



## TERMS & CONDITIONS OF SALE

These are the terms and conditions of sale which apply to all goods and services sold by the seller to the customer. These terms and conditions which maybe contained in the customer's purchase order or other documentation and may only be altered with written express agreement of the seller.

### DEFINITIONS

- “Customer”** : means the customer reflected on the order form.
- “Goods”** : means the goods or services described in the purchase order form.
- “Purchase Order”** : means the purchase order form to which these terms and conditions are attached.
- “Seller”** : means **INVICTUS Technical SA (Pty) Ltd.; Registration no. 2023/192946/07**
- “Terms & Conditions”** : means these terms and conditions of sale, contents of the customer's purchase order and any written acceptance of the customer's orders by the seller.

### GENERAL

All goods and/or services supplied by the seller shall be supplied subject to these terms and conditions only. These terms and conditions take precedence over any terms and conditions which may be contained in the customer's order, or other customers documentation, and may only be altered with the express prior written agreement by the seller.

### ORDERS

The customer shall purchase the goods and/or services from the seller with an official order instruction/document specifying the quantities and particulars of the goods and/or services required and, if applicable, the address to which the goods must be delivered. No order for any goods or services shall be binding on the seller unless and until the seller has accepted such a purchase order in writing. The seller shall be entitled to in its sole discretion to decline any purchase order placed. Each order accepted by the seller shall be and constitute a separate contract.

### VALIDITY QUOTATIONS

All quotations are valid for thirty (30) days from date of official quotation, where after they shall lapse and be ipso facto null and void unless the seller agreed to an extended period of validity in writing.

### PURCHASE ORDER VALUE

The purchase order value payable by the customer to the seller for the goods shall be the ruling prices stipulated in writing by the seller at the time of purchase order for the goods and/or services placed by the customer in terms of clause, and such prices shall be price plus (+) VAT (Value added tax).

Should the seller agree to deliver the goods to the customer, then in addition to the purchase price payable for the goods, the customer shall pay to seller all costs of delivery of the goods to the address stipulated in the customer's purchase order, including without limiting the generality of a foregoing, the cost of insurance.

### TERMS OF PAYMENT

Unless otherwise agreed in writing by the seller, the purchase price for the goods and/or services together with the cost of delivery of the goods, if applicable, shall be paid by the customer to the seller into the seller's verified bank account. Payment of the purchase prices for the goods shall be made within thirty-seven (37) days of the date on which the customer received an invoice for the goods, without set-off or deduction, and free of exchange. Should the customer be unable to take delivery of the goods, payment shall nevertheless be fall due. The terms of payment set out above, shall apply equally to price variation claims.



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The seller shall be entitled to charge interest of two-point five percent (2.5%) in respect of any period during which the payments are overdue.

## **DELIVERY**

The goods may be delivered by road as the seller may in its discretion decide. If the goods are delivered via customer own transport company, then delivery shall be deemed to have been given to the customer when such goods are handed to the customer transport company. If the goods are delivered by the seller, then delivery shall be deemed to have been affected when goods are offloaded at the customer's premises. All risk in and to the goods shall pass to the customer upon delivery. The customer shall be obliged to accept the delivery of the goods at the date specified in or requested by the customer in writing in the purchase order of the customer referred to in clause and which been accepted by the seller in terms of clause.

Should the seller fail to accept delivery on such date, the risk of loss or damage to the goods together with all and any expenses pursuant thereto, including but not limited to insurance, storage and further delivery charges shall be borne by the customer and paid to the seller by the customer on request. When delivery is spread over a period, each separate delivery thereof shall be invoiced when dispatched. Each invoice shall be treated as a separate invoice and payable in terms of clause. Where there is a shortage in any goods delivered to the customer or where the goods delivered are in a damaged condition, the customer shall give written notice to the seller of such shortage or damage within five (5) business days of delivery to the customer's premises.

Should the customer fail to give such notice, the customer shall have not claim in respect of any alleged shortages or damage and the goods shall be deemed to have been delivered in a completed and undamaged condition.

The seller shall endeavor to deliver the goods at the earliest possible time, but in no instance can the seller accept liability for any loss or damage arising from the late delivery of the goods due to force majeure. No liability shall attach to the seller because of the failure to deliver is such failure is due to circumstances beyond the seller's control.

