

STANDARD CONDITIONS OF SALE

1. GENERAL PROVISIONS

1.1 The Customer agrees that this Agreement represents the entire Agreement between the Customer and Controlled Engineering Solutions Company (Pty) Ltd (hereinafter called CESCO), and that these conditions are the only conditions that regulate the relationship between the parties.

1.2 This Conditions of Sale governs all contractual relationships between the parties and is applicable to all existing debts between the parties.

1.3 This Agreement is final and binding and is not subject to any suspensive or resolutive conditions.

1.4 These terms supersede all previous conditions without prejudice to any securities or guarantees held by CESCO.

1.5 The Customer agrees that neither CESCO nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer.

1.6 No alteration or variation of terms and conditions shall apply unless the alteration or variation in question is expressly agreed to in writing and signed by an authorised representative of CESCO at the time in question.

1.7 If the Customer requires the goods for the purposes of another agreement between the Customer and anyone else, none of the provisions of that agreement shall apply to or be incorporated in this Conditions of Sale between CESCO and the Customer unless expressly confirmed in writing by CESCO

2. QUOTATIONS

2.1 Quotations are subject to formal confirmation in writing by CESCO.

2.2 All quotations will remain valid for a period of 30 (thirty) days from the date of the quotation unless otherwise advised by CESCO.

2.3 All quotations are subject to the availability of the goods or services and subject to correction of bona fide errors by CESCO.

2.4 The total or any portion of prices quoted is either directly or indirectly affected by

variation in rates of exchange, including but not limited to currency and devaluation. The increase or decrease occasioned by such variations shall be for the Customer's account.

2.5 The SEIFSA formulas will be applicable and is detailed in the SIEFSA Standard Rates regarding labour, transport, electricity consumption, PPI, overheads, and all other costs regarding production.

3. PRICE ADJUSTMENTS

3.1 CESCO reserves the right to implement any price adjustment as it sees fit.

4. ACCEPTANCE

4.1 The Customer agrees that on placing an order with CESCO these Conditions of Sale, (attached to the reverse side of the order acknowledgement), are automatically accepted.

5. CLAIMS

5.1 No claim under this Agreement shall arise unless the Customer has, within 14 (fourteen) days of the alleged breach or defect occurring, given CESCO written notice thereof. CESCO reserves the right to respond by either removing or repairing said goods or refunding the Customer.

5.2 To be valid, the original Tax Invoice must support claims.

6. PAYMENT TERMS

6.1 The Customer agrees that the amount contained in a Tax Invoice issued by CESCO shall be due unconditionally in cash on order, unless the Customer is a Credit Approved Customer, in which event all payments shall be made on or before the last day of the following month of the date of invoice.

6.2 The Customer agrees to pay the amount on the Tax Invoice at the offices or in the bank account of CESCO as applicable from time to time. CESCO agrees to inform the Customer of any change in its bank details.

6.3 The risk of payment by cheque or otherwise rests with the Customer.

6.4 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment shall be valid unless agreed to in writing by

the Financial Director of CESCO.

6.5 No debts can be set off against any amounts owed to the Customer by CESCO.

6.6 The price of Goods is strictly net and not subject to any discount unless otherwise agreed in writing.

6.7 All settlement discounts are offered specifically in return for early payment and will only be allowed in respect of payments made before, or on the last day on which the payment falls due. Subsequently all settlement discounts shall be forfeited if payment in full is not made on or before the due date. Where the due date falls on a Sunday and / or public holiday, payment should be effected on the previous day.

6.8 Should the Customer fail to settle an account within the time limits specified in 6.1, CESCO reserves the right to cease all deliveries until the outstanding account has been settled in full.

6.9 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.

6.10 The Customer agrees that interest shall be payable on any moneys due to CESCO at the maximum legal interest rate prescribed in terms of the Usury

Act, from the date it falls due. In the case of late payment, interest shall be calculated from the date on which payment was due.

