

TERMS AND CONDITIONS OF SALE

1 The Customer agrees that (a) these terms and conditions represent the entire sales and purchase agreement (hereinafter called Agreement) between the Customer and Kutha Investments (Pty) Ltd trading as Pangolin Products, (hereinafter called Pangolin) and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of Pangolin; (b) this Agreement will govern all future contractual relationships between the parties; (c) this Agreement is applicable to all existing debts between the parties; (d) this Agreement is final and binding and is not subject to any suspensive or dissolutive conditions; (e) any conflicting conditions stipulated by the Customer are expressly excluded; (f) these terms supersede all previous conditions of agreement without prejudice to any securities or guarantees held by Pangolin and (g) these terms apply to all servants and subcontractors of Pangolin.

2.1 The Customer acknowledges that it does not rely on any representations made by Pangolin in regard to the goods and services or any of its qualities leading up to this Agreement other than those contained in this Agreement. Any recommendation, formula, advice, dimension, weight, specifications, price list, performance figure, advertisement, brochure and other technical data furnished by Pangolin in respect of the goods or services orally or in writing is approximate and for information only and will not form part of the Agreement in any way unless agreed to in writing by Pangolin.

2.2 The Customer warrants that neither Pangolin nor any of its employees will be liable under any circumstances whatsoever for any loss or damage arising out of the use by the Customer of any misrepresentation, material or information referred to in clause 2.1 whether furnished negligently or innocently.

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

2.4 The Customer agrees to pay all costs resulting from any acts or omissions by the Customer including suspension of work, modification of requirements, failure or delay in giving particular requisites to enable work to proceed on schedule or requirements that work be completed earlier than agreed.

2.5 Pangolin reserves the right at its sole discretion to provide alternative goods at the prevailing prices to those ordered by the Customer should such goods be unavailable, superseded, replaced or their manufacture terminated.

3.1 Unless otherwise stated, all quotations will remain valid for a period of 7 days from the date of the quotation.

3.2 All quotations are subject to the availability of the goods or services and subject to correction of good faith errors by Pangolin and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of Pangolin before acceptance of the order.

3.3 If the Customer disputes the amount of increase, the amount of the increase may be certified by any independent auditor and such certificate shall be final and binding on the Customer.

3.5 Notwithstanding the provisions of section 1 above, all orders or agreed variations to orders, whether oral or in writing, shall be binding and subject to these standard conditions of agreement and may not be cancelled. Telephonic orders for either goods and/or services placed by the Customer with Pangolin will be processed but delivery of such order shall be refused until such time as Pangolin is placed in possession of a written order form.

3.6 Pangolin 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.

3.7 Pangolin shall be entitled to invoice each delivery / performance actually made separately.

3.8 Any delivery note or waybill or job card (copy or original) signed by the Customer or a third party engaged to transport the goods and held by Pangolin shall be prima facie proof that delivery of the goods was made to the Customer and are in accordance with the quality and quantity reflected thereon.

3.9 The risk of damage to, destruction or theft of goods shall pass to the Customer on acceptance of any order placed in terms of this Agreement and the Customer undertakes to comprehensively insure the goods until paid for in full. Pangolin may recover insurance premiums from the Customer for such ordered and uninsured goods.

3.10 Delivery, installation, commissioning, commencement and performance times quoted are merely estimates and are not binding on Pangolin; time is not of the essence of this agreement unless expressly agreed upon in writing by Pangolin. Pangolin shall not be liable for any loss or damage of whatsoever nature which the Customer may suffer as a result of any incorrect or delayed delivery.

3.11 Pangolin is hereby authorised, in its sole discretion, to engage a third party to transport the goods on the Customer's behalf and on the terms deemed fit by Pangolin.

3.12 The Customer indemnifies Pangolin against any claims that may arise from such agreement in clause 3.11 against Pangolin.

3.13 Repair times and repair costs given are merely estimates and are not binding on Pangolin; time is not of the essence of this agreement unless expressly agreed upon in writing by Pangolin. Pangolin shall not be liable for any loss or damage of whatsoever nature which the Customer may suffer as a result of any unforeseen costs and/or delayed repairs.

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

3.15 All goods taken on a demonstration basis by the Customer are deemed sold if not returned within 7 days of issue in the original condition, in the original packaging and with all accessories and manuals intact unless otherwise agreed in writing.

3.16 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and that each infringement attempt shall immediately render the full prevailing price payable to Pangolin.

3.17 The Customer shall indemnify Pangolin against any claims, costs and expenses arising out of the infringement of copyright, patent, trade mark or design supplied by the Customer.

