

## GENERAL TERMS AND CONDITIONS OF SALE

### 1 INTERPRETATION

- 1.1 The following rules of construction shall apply, unless the context requires otherwise
- 1.1.1 any reference to a person includes any individual, body corporate, unincorporated association or other entity recognised under any law as having a separate legal existence or personality;
- 1.1.2 any one gender, whether masculine, feminine or neuter, includes the other two;
- 1.1.3 the singular includes the plural and vice versa;
- 1.1.4 any conflict between this Agreement and any other document supplied by the Purchaser and/or any document in relation to the subject matter of this Agreement, the provisions contained in this Agreement shall prevail;
- 1.1.5 a word or expression given a particular meaning includes cognate words or expressions;
- 1.1.6 any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day is a day that is not a Business Day, the next Business Day;
- 1.1.7 the words including, include or in particular followed by specific examples shall be construed by way of example or emphasis only and shall not be construed, nor shall it take effect, as limiting the generality of any preceding words, and the eusdem generis rule shall not be applied in the interpretation of such specific examples or general words;
- 1.1.8 the words other or otherwise shall not be construed eusdem generis with any foregoing words where a wider construction is possible;
- 1.1.9 all the headings and sub-headings in this Agreement are for convenience and reference only and are not to be taken into account for the purposes of interpreting it;
- 1.1.10 if a definition confers substantive rights or imposes substantive obligations on a Party, such rights and obligations shall be given effect to and are enforceable as substantive provisions of this Agreement, notwithstanding that they are contained in that definition;
- 1.1.11 a "law" shall be construed as any law (including common law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure or enactment of any government, local government, statutory or regulatory body or court and shall be deemed to include the rules and other requirements of any applicable stock exchange;
- 1.1.12 references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Agreement or any transaction entered into in accordance with this Agreement;
- 1.1.13 this Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to either Party shall be deemed to include such Party's estates, heirs, executors, administrators, trustees, assigns or liquidators, as the case may be;
- 1.1.14 no rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for, or participated in, the preparation of this Agreement or any part of it;
- 1.1.15 unless the context indicates otherwise, the following expressions shall have the corresponding meanings:
- 1.1.16 "Affiliate(s)" means, with respect to any juristic person, any other person that, directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such person, where "Control" means the beneficial ownership of the majority in number of the voting rights or other voting equity interests of such other person or the right or ability to appoint or remove directors holding a majority of the voting rights at meetings;
- 1.1.17 "Agreement" means these General Terms and Conditions of Sale, including the Agreement Details;
- 1.1.18 "Agreement Details" means the details set out in the front of this document;
- 1.1.19 "Business Day" means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.1.20 "Confidential Information" means any and all information and technical data which has been and may be disclosed by BWE to the Purchaser before and during the term of this Agreement and which is stated to be or is by its nature confidential, or is confidential, but excluding any information, which now or hereafter becomes, through no act or omission on the part of the Purchaser, generally known or available to the public; or was acquired by the Purchaser before receiving such information from BWE, or which is lawfully furnished to the Purchaser by a third party;
- 1.1.21 "CPA" means the Consumer Protection Act, 2008, and any promulgated regulations thereto and as amended from time to time;
- 1.1.22 "Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of rights to claim in the future, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- 1.1.23 "NCA" means the National Credit Act, 2005, and any promulgated regulations thereto and as amended from time to time;
- 1.1.24 "Parties" means BWE and the Purchaser and "Party" means either of them as the context may require;
- 1.1.25 "Parts" means parts and/or components related to the goods supplied by BWE to the Purchaser in accordance with this Agreement;
- 1.1.26 "Personal Information" means any information that may identify an individual or juristic person;
- 1.1.27 "Purchaser" means any person identified in the Agreement Details and includes its successors-in-title, legal representatives, administrators, liquidators, trustees or permitted assigns;
- 1.1.28 "VAT" means Value-Added Tax levied in accordance with the provisions of the Value-Added Tax Act, 1991, and any promulgated regulations thereto and as amended from time to time.

