

Terms and Conditions of Agreement of Sale and Deed of Suretyship
relating thereto entered into by and between:
Fabrication and Light Engineering cc / ACROW ("The Seller") and

[] ("The Purchaser")

It is agreed that:

- 1 The price invoiced and reflected on the Seller's invoice to the Purchaser shall be paid by the Purchaser without any deduction or set-off in accordance with the Terms of Payment which terms may be amended from time to time and are required to be reduced to writing and signed by both parties.
- 2 The Seller shall be entitled to charge interest, from time to time, at the maximum rate permissible in law on all overdue accounts.
- 3 All risk and obligations in relation to the goods purchased shall pass to the Purchaser on acceptance and delivery thereof. Notwithstanding delivery of the goods the Seller shall have ownership and which ownership shall remain vested in the Seller until all payments are made in full whereupon ownership shall pass only once the Purchaser has made payment in full..
- 4 The Seller shall not, under any circumstances, be liable for any defects, shortages in delivery or failure of the goods complying with the Purchaser's specifications, unless written notice is received by the Seller in respect thereof, within 3 (three) days after delivery.
- 5 The Seller shall not be liable for any consequential damages or loss suffered by the Purchaser or any other third party in respect of delays in delivery, defective goods and from any other cause whatsoever.
- 6 In the event of the Purchaser committing a breach of the Terms of this Agreement, all of which are deemed to be material, the Seller may at its option and without prejudice to any and all of its rights in relation hereto, shall be entitled to:
 - a) Retake possession of the goods sold and delivered to the Purchaser, in respect of which ownership has not passed; (OR)
 - b) if the Purchaser fails to make payment of any instalment by the required due date, or if the Purchaser committed any act of insolvency, the whole of the outstanding balance, including any interest, shall immediately become due and payable and the Seller may demand from the Purchaser to return and restore of the goods and take lawful possession thereof. All previous payments made to the Seller shall upon be forfeited.
- 7 The purchaser may not allow the goods to become subject to any lien while any amount of the purchase price and related costs is unpaid.
- 8 The Seller shall be entitled, but not obliged to institute any proceedings against the Purchaser arising out of any sale in the Magistrate's Court having jurisdiction. The Purchaser agrees to be liable to the Seller for all legal costs calculated on the Attorney and own client scale and collection commission.
- 9 The Purchaser and signatory/ies hereto nominate the Purchaser's business address as recorded on Page 1 hereof as their *Domicilium Citandi Et Executandi*.
- 10 The Purchaser hereby irrevocably and in *rem suam* cedes, pledges, assigns, transfers and makes over unto and in favour of the Seller, all its right, title, interest, claim and demand in and to all claims of whatsoever nature and description, however arising which the Purchaser may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever ("Purchaser's debtors") without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Purchaser to the Seller from whatsoever cause or causes arising and for the due performance of every other obligation howsoever arising which the Purchaser may be or become bound to perform in favour of the Seller, it being acknowledged that this cession is a cession in *secutritatum debiti* and is not an out-and-out cession. Should it transpire that the Purchaser entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Purchaser's reversionary rights.
- 11 In the event of an order being given to the Seller on the Purchaser's official order form, the Purchaser shall be stopped from denying the validity of such order, notwithstanding the fact that such order may have been given or signed by a person not authorised by the Purchaser. All signatories of the Purchaser's official order form shall be deemed to hold the proper and required authorisation from the entity it represents.
- 12 It is agreed that set-off shall operate automatically as a matter of Law at the moment reciprocal debts between the Seller and Purchaser come into existence and independently of the will of the parties and it shall not be necessary for either the Seller or the Purchaser to specifically raise set-off. Upon the operation of an automatic set-off aforementioned, the debts shall be mutually extinguished to the extent of the lesser debt with retrospective effect.
- 13 No extension of time or any other relaxation or indulgence granted by the Seller to the Purchaser shall operate as, or be deemed to be a waiver by the Seller of any of its rights under this agreement, or a novation of any of the Terms and Conditions of this agreement.
- 14 The credit facilities may be altered or withdrawn by the Seller at anytime provided prior notice of any such change is given to the Purchaser by the Seller. Any amounts still outstanding on the credit facility shall immediately fall due and owing.