4.1 New goods are guaranteed according to the Manufacturer's product specific warranties only and all other guarantees including common law guarantees are hereby specifically excluded.

4.2 Services are guaranteed for a period of 3 months against faulty workmanship and parts are guaranteed according to the Manufacturer's product specific warranties.

4.3 Liability under Clause 4.1 is restricted to the cost of repair or replacement of faulty goods or services or granting of credit at the sole discretion of Pangolin.

4.4 No claim under this Agreement shall arise unless the Customer has, within 3 days of the alleged breach or defect occurring, given Pangolin 30 days written notice by prepaid registered post to rectify any defect or breach of Agreement.

4.5 To be valid, claims must be supported by the original Tax Invoice.

4.6 The Customer shall return any defective moveable goods to the premises of Pangolin at the Customer's own cost and packed in the original or suitable packaging and all risks for the duration of repair remain with the Customer.

4.7 All guarantees are immediately null and void should any goods be tampered with or should seals on goods be broken by anyone other than Pangolin or should the goods be operated or stored outside the Manufacturer's specifications.

4.8 Any item delivered to Pangolin shall serve as a pledge in favour of Pangolin for present and past debts and Pangolin shall be entitled to retain or realise such pledges as it deems expedient at the value as determined in 12.1b. The sworn or realised value of pledged goods will be offset against the Customer's debts and any excess balance will be paid to the Customer.

5.1 Under no circumstances shall Pangolin be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever.

5.2 Under no circumstances shall Pangolin be liable for any damage arising from any misuse, abuse or neglect of the goods or services.

6. Delivery of the goods or services to the Customer shall take place at the place of business of Pangolin or whatsoever location as agreed upon in writing by Pangolin.

7.1 Payment will be made strictly in accordance with the accepted provisions of the applicable quotation or credit agreement, as it exists between Pangolin and the Customer. Should no quotation or credit agreement exist or should such agreement have been cancelled by Pangolin and notice to that effect given to the Customer then all purchases are made cash on order.

7.2 The risk of payment by cheque through the post rests with the Customer.

8.1 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by Pangolin, reduced to writing and signed by the Customer and a duly authorised representative of Pangolin.

8.2 The Customer is not entitled to set off or deduct any amount due to the Customer by Pangolin against this debt.

8.3 Any discount or rebate offered by Pangolin shall be forfeited if payment in full is not made on or before the due date.

9. The Customer agrees that a certificate signed by any Director of Pangolin shall be prima facie evidence of the amount due and payable to Pangolin by the Customer including any interest and costs for the purposes of judgement, including provisional sentence or summary judgement, and of claims against insolvent or deceased estates. Proof of the appointment or authority of the signatory shall not be required in such certificate.

10. The Customer agrees that interest shall be payable at the maximum legal interest rate prescribed in terms of applicable South African law on any moneys past due date to Pangolin and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.

11.1 The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 7.1 above in the case of a Credit Approved Customer; or if the Customer commits a breach of any of these conditions, or being an individual, is provisionally or finally sequestrated or surrenders his estate, or being a partnership, is being dissolved, or being a company or close corporation is placed under a provisional or final order of judicial management or liquidation, or compromises or attempts to compromise generally with its creditors or if an order in terms of section 65 of the Magistrates Court Act 32 of 1944, as amended is issued against the Customer, or if he commits or permits any act that may prejudice the rights of Pangolin; then in any of these events Pangolin may in its sole discretion either: (i) be entitled to immediately institute action against the Customer at the sole expense of the Customer; or (ii) cancel the agreement and take possession of any goods delivered to the Customer by giving the Customer written notice to that effect; or (iii) claim damages. Furthermore, Pangolin shall be entitled to immediately suspend any delivery or service while the Customer is in breach of any of the terms of any contract between it and Pangolin. In the event of a breach and without restricting or revoking any other rights Pangolin may have in law, Pangolin shall have the right to claim from the Customer the following costs: if payment by cheque is referred to drawer for whatsoever reason, an amount of R60.00 per affected cheque; if the Customers debit order is returned due to lack of funds, an amount of R60.00; if default necessitates the telephonic contact of the debtor by Pangolin, an amount of not more than R50.00 per call; if default necessitates a personal visit by Pangolin, an amount of R100.00 per visit; Cost for issuing a Letter of Demand at R16.50; subject to the maximum costs recoverable in terms of the Magistrates Court Act 32 of 1944 as amended, Attorneys Act 33 of 1979 and Debt Collections Act 114 of 1998. These remedies are without prejudice to any other right Pangolin may be entitled to in terms of this agreement or in law.