### 2 CONSUMER PROTECTION ACT

- 2.1 The Parties agree that the provisions of the CPA do not apply to the Purchaser as the Purchaser is a juristic person whose asset value or annual turnover equals or exceeds the current value determined by the Minister of the Department of Trade and Industry in terms of section 5(2)(b) of the CPA, being R2 000 000.
- 2.2 The Purchaser undertakes to notify BWE in writing should its asset value or annual turnover fall below the forecast threshold at any time during the course of this Agreement.

### 3 APPLICATION

- 3.1 These General Terms and Conditions of Sale shall apply to any contract for the sale of any goods by BWE whether that contract arises out of:
- 3.1.1 any offer made by BWE and accepted by the Purchaser; or
- 3.1.2 any offer made by the Purchaser and accepted by BWE, including any such offer made by the Purchaser in response to a quotation from BWE.
- 3.2 No agreement to vary, add to or cancel this Agreement shall be of any force or effect unless recorded in writing and signed by or on behalf of all of the Parties.

### 4 PRICE

- 4.1 The price(s) of the goods will be the BWE's official price list ruling at the date on which the goods are delivered to the Purchaser or as agreed with the Purchaser in writing in the Agreement Details, adjusted in accordance with BWE's then current price adjustment mechanism and any currency conversion rate at the time of delivery.

### 5 PAYMENTS

- 5.1 The price shall be paid by the Purchaser:
- 5.1.1 in South African currency free of bank and other charges, without set-off or any deduction,
- 5.1.2 on or before the date specified on the statement to be issued by BWE. If no payment date is specified on the statement, payment shall be due on presentation of an invoice by BWE, unless other terms have been agreed upon in writing between the Parties.
- 5.2 All risk in and to the payment of the price shall remain with the Purchaser. A payment by a Purchaser is only deemed to have been made once the full amount of that payment is available to BWE as freely available funds in its nominated bank account.
- 5.3 If delivery is to be made by instalments then each instalment will be invoiced and paid for separately but otherwise in accordance with clause 5.1.
- 5.4 Any amount not paid by the Purchaser on due date shall bear interest at the rate of 2% (two per cent) above the prime overdraft rate, as quoted by BWE's bankers, calculated daily and compounded on a monthly basis from the due date until full payment has been received by BWE.

### 6 CERTIFICATE OF INDEBTEDNESS

- 6.1 A certificate signed by any manager or director of BWE (whose appointment it shall not be necessary to prove) as to the existence of and the amount of any indebtedness owing by the Purchaser to BWE hereunder, that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing related to the Purchaser's indebtedness to BWE in terms of this Agreement, shall be prima facie proof of the contents and correctness thereof for the purposes of provisional sentence, summary judgment or any other proceedings, shall be valid as a liquid document for such purpose and shall, in addition, be prima facie proof for purposes of pleading or trial in any action instituted by BWE arising therefrom.

### 7 DISCOUNTS

- 7.1 The price is strictly net and not subject to any discounts, unless otherwise agreed to in writing by the Parties.
- 7.2 If any discount is agreed to in writing, it shall only be allowed if payment is received by BWE on or before the due date and shall only be calculated on the net price of the goods (excluding VAT).