6.11 Should a Credit Approved Customer not pay its debts within the prescribed time limit as set out in clause 6.1 it will lose its credit rating and will have to reapply for credit facilities.

6.12 Should a Customer cancel an order after CESCO has placed an order for the raw material with its Supplier, CESCO will without prejudice to any other rights in terms of this Agreement, be entitled to all damages, consequential and otherwise regarding such cancellation of order by the Customer.

6.13 In the event of agreement for payment to be effected by Letter of Credit, such credit shall be issued to CESCO from an acceptable bank (in the sole discretion of CESCO) and shall be valid for a period of not less than six (6) months.

7. 7. CERTIFICATE

7.1 A certificate made out by any director of CESCO (whose appointment need not be proved) as to the existence and the amount of the Customer's indebtedness to CESCO at any time, shall be prima facie proof of the contents and the correctness thereof for the purposes of provisional sentence, summary judgement or any other proceedings of whatsoever nature against the Customer in any competent court and shall be valid as a liquid document for such purpose.

7.2 Such certificate shall also be prima facie proof as to the fact that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the Customer's indebtedness to CESCO.

8. WARRANTY, EXCLUSIONS AND LIMITATIONS

8.1 Goods are guaranteed according to the CESCO product specific warranties only and all other guarantees including common law guarantees are hereby specifically excluded. Services carry no guarantee. Liability hereunder is restricted to the cost of repair or replacement of faulty goods or granting of a credit at the sole discretion of CESCO.

8.2 Subject to any express warranty or guarantee given by CESCO in writing (or where CESCO is acting as an agent, by its Principal) and which is intended to form part of the Agreement, CESCO does not:-8.2.1 give any warranty or guarantee or make any representations whatever in respect of the goods or any part of them for any particular purpose, whether or not that purpose is known to CESCO, nor does it accept any liability for any defect (latent or patent) in the goods that may be given by CESCO to the Customer;

8.2.2 give any warranty that any specifications, weights, dimensions and any technical information relating to the goods that may be given by CESCO to the Customer are correct.

8.3 All guarantees are immediately null and void should any goods be tampered with or should the goods be operated or stored outside normal specifications.

8.4 Any item delivered to CESCO shall serve as a pledge in favour of CESCO for present and past debts. CESCO shall be entitled to retain

such items and deal therewith as it in its sole discretion deems expedient and at the value as determined by the best selling price obtained in an arms-length transaction. The realised value of pledged goods will be offset against the Customer's debts and any remaining balance will be paid to the Customer.

8.5 Under no circumstances shall CESCO be liable for any damage arising from any misuse or abuse of the goods.

8.6 Any order is subject to cancellation if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgement is recorded against the Customer or any of its principals.

8.7 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use.

8.8 The Customer shall not have any claims of any nature whatever against CESCO for any failure by CESCO to carry out any of its obligations

under the Agreement as a result of vis Major (acts of God), strike or lock out, shortage of labour or materials, breakdown of machinery delays in transport, accidents of any kind and default or delay by any sub contractor or supplier of CESCO, riot, political or civil disturbances, the elements, any act of any state or government or any authority, or any other cause whatever beyond CESCO's control (Force Majeure).

8.9 If, for any cause CESCO's available supplies of goods become or in its opinion, will become unable to meet the requirements of all Customers at any time then CESCO shall be entitled to allocate those supplies among its

customers (including the Customer and the Customer's associated and affiliated companies) in such manner it deems fair and equitable, and to vary its obligations to the Customer accordingly.

8.10 "Limited service components" means such components which have been rejected by CESCO as not being to specification. Should a limited service component be sold to a Customer, the Customer carries all risk of whatsoever nature regarding such limited service component should it be on sold or used by the Customer. The Customer hereby indemnifies CESCO regarding all and any risk and claims regarding such limited service components.