11.2 A Credit Approved Customer will forthwith lose this approval when payment is not made according to the conditions of 7.1 and all amounts then outstanding shall immediately become due and payable.

12.1 In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.

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

12.3 In the event of cancellation Pangolin is entitled not to produce any unmade balance of a contract and to recover from the Customer any loss sustained.

13.1 Ownership and dominium in all goods supplied by Pangolin to the Customer, whether such goods are attached to other property or not, shall remain vested in Pangolin until such goods have been fully paid for by the Customer.

13.2 The Customer is not entitled to remove any goods beyond the borders of the Republic of South Africa or to sell or dispose of any goods unless paid for in full without the prior written consent of Pangolin. The Customer shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Pangolin in the goods.

13.3 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (confusio or commixtio) the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of goods in ownership to Pangolin.

14.1 The Customer shall be liable to Pangolin for all legal expenses on the attorney-and-own client scale of an attorney and counsel incurred by Pangolin in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this agreement. 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 Pangolin may demand.

14.2 The Customer shall pay six thousand Rand into court or furnish sufficient security in lieu of costs in any action instituted by or against the Customer.

14.3 The Customer agrees that Pangolin will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.

15. The Customer agrees that no indulgence, relaxation, latitude or extension of time whatsoever by Pangolin will affect the terms of this agreement or any of the rights of Pangolin and such indulgence shall not constitute a waiver by Pangolin in respect of any of its rights herein. Under no circumstances will Pangolin be stopped from exercising any of its rights in terms of this Agreement.

16. The Customer hereby consents, in terms of Section 45 of the Magistrates Court Act of 1944 as amended to Pangolin instituting any proceedings arising out of this contract in the Magistrates Court for the district of Johannesburg otherwise having jurisdiction in terms of Section 28 of the Magistrates Court Act notwithstanding the fact that such proceedings are otherwise not within the jurisdiction of that court. Pangolin however reserves the right, in its sole discretion, to institute any action arising from this agreement in the High Court of South Africa.

17.1 Any document shall be deemed duly presented to and accepted by the Customer (i) within 3 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 (ii) within 24 hours of being faxed to any of the Customer's fax numbers or any director, member's or owner's fax numbers; or (iii) on being delivered by hand to the Customer or any director, member or owner of the Customer; or (iv) within 48 hours if sent by overnight courier; (v) within 24 hours of being telexed to the Customer's telex number or (vi) within 7 days of being sent by surface mail.

17.2 The Customer chooses its address for legal execution the address as the business address or the physical addresses of any Director (in the case of a company), Member (in the case of a close corporation) or of the Owner(s) or Partner(s).

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

17.4 In the event of any default by the Customer of any provision of this agreement, the Customer hereby consents and authorizes Pangolin to furnish the name, credit record and repayment history of the Customer to any credit bureau as a delinquent debtor.

18. The Customer agrees to the Standard Rates of Pangolin for any goods or services rendered, which rates may be obtained on request.

19. The invalidity of any part of these terms and conditions shall not affect the validity of any other part or in its entirety.

20. Any order is subject to cancellation by Pangolin due to Acts of God from any cause beyond the control of Pangolin, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

21. The Customer hereby waives the benefits of the legal exceptions of *non numerata pecunie, non causa debiti, de errore calculi, de duobus vel pluribus reis debendi*; review of accounts and no value received and hereby declares full acquaintance with the meaning of this waiver.

22. The Customer agrees that Pangolin will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 20 occur.

23. Although the provisions of this agreement are self explanatory, the Customer warrants that he has read and understands the provisions contained herein.

24. This Agreement and its interpretation is subject to South African law and the Customer consents to the requisite jurisdiction of the South African Courts referred to in 16.

25. Pangolin may need to collect, use, store or process Personal Information of the Customer, and the Customer hereby authorises such collection, use, storage and processing where the need arises. Pangolin shall only provide, collect, use, store or process such Personal Information:

25.1 in compliance with the South Africa Protection of Personal Information Act (POPI);

25.2 as is necessary for the purposes of this agreement; and

25.3 in accordance with the lawful and reasonable instructions of the Party providing the Personal Information.

26. Both Parties shall comply with the security and information protection obligations equivalent to those imposed on them in terms of POPI and other applicable data protection legislation, and failing such legislation, they shall take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage. This also serves to make the Customer aware that some of the collected data may be stored in secured servers based outside the borders of South Africa. ♦