### 8 DELIVERY AND RETURNS

- 8.1 Delivery shall be made to the Purchaser, Ex Works (Incoterms 2010), at BWE's premises.
- 8.2 Delivery shall be completed when the goods are made available to the Purchaser and/or its agent at the BWE premises and before loading onto the carrier.
- 8.3 After completion of delivery, BWE shall not be responsible for the arrival of the goods at their destination or for any loss or damage to the goods from any cause whatsoever, whilst in transit.
- 8.4 The Purchaser shall be responsible for procuring and arranging for the transportation of the goods from BWE's premises to any destination required by the Purchaser.
- 8.5 Should BWE, at the Purchaser's request, agree to engage a carrier to transport the goods for the Purchaser then:
- 8.5.1 BWE is authorised to engage a carrier on such terms and conditions as it deems fit;
- 8.5.2 the goods will be loaded and transported at the Purchaser's risk;
- 8.5.3 the Purchaser waives any claim it may have, or acquire, against BWE arising from, or in connection with, BWE's appointment of the carrier;
- 8.5.4 the Purchaser shall indemnify BWE against all demands and claims which may be made against it by the carrier so engaged and all liability which BWE may incur to the carrier arising out of the transportation of the goods;
- 8.6 Notwithstanding any other provision in the Agreement to the contrary, BWE's obligation to deliver the goods will in all cases be subject to the following conditions:
- 8.6.1 the availability to BWE of all materials and supplies required for the manufacture of the goods or their components, where the goods or components in question are being manufactured by BWE;
- 8.6.2 the timely receipt by BWE from its own suppliers of the goods or their components, where the goods or components in question are being supplied to BWE by third parties;
- 8.6.3 the timely receipt by BWE of any instructions (including all drawings and specifications) required by BWE from the Purchaser in respect of the goods;
- 8.6.4 Time shall not be of the essence in respect of BWE's performance of the Agreement.
- 8.6.5 If the Purchaser fails to collect the goods on due date, then the Purchaser shall refund to BWE, on demand, the reasonable costs (including storage and insurance) of keeping the goods during the period of that delay.
- 8.9 If delivery is to be made in instalments, then the provisions of this clause 8 shall apply to each instalment.
- 8.10 Subject to clause 8.11, the Purchaser shall be entitled to return any Parts to BWE within 30 (thirty) days after the date of delivery, for credit or exchange, provided that:

- 8.10.1 the Parts must be unopened in its original packaging in a resealable condition;
- 8.10.2 a restocking fee of 15% (fifteen per cent) of the price for the Parts will be charged to the Purchaser by BWE, unless the Parts was incorrectly supplied by BWE;
- 8.10.3 no oil or electrical Parts will be accepted by BWE for returns, unless incorrectly supplied by BWE;
- 8.10.4 the Purchaser will not be entitled to a credit on emergency and/or airfreight surcharges, unless the Part was incorrectly supplied by BWE.
- 8.10.5 the Purchaser will be liable for all transport costs, unless the Parts was incorrectly supplied by BWE.
- 8.11 Notwithstanding the above, Parts classified as "Non-Returnable" shall not be refundable to BWE by the Purchaser.
- 9 OWNERSHIP, RISK AND BENEFIT
- 9.1 Notwithstanding the delivery of any goods to the Purchaser, ownership of the goods shall pass to the Purchaser only against payment of the full price.
- 9.2 Subject to clause 9 above, risk and benefit in the goods shall pass to the Purchaser when the goods leave BWE's premises or on delivery, whichever is the sooner.
- 10 EXCLUSIONS AND LIMITATION OF LIABILITY
- 10.1 All specifications, illustrations, drawings, diagrams, price lists, dimensions, performance figures and other technical data furnished by BWE in respect of the goods, whether in writing or not, are furnished only on the basis that they will not form part of the Agreement or be relied upon by the Purchaser for any purpose, unless and to the extent that they are expressly warranted or guaranteed in writing by BWE and are as such expressly stated by BWE on the Agreement Details.
- 10.2 If the goods or any part of them are to be supplied in accordance with any specifications, measurements or other instructions furnished by the Purchaser, the Purchaser shall not have any claim of any nature whatsoever against BWE:
- 10.2.1 for any loss or damages sustained by the Purchaser as a result of any error, discrepancy or defect in these specifications, measurements or other instructions;
- 10.2.2 if the goods in question are not suitable for the purposes for which they are required (whether those purposes are known to BWE or not).
- 10.3 BWE shall be exempted from and shall not be liable under any circumstances whatsoever for:
- 10.3.1 any indirect, consequential or special damages of any nature or any loss of actual or anticipated profit or revenue, loss of use or productivity, loss of production or business interruption, loss of goodwill, loss of any contract, loss of opportunity, any demurrage or other costs related to the delay of vessel, in each case, whether direct or indirect, and whether in the contemplation of the Parties or not, which the Purchaser may suffer as a result of any breach by BWE of its obligations under this Agreement;
- 10.3.2 any negligence on its part or that of its servants or agents in carrying out any of its obligations under the Agreement;
- 10.3.3 any claim for any alleged shortage in delivery or failure of the goods to comply with the Agreement, unless written notice of the claims is received by BWE within 7 (seven) days after receipt of the goods by the Purchaser;
- 10.4 Insofar as any of BWE's obligations under the Agreement are carried out by any of its servants, agents or sub-contractors, the provisions of clauses 10.1, 10.2 and 10.3 are stipulated for their benefit as well as BWE's and each of them shall be exempted accordingly.
- 10.5 The Purchaser shall not have any claim of any nature whatsoever against BWE for any failure by BWE to carry out any of its obligations under the Agreement as a result of force majeure (including, but not being limited to, any shortage, lack of, or shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier of BWE, not, political or civil disturbances, the elements, any act of any State or Government or any other authority or any other causes whatsoever beyond BWE's control).
- 10.6 Subject to any express warranty or guarantee given by BWE in writing and which is intended to form part of the Agreement, or as specifically provided for in the OEM warranty statement, BWE does not give any warranty or guarantee, or make any representations, whatsoever in respect of the goods or the fitness of the goods or any part thereof for any particular purposes, whether or not that purpose is known to BWE and/or
- 10.6.2 accept any liabilities for any defect (latent or patent) in the goods or any part of them.
- 10.7 Notwithstanding any provision contained elsewhere in this Agreement, as far as permissible in law, the total liability of BWE to the Purchaser, under or in connection with this Agreement, howsoever arising, including direct or indirect, and whether arising out of contract, delict, statutory duty or otherwise and whether arising by way of penalties, liquidated damages, delay damages, performance liquidated damages, indemnity or otherwise, shall not exceed in aggregate the lesser of R2,000,000 (two million Rand) and in the case of the sale of any goods, the cost of replacement of the goods.
- 11 PERMITS
- 11.1 If any permit, consent or approval (collectively "Regulatory Approval") is required under any law applicable to the purchase, receipt or use of the goods by the Purchaser ("Applicable Law"), then this Agreement shall be of no force or effect until the Purchaser obtains the Regulatory Approval(s) and provides BWE with written proof, satisfactory to BWE, that the Regulatory Approval(s) has been obtained.
- 12 NEGOTIABLE INSTRUMENTS
- 12.1 Any promissory note, bill of exchange, or other negotiable instrument received by BWE from the Purchaser shall not be a novation of the debt for which it is given and the Purchaser waives presentment, notice of dishonor and protest, where applicable.
- 13 EXPORT OF GOODS
- 13.1 The Purchaser:
- 13.1.1 acknowledges that if any of the goods supplied under this Agreement are exported from the Republic of South Africa, whether by itself or any other third party, within 2 (two) years after delivery, then BWE will be liable to pay an additional sum that will be determined in accordance with the then current policy of Caterpillar SARL, or alternatively Caterpillar Inc. ("OEM"), registered in the United States of America, on the export of goods;