8.11 All specifications, illustrations, drawings, diagrams, price lists, dimensions, performance figures and other technical data furnished by CESCO 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 Customer for any purpose, unless and to the extent that they are expressly warranted or guaranteed in writing by CESCO and are, as such, expressly stated by CESCO to form part of the Agreement.

8.12 If goods or any part thereof are to be supplied in accordance with any specifications, measurements, weights or other instructions furnished by the Customer, the latter shall not have any claim of any nature whatsoever against CESCO.

8.12.1 For any loss of damages sustained by the Customer as a result of any error, discrepancy or defect in those specifications, measurements or other instructions;

8.12.2 If the goods in question are not suitable for the purposes for which they are required, whether those purpose are known to CESCO or not.

8.13 CESCO and its employees shall be exempted from and shall not be liable under any circumstances whatever for.

8.13.1 Any indirect or consequential damages of any nature or any loss of profit or special damages of any nature and whether in the contemplation of the parties or not, which the Customer may suffer as a result of any breach by CESCO of its obligations under the Agreement.

8.13.2 Any claim for any alleged shortage in delivery or failure of the goods to comply with the Agreement unless:

8.13.2.1 written notice of the claims is received by CESCO within 7 (seven) days after receipt of the goods by the Customer.

8.13.2.2 the shortage is endorsed by the Customer on the delivery or consignment notes relating to the goods in question.

8.14 Should it be necessary for any material to be replaced; then CESCO shall only be responsible for the replacement of the specific material and shall under no circumstances be responsible for any costs, expenses or damages howsoever arising, including in any costs incurred in digging up material placed underground.

8.15 Used or second-hand goods are sold “voetstoots” and in their present condition and the Customer acknowledge that it is fully acquainted with the condition of the goods.

8.16 Should the Customer have any complaint about any of the goods, which are not manufactured or designed by CESCO, it shall not have a claim in respect of the matter complained of against CESCO.

9. DELIVERY

9.1 The Customer hereby confirms that the goods or services on the Tax Invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery / performance has already taken place, that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.

9.2 Notwithstanding the provisions of sub-clause 1 above, all orders or variations to orders, whether oral or in writing, shall be binding and subject to these standard conditions of sale and may not be cancelled.

9.3 CESCO shall be entitled in its sole discretion to split the delivery /

performance of the goods or services ordered in the quantities and on the dates it decides in its sole discretion.

9.4 CESCO shall be entitled to invoice separately each delivery / performance actually made.

9.5 The Customer shall be responsible for procuring and arranging for the transportation of goods from CESCO's premises to any destination required by the Customer unless otherwise agreed by CESCO in writing.

Delivery shall be completed when the goods are handed to the Customer or its agent at CESCO's premises and before loading commences. After completion of delivery CESCO shall not be responsible for the arrival of the goods at their destination or for any loss or damages to the goods from any cause whatsoever, while in transit.

9.6 Should CESCO, at the Customer's request, agree to engage a carrier to transport the goods for the Customer then:

9.6.1 CESCO is authorised to engage a carrier on such terms and conditions as it deems fit.

9.6.2 The Customer hereby indemnify CESCO against all demands and claims which may be made against it by the carrier so engaged and all liability which CESCO may incur to the carrier arising out of the transportation of the goods.

9.6.3 Notwithstanding any other provision in this Agreement to the contrary the obligation to deliver the goods shall in all cases be subject to the following conditions precedent:-

9.6.3.1 the availability of the goods ordered;

9.6.3.2 timeous receipt by CESCO of any drawings, designs and specifications that may be required by CESCO from the Customer provided that such drawings, design and specifications shall be deemed to

have been given to CESCO for the purposes of description only and shall not form part of this Agreement.

9.7 Time shall not be of the essence of the Agreement delivery dates and must be treated as approximate only based on the latest information available to CESCO. Under no circumstances shall the Customer be entitled to withdraw from or terminate this Agreement on account of any nature against CESCO arising from late delivery.

