binding on all transactions concluded between the Company and the Consumer.

13.1.5. choose as domicilium citandi et executandi the address specified in the credit application form and in the absence thereof as defined on the front of this document.

## 14. GENERAL

14.1 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless presented in writing and signed by a director of the duly authorised representatives of the Company and the Consumer. No agreement, whether consensual or unilateral or bilateral, purporting to obligate the Company to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless presented in writing and signed by an authorized Manager or Director of the Company;

14.2 No relaxation or indulgence which the Company may give at any time in regard to the carrying out of the Consumer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of the Company's rights in terms of any contract;

14.3 The Consumer shall not cede any right nor assign any obligation;

14.4 The Company may at any time in its sole discretion cede or assign all or any of its rights in terms of this application for credit facilities including all terms and conditions to any third party without prior notice to the Consumer;

14.5 I/we, the undersigned, undertake to pay all costs involved to provide any security to cover my/our exposure to the Company.

14.6 Any written notice to the Company shall be addressed to the relevant Divisional office;

14.7 The Consumer undertakes to notify the Company within a period of seven days of any change of address or any changes in the information as set out in this agreement;

14.8 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement;

14.9 I/we, the undersigned, do hereby warrant that all the information recorded in this application is true and correct and I/we agree that all transactions concluded with the Company shall be subject to the terms and conditions specified herein and agree to be bound by all such terms and conditions, and without limiting the generality of the foregoing, in particular the Deed of Suretyship, in so far as the latter relates to the signatories. I/we further confirm that I/we have read, understood and agreed to all the provisions contained in this credit application form and warrant that the information supplied is true and correct and undertake to notify the Company immediately in writing of any change in ownership or details contained herein and accept herewith liability for all debts incurred by the Applicant;

14.10 Without derogating from the generality of the foregoing, should any of the information furnished herein be inaccurate and the Company suffer damages in consequence thereof, I/we agree that without prejudice to the Company's other rights at law, the said damages shall be deemed to be equal to the balance outstanding due to the Company in respect of goods sold and delivered by the Company pursuant to this credit application.

14.11 If the Act applies to these Terms and Conditions, or any transactions concluded hereunder, any of the provision of this agreement in conflict with the Act shall be regarded as pro non scripto in so far as the provisions are in conflict with the Act.