- 13.2 undertakes to refund to BWE, on demand, such additional sum which BWE is required to pay in terms of clause 13.1.
- 14 TRANSFER OF RIGHTS AND OBLIGATIONS
- 14.1 The Purchaser may not cede (transfer its rights), delegate (transfer its obligations), assign (transfer its rights and obligations) or sub-contract all or any of its rights and/or obligations in terms of the Agreement, without BWE's prior written consent, on each occasion.
- 14.2 The Purchaser hereby agrees that BWE may cede (transfer its rights), delegate (transfer its obligations), assign (transfer its rights and obligations) or sub-contract all or any of its rights and/or obligations in terms of the Agreement, without the Purchaser's additional consent and without giving notice to the Purchaser.
- 15 THE NATIONAL CREDIT ACT
- 15.1 Notwithstanding the preceding provisions of this Agreement, in the event that the NCA is applicable, then:
- 15.1.1 should the price of any goods sold not be paid to BWE under its payment terms reflected herein, then an incidental credit agreement shall be deemed to be concluded in respect of the sale in question, 20 (twenty) business days after BWE first charges interest on the amount due in terms of such sale;
- 15.1.2 the NCA, in so far as it applies to an incidental credit agreement, shall apply to the sale of the goods by BWE to the Purchaser;
- 15.2 BWE shall be obliged to comply with the NCA before being entitled to proceed against the Purchaser and before commencing any legal proceedings against the Purchaser to enforce this Agreement; and
- 15.3 BWE shall be entitled to recover from the Purchaser all costs and charges permitted in terms of the NCA, including, in the event of a payment default, collection cost and default administration charges.
- 16 CONSEQUENCES FOR FAILURE TO PAY
- 16.1 Subject to clause 17, if any amount owed by the Purchaser to BWE from any cause whatsoever, whether under this Agreement or not, is not paid on due date then, without prejudice to any other right which it may have, BWE may:
- 16.1.1 require that all amounts then owed to it by the Purchaser, from any cause whatsoever (and whether under the Agreement or not) shall immediately become due and payable;
- 16.1.2 retain in its possession any goods of the Purchaser until all these amounts have been paid;
- 16.1.3 until payment is made, suspend the carrying out of any of its then uncompleted obligations from any cause whatsoever (whether under the Agreement or not); and/or
- 16.1.4 terminate any credit facilities granted to the Purchaser, whether under the Agreement or not;
- 16.1.5 take possession of, and the Purchaser shall be obliged to return, the goods to BWE for retention by BWE pending the institution or determination of any action relating to the breach.
- 17 CANCELLATION
- 17.1 BWE may immediately cancel the Agreement or any uncompleted part of it and claim immediate payment and/or performance by the Purchaser of all of the Purchaser's obligations whether or not the due date for payment and/or performance shall have arrived, in either event, without prejudice to BWE's rights to claim damages if the Purchaser:
- 17.1.1 commits a breach of any of the terms or conditions of the Agreement and fails to remedy that breach within 2 days of the date of a written notice from BWE to do so; or
- 17.1.2 being an individual, dies or is provisionally or finally sequestered or surrenders his estate; or
- 17.1.3 being a partnership, the partnership is terminated; or
- 17.1.4 being a company, is wound-up, liquidated, deregistered or placed under judicial or extrajudicial reorganisation or is placed under business rescue, whether provisionally or finally and whether voluntarily or otherwise, or is placed under administration or insolvency proceedings or compromises or attempts to compromise with, or defers or attempts to defer payment of, debts owing by it to its creditors generally, or alienates or encumbers the whole or a major portion of its assets; or
- 17.1.5 it is unable (or admits inability) to pay its debts generally as they fall due, or it is (or admits to being), otherwise insolvent or stops or suspends payment of all or a material part of its debts or convenes a meeting or takes any steps for the purposes of making any arrangement, compromise or composition for the benefit of its creditors or agrees or declares a moratorium or reorganisation in respect of its debts.
- 17.2 BWE's right in terms of clause 17.1 shall not be exhaustive and shall be in addition to any other rights it may have whether under the Agreement or otherwise.
- 17.3 No relaxation which BWE may have permitted on any one occasion in regard to the carrying out of the Purchaser's obligations shall prejudice or be regarded as a waiver of BWE's rights to enforce those obligations on any subsequent occasion.
- 17.4 Upon termination of the Agreement for any reason whatsoever:
- 17.4.1 all amounts then owed by the Purchaser to BWE, in terms of the Agreement, shall become due and payable forthwith;
- 17.4.2 BWE shall retake possession of any goods in respect of which ownership has not passed.
- 18 GOVERNING LAW
- 18.1 The validity of this Agreement, its interpretation of the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiry or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.
- 19 JURISDICTION
- 19.1 If the Purchaser is a resident or carries on business in the Republic of South Africa, then BWE shall be entitled to institute any proceedings against the Purchaser, arising out of the Agreement, in any Magistrates Court having jurisdiction over the Purchaser even if the cause of action in question exceeds the jurisdiction of the Court.
- 19.2 If the Purchaser is not a resident of and does not carry on business in the Republic of South Africa, then the Purchaser consents and submits to the jurisdiction of the South Gauteng High Court, Johannesburg, and the relevant South African Courts of Appeal for all purposes arising out of the Agreement or otherwise.
- 20 GENERAL
- 20.1 If any provision of this Agreement is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the Parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.