9.8 If the Customer fails to take delivery of the goods on due date then:-

9.8.1 the risk shall pass immediately from CESCO to the Customer;

9.8.2 the Customer shall refund to CESCO on demand the reasonable costs (including storage and insurance) of keeping the goods during the period of that delay.

9.9 If delivery is made in instalments then the provisions of this clause shall apply to each installment.

9.10 Any delivery note or waybill (copy or original) signed by the Customer or a third party engaged to transport the goods and held by CESCO shall be conclusive proof that delivery was made to the Customer.

9.11 The Customer agrees that a signature on CESCO's official Delivery Note/Invoice shall constitute prima facie proof of delivery of goods, or services purchased, unless the contrary is proved by the Customer.

9.12 Should the Customer or his representative fail to effect delivery of the goods within 14 (fourteen) days after being informed by CESCO that the goods are ready for dispatch, the Customer will be invoiced as if the goods had been dispatched. The risk of loss or damage shall pass to the Customer upon expiry of the aforesaid 14 (fourteen) days.

9.13 Should the Customer fail to take delivery of the goods tendered by CESCO within the abovementioned 14 (fourteen) days, CESCO shall be entitled to store or have such goods stored on behalf of the Customer. All costs and damages relating to the failure of the Customer shall be for the

account of the Customer, and CESCO shall be indemnified against any and all loss or damage, which may have been suffered by the Customer, resulting from such storage.

9.14 If the Customer provides a date of shipment and said date is postponed due to lack of transport or shipping, the Customer shall be liable for the demurrage and storage charges.

10. OWNERSHIP

10.1 Notwithstanding the delivery of any goods to the Customer, ownership shall not pass until CESCO has received payment of the full purchase price. This shall apply even where credit is allowed to the Customer.

10.2 The risk of damage, destruction or theft of goods shall pass to the Customer on conclusion of delivery and the Customer undertakes to comprehensively insure the goods until paid for in full.

10.3 CESCO may retake possession of any goods sold where ownership has not passed.

10.4 The Customer irrevocably authorises CESCO to enter its premises to repossess any goods delivered and indemnifies CESCO completely against any damage whatsoever relating to the removal of repossessed goods.

10.5 In the event of cancellation, CESCO is entitled not to produce any unmade balance of a sale and to recover any loss sustained thereby from the Customer.

11. REPAIRS

11.1 Repair times and repair costs given are merely estimates and are not binding on CESCO.

11.2 Any item handed in for repair may be sold by CESCO to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed.

12. PERMITS

12.1 If any permit or other consent or approval is required by CESCO under any law (including any statute, ordinance, by-law, proclamation, regulation or other enactment) for the performance of the Agreement or any part of it, then the Agreement shall not take effect until CESCO obtains that permit, consent or approval.

13. LEGAL FEES

13.1 The Customer shall be liable for all legal expenses on the attorney-and-own client scale, including but not limited to counsel fees, incurred by CESCO in the event of:

13.1.1 any default by the Customer or

13.1.2 any litigation in regard to the validity and enforceability of this Agreement.

13.2 The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that CESCO may demand.

13.3 The Customer agrees that no indulgence whatsoever by CESCO will affect the terms of this Agreement or any of the rights of CESCO and such indulgence shall not constitute a waiver by CESCO in respect of any of its rights herein. Under no circumstances will CESCO be prevented from exercising any of its rights in terms of this Agreement.

13.4 CESCO shall have the right to institute any action in either the Magistrate's Court or the Supreme Court at its sole discretion.

14. COMPLIANCE WITH LAWS

14.1 The Customer shall comply with all laws, including all statutes, ordinances, bylaws, proclamations, regulations and other enactments which are required to be complied with for the purpose of this Agreement and the Customer agrees to indemnify CESCO against any loss, damage, costs or other liabilities incurred by the Customer as a result of the Customer failing to comply with such

laws.