It is recorded that delivery dates shall be regarded as indicative only and whereas the seller will do everything possible to keep to such dates, the seller cannot be held responsible for any failure to do so. Notwithstanding anything to the contrary in these terms and conditions, but always subject to the provisions clauses the seller's liability in respect of any failure by it to deliver the goods, or to deliver the goods timeously, shall be limited to an amount equal to the amount of the purchase price of such goods and, in any event, the seller shall not be liable for any consequential loss, loss of profit, special damages or any indirect or any indirect loss of the customer.

## **RETURN OF GOODS**

The goods will not be accepted to return without the prior written consent of the seller first being had and obtained, and should such consent be given, the goods must be returned transportation paid to the seller undamaged in the original factory sealed packaging. Provided that inspection by the seller reveals that the goods are in saleable condition, which decisions shall rest solely with the seller, credit will be passed to the customer less 15% (fifteen percent) of the original invoice price to cover the cost of examination, handling, and repacking. In the event of the seller making and incorrect delivery, then and in such event the goods shall be returned without the prior written consent of the seller being first had and obtained and such returns shall be for the account and shall be properly marked with purchase order number. Should the goods be returned to the seller by the customer without the prior written consent having been given, the seller shall be entitled to store the goods at the customer's sole risk and reasonable charge for such storage shall be made.

## **VARIATIONS**

The seller shall not be obliged to accept or act upon any charges, modifications, or additions to original customer instructions if such charges, modifications, or alterations were given subsequent the seller's acceptance of the customer's purchase order. No variations of these terms and conditions or additions hereto shall be of any force or effect unless reduced to writing and signed by both the seller and the customer.



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## **LIABILITY**

The seller shall not be liable to the customer for any damages including, but not limited to, consequential loss or loss of profits arising from the performance or non-performance by the seller of its obligations in terms of these terms and conditions. This exclusion of liability shall relate to claims for breach of contract (purchase order), as well as for alleged negligence on the part of the seller.

The customer further indemnifies the seller against any claims that may be made against the seller by any third party for any damages including, but not limited to, consequential loss or loss of profits arising from the performance of non-performance by the seller of its obligations in terms of these terms and conditions or in connection with the use of goods or services, without such claims are in respect of damage to property, consequential loss, personal injury or death.

The customer agrees that the seller shall not incur any liability und OSHAS Act No. 85 of 1993, in specific to Section 10 of the Act.

## **WARRANTY (GUARANTEE'S)**

The customer's claims against the seller for breach of warranty are restricted to the terms set forth in any warranty form furnished to the customer with goods sold. The said warranty (guarantee) is given in lieu of any liability at common-law, and other warranties or representations concerning the goods sold, whether express or implied by law, are excluded.

Any warranty given by the seller from time to time shall not apply if the customer fails to use the goods in accordance with the recommendations made by the seller or if the goods are used for any purpose other than for which they are intended, or if the goods are modified or repaired an unauthorized person or are damaged by the customer in any way.

The warranty will be nullified should any of the process parameters / operating conditions change provided by the customer and as subject to the pre-scribed warranty applicable goods per job.

## **BREACH**

In the event of the customer committing any breach of these terms and conditions including, but not limited to, the failure to make payment as per the agreed payment terms and conditions, the seller shall be entitled forthwith charge interest and action further legal steps. The exercise of this right shall not preclude the seller from its right to claim damages from the customer occasioned by its breach. The seller shall, in the alternative, be entitled to enforce provisions of these terms and conditions and claim payment of the full amount due by the customer. Should the seller take legal action against the customer in the event of the customer's breach of contract (purchase order specification), the customer shall be liable for all legal fees incurred by the seller in the recovery of any amounts owing, including costs of the attorney and own client scale and collection commission. If the customer breaches these terms and conditions and the seller elect's agreement of the sale, the seller shall be entitled to suspend performance and/or services of its obligations until the customer has complied with its obligations.

## **INDULGENCE**

Any relaxation, leniency of indulgence which the seller may extend to the customer shall not in any way constitute a waiver of seller's rights in terms hereof.

## **ARBITRATION**

And dispute arising out of or in connection with a purchase order to which these terms and conditions relate shall be finally settled under Rules of Arbitration of the arbitrator appointed in accordance with the said rules, seating in Johannesburg, South Africa, Gauteng.

## **HEADINGS**

The headings of the clauses in these conditions are for reference purposes and shall not affect their interpretation.



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## **SUSPENSION OR CANCELLATION OF DELIVERY**

The seller reserves the right to suspend, delay or cancel the delivery of some or all of the goods and/or services or to require advance payment for them if:

The customer is insolvent or is unable to pay its outstanding account, or seeks to effect any compromise with any of its creditors or compound any of its debts; or the customer is placed under an order of sequestration, judicial management or liquidation, whether such order be provisional or final; or the customer is the subject of any resolution passed to enable it to be wound-up or dissolved; or any judgement is given against it in any court of law and, if appealable, is not appealed against within a period allowed for the lodging of such an appeal or, if not subject to an appeal, remains unsatisfied for a period of ten (10) days; or the customer is in breach of any of its obligations under to the seller. Any suspension, delay, or cancellation because of any of the aforementioned events shall not affect any other right which the seller may have against the customer based on these terms and conditions of sales or otherwise.

## **INABILITY TO SUPPLY OR DELIVER**

If the seller cannot deliver, cannot deliver timeously, some or all of the goods and/or services for any reason beyond its control, including but not limited to lack of instruction from the customer, stock shortage, industrial dispute or break-down, production delays, government action, force majeure, the seller may, in its discretion, cancel the whole or any part of the contract / purchase order forthwith. In the event of such a cancellation the seller shall not be liable for any loss whatsoever, including any consequential loss of profits, special damages or any indirect loss thereby caused.

## **INSTALLATION**

In case installation of the goods and/or services is agreed upon, the following provisions shall apply, and the seller's price shall be based on the fulfilment of the following provisions by or at the expense of the customer.

The provision of adequate and lockable storage on or near the installation site for the goods to be supplied in such a way that the goods are protected against theft and any damage or deterioration; any item lost or damaged during the storage period shall be repaired or replaced at the customer's cost.

The timely execution and completion of the preparatory works at customer's sole expense and risk, in conformity with the requirements, which the seller shall indicate to the customer in due time; the site preparation shall be in compliance with all safety, electrical and building codes relevant to the goods and its installation. Sufficiency of such plans and specifications, specifically including, but not limited to the accuracy of the dimensions described therein, shall be the sole responsibility of the customer. The installation site shall be made available to the seller without obstacles in due time to enable the seller to start the installation work at the scheduled date; the seller's installation staff shall not be called upon to do the installation of the goods and/or services until all preparatory works have been satisfactorily completed.

The availability of the goods to be delivered in due time and in proper condition at the installation site. The timely provision free of charge permits, access by the pertinent authorities to perform the installation and putting into operation the goods delivered.

The seller will ensure that the work is performed in compliance with the rules of engineering in addition to the relevant environmental protection, occupational safety, and accident prevention regulations. Before setting up the work area, the organization and sequence of the tasks are agreed upon with the appointed contact person. Likewise, a walk-around will take place, to obtain information about escape routes/fire detectors etc.

Only qualified personnel who can provide the service properly and professionally are employed. Wearing personal protective equipment is the responsibility of the personnel, protective helmet, shoes suit, goggles, and/or glasses, etc. if necessary. If the deployment of work equipment (lifting gear/ladders/scaffolding) proves necessary, use and safeguarding is to be performed properly. The construction site is left in a clean, tidy, and safe condition.



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## ACCEPTANCE OF GOODS

The goods and/or services are delivered or installed as per prior agreement of acceptance of the official quotation and agreed to by documentation/information submitted in advance. The signed delivery notes and/or acceptance certificate shall be the signed document as acceptance of the goods and/or services.

Should the customer wish to reject the goods and/or services installed on reasonable grounds, the customer shall submit to the seller its reasons in detail and in writing within ten (10) days after completion of the acceptance of the goods and/or services. Should it be determined that the goods and/or services were defective the seller shall as sole remedy correct the installation complaint. If the goods are defective the seller shall have the goods tested and if found that it is defective the seller will replace the goods. An acceptance test will be performed by the seller after completion work performed, after completion the acceptance certificate will be signed of again by the customer in acceptance of the work performed, and the good installed then shall be considered as having been accepted by the customer.

Any partial non-fulfilment of the seller's obligations solely attributable to the seller entitles the customer to withhold payment only of a corresponding, reasonable amount. The taking into operation use of any goods installed shall also constitute acceptance of the goods concerned. Minor defects or deviations not affecting the operational use of the goods installed shall be stated in the acceptance certificate/delivery note but shall not entitle the customer to obstruct or suspend acceptance of the goods or the installation. The seller undertakes to remedy such defects as soon as possible but subject to the provisions of this clause.