14.2 The validity of this Agreement, its interpretation, the respective rights of the parties and all matters arising out of its performance or expiration or earlier termination for whichever reason, shall be determined in accordance with the laws of the Republic of South Africa.

15. CANCELLATION

15.1 CESCO may cancel the Agreement or any uncompleted part of it if the Customer: -

15.1.1 commits breach of any of the terms or conditions of the Agreement;

15.1.2 being an individual, dies or is provisionally or financially sequestrated or surrenders his estate; or

15.1.3 being a partnership, the partnership is terminated; or

15.1.4 being a legal persona, is placed under a provisional or final order of liquidation or judicial management; or

15.1.5 compromises or attempts to compromise generally with its creditors.

15.2 CESCO's rights above shall not be exhaustive and shall be in addition to its other rights under the Agreement or otherwise.

15.3 No relaxation, which CESCO may permit on any one occasion in regard to any of the Customer's obligations, shall prejudice or be regarded as a waiver of CESCO's rights to enforce those obligations on any subsequent occasion.

15.4 Upon the termination of the Agreement for any reason whatsoever all amounts then owed by the Customer to CESCO under this Agreement shall become due and payable immediately.

16. NEGOTIABLE INSTRUMENTS

16.1 Any promissory note, bill of exchange, or other negotiable instrument received by CESCO from the Customer shall not be a novation of the debt for which it is given and the Customer waives presentment, notice of dishonour and

protest where applicable.

17. INTERNATIONAL TRADE

17.1 Regardless of the parties' place of execution, performance or domicile, this Agreement and all modifications and/or amendments thereto shall be governed by and construed under each in accordance with the Laws of the Republic of South Africa.

17.2 International Customers shall furnish South African Bank Guarantees with a financial institution within the Republic of South Africa.

17.3 International Customers shall choose a domicilium citandi et executandi at an address within the jurisdiction of the South African Courts. 17.4 International Customers confirm that they have obtained legal advice confirming that the provisions of this Agreement comply with all applicable Laws within the countries in which it will be implemented, including the approval of the Exchange Control authorities of such countries.

17.5 All sums payable shall be converted to South African currency at a rate of exchange prevailing on date of invoice, alternatively date of payment, whichever sum is the larger.

18. MISCELLANEOUS

18.1 INTERPRETATION

The headings in these conditions are for convenience only and are not to be taken into account for the purpose of interpreting the Agreement.

18.2 SEVERABILITY

18.2.1 It is agreed that each paragraph, clause and each sub-clause in this Agreement is severable, the one from the other;

18.2.2 If any paragraph, clause or sub-clause is found to be defective or unenforceable for any reason by any competent court, the remaining clauses, paragraphs and sub-paragraphs shall continue to be of full force and competent force and effect.

18.3 ENTIRE AGREEMENT

This Agreement constitutes all the terms and conditions pertaining to this application. The Customer warrants that they understand all the terms and conditions and accept them.

18.4 DOMICILIUM CITANTI ET EXECUTANDI

18.4.1 The parties choose as their domicilium citandi et executandi, the address as it appears on the order form.

18.4.2 Any document shall be deemed duly presented to the Customer within:

18.4.2.1 7 (seven) days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or

18.4.2.2 within 24 (twenty-four) hours of being faxed to any of the Customer's fax numbers or any director, member's or owner's fax numbers;

18.4.2.3 on being delivered by hand to the Customer or any director, member or owner of the Customer; or

18.4.2.4 within 48 (forty-eight) hours if sent by overnight courier.

18.4.3 The Customer undertakes to inform CESCO in writing within 7(seven) days of any change of address or 14 (fourteen) days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this Agreement.

18.5 DISCLOSURE

The Customer hereby consents to the storage and use by CESCO of the personal information that it has provided to CESCO for establishing its credit rating and to CESCO disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that CESCO will not be held liable for the bona fide disclosure of any of this information to such a third party and that no further specific consent need to be obtained for the transfer of such information to a specific third party.