## GOVERNING LAW

These terms and conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

## CONSENT TO JURISDICTION

For the purposes of any legal proceedings the customer hereby consents to the jurisdiction of any Magistrate's Court having jurisdiction over the parties. This notwithstanding it shall not preclude the seller from instituting action out of any division of the High Court of South Africa having jurisdiction.

## ACCEPTING OF PURCHASE ORDERS

Acceptance by the seller of the customer's purchase orders shall only be binding if in writing and by sales order acknowledgement documentation. All customer's purchase orders are to be accompanied by such instructions from the customer as, in the sole discretion of the seller, are necessary to enable the seller to supply the goods and/or services set out in the customer's purchase order. Should instructions not be timeously furnished, or be deficient in any respect, then the seller shall be the price set out in the customer's order by such amount as may be necessary to cove the increase in costs occasioned by the delay in furnishing of the instructions.

The seller reserves the right to employ subcontractors in respect of a portion or all the services to be rendered or goods to be supplied to the customer. Once acceptance of a customer's purchase order has been delivered to the customer, a binding contract on the goods and/or services, subject to the conditions contained herein, will have been entered into by and between the seller and the customer, which purchase order shall not without the consent of the seller be capable of and/or variation and/or cancellation. Should the seller agree to cancel purchase order in whole or in part, then the customer shall upon date of cancellation pay the seller, as and by way of a payment in lieu of damages, a cancellation fee equal to and aggregate of fifteen (15%) percent of the contract price. Should the cancellation involve the return of goods already delivered the provisions of the clause shall apply mutatis mutandis. A certificate by the Managing Director of the seller shall, ipso facto, be proof of the amount of ancillary charges incurred and shall be sufficient to discharge the burden of proof for the purposes of pleading, and no further evidence relating thereto need to be adducted at any trial at which the a document is rendered as evidence. No counter offer in respect of any of the terms of the quotation shall be accepted and any acceptance of a quotation attached to or delivered with

a counter offer shall, in itself, be determined to form part of such counter offer and shall accordingly not be valid or binding upon the seller.



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## CONSENT

The customer specifically consents that the supplier, may carry out a credit enquiry in respect of the customers, may access a Credit Bureau's database before granting any credit to the customer, may, where credit is granted, transmit details to a Credit Bureau of how the customer has performed in meeting with its obligations under the account, and share such information with other Credit Bureaus for the purpose of accessing further applications for credit by the customer (and its members, directors, or partners as the case may be) and for occasional debt tracing, debt collection and fraud prevention purpose; if credit is granted in favour of the customer and the customer fails to meet its financial commitments to the seller, the seller may record the customer's default with a Credit Bureau; may refer information relating to the customer's credit performance to a Credit Bureau for banking and credit assessment, statistical analysis, and credit scoring purposes and use such information to identify products (including those supplied third parties) which may be relevant to the customer; may record the existence of a customer's account with the seller's at a Credit Bureau(s).

## ADDITIONAL TERMS APPLICABLE TO EXPORT SALES PRICE

All prices quoted:

- Shall be exclusive of any import duty or import that may be imposed by any statutory or quasi-statutory body from time to time; are expressed in RAND or US Dollar where applicable and based on the rate of exchange applicable and ruling on the date of quotation and any variation on the quoted rate shall be for the customer's account.
- VAT will be charged on the invoice for goods that are collected by the customer in South Africa and exported via their own transport company across border.
- Only VAT non-exempted invoices will be issue if the exporting body is the seller and delivered by the seller's transported across border.
- Are based on the full quantities specified being accepted by the customer and any variation at the instance of the customer in the quantity purchase order shall, in the discretion of the seller, invalidate the price quoted.
- All exclusive of delivery charges. Any charges for export shall be separately quoted in terms of these terms and conditions and shall include transport, insurance and forwarding costs.
- Any variation in the exchange rate after date of quotation validation, or Value Added Tax and/or any other tax payable from time to time and/or the cost to the seller of any matter relating to delivery installation, insurance, freight, clearance of goods from customs and/or authorities, and/or any other matter whatsoever upon which the price quoted has been based shall, insofar as any such variations affects the cost to the seller of complying with the quotation, result in the price as set out therein being varied in proportion to any such variation and shall be for the account of the customer. A certificate from the seller's auditors setting out the extent of the variation in respect of any of aforesaid matters, shall be absolute and conclusive proof thereof and accordingly the sell is not obliged to lead any other evidence relating to such variations at any trial which such variation is placed in dispute. All quotations are valid for thirty (30) days from date of official quotation, where after they shall lapse and be ipso facto null and void unless the seller agreed to and extended period of validity in writing.