- 15 The party/ies who have appended their signature/s hereto on behalf of the Purchaser hereby bind himself/themselves as surety/ies and co-principal debtor/s in solidum unto and in favour of the Seller in respect of all the obligations of the Purchaser in terms hereof and furthermore hereby agree and undertake to be bound by the Terms and Conditions of this agreement mutatis mutandis under renunciation of the benefits of exclusion and division.
- 16 A signed Delivery Note shall constitute *prima facie* proof that the goods have been delivered to and received by the Purchaser in good condition, whether signed by the Purchaser, an employee, an agent or representative of the Purchaser.
- 17 A monthly statement by the Seller shall constitute conclusive proof of the indebtedness and the amount thereof owing by the Purchaser to the Seller at any time and shall, for purposes, be binding on the Purchaser. Such proof shall constitute a liquid document.
- 18 Should the Purchaser have previously made application to the Seller for credit facilities, which said application would have embodied Terms and Conditions and should the Purchaser have furnished any security to the Seller for the due obligations of the Purchaser to the Seller on any previous occasion, the Purchaser records and acknowledges that the signature by it on this document shall not be regarded as a novation of any such previous agreement or any prior security given by it to the Seller. The Purchaser furthermore records and acknowledges that, in-so-far as any provision contained herein may be inconsistent with any provision contained in any document previously executed by it, the provision of this document shall prevail.
- 19 The Purchaser warrants to the Seller that it has provided similar security nor entered into a pledge of its movable assets, which assets are pledged and held as security by the Purchaser, in favour of any other party and/or executed notarial bond over its movable assets or any portion thereof in favour of any other party. Should, however, the Purchaser have previously executed a pledge or entered into a notarial bond as aforesaid, the Purchaser undertakes to disclose details thereof to the Seller within 3 (three) days from the date of execution of this document.
- 20 The Purchaser warrants that all information supplied to the Seller is true and correct, and undertakes to notify the Seller in writing within (7) seven days, of any change of details given including change of ownership, name or address. Such change shall in no way derogate from my/your liability to the Seller.
- 21 At all times It is and shall remain the Purchaser's responsibility to ensure that any reinforcing or structural requirements and which includes the surface bed (and underlying earthworks) is and remain sufficient to support, tolerate and withstand the Shelving/Racking System as supplied by the Seller and any goods or merchandise set and placed thereon.
- 22 The Shelving/Racking System is designed using the design base that the Purchaser's supporting surface bed is manufactured using at least 14MPa concrete (as stipulated by SEMA as an absolute minimum) 150mm thick and is founded on ground with a minimum allowable bearing capacity of 150kPa, unless otherwise specified in writing at quotation phase.
- 23 Our pricing is based on the tolerance associated with 'good work' (Class II) as defined in the South African Bureau of Standards specifications for Civil Engineering Construction (SANS 1200G), for all surface-beds to comply with said acceptable National Standard as specified in Clause 6.2.3 (d,7i) for 'flatness of flat surfaces' to be within 5mm.
- 24 **FORCE MAJUERE:**
 - 24.1 Should circumstances which were not foreseeable with reasonable foresight or avoidable with reasonable care ('circumstances') arise (or be reasonably anticipated) and delay (or have the potential to delay) performance (whether in whole or in part) or make performance (whether in whole or in part) impossible, the party whose performance is affected (or whose performance may be affected) ('affected party') shall forthwith in good faith and by most expeditious means, notify the other party in writing of:

Initial

Continued on next page.....

Terms and Conditions of Agreement of Sale and Deed of Suretyship

relating thereto entered into by and between:

Fabrication and Light Engineering cc / ACROW ("The Seller") and

("The Purchaser")

It is agreed that:

Continued from previous page.....

- a) The cause(s) nature and extent of the circumstances;
 - b) The expected duration of the circumstances;
 - c) The extent of which the performance shall be affected
- 24.2 If the circumstances change after the affected party has notified the other party the affected shall forthwith, in good and by the most expeditious means inform the other party of such changes and keep the other party updated on such changes
- 24.3 Such circumstances shall not terminate the Contract between the parties or absolve the affected party from performance.
- 24.4 Should the circumstances make the AGREED PERFORMANCE impossible, the affected party shall, having regard to all relevant factors, and in good faith, submit proposals for alternatives to the other party. Such proposals shall be in sufficient detail to enable the other party to technically and financially assess the alternative and decide whether any alternative is acceptable. Should there be no alternative acceptable to the other party, it may elect to cancel the Contract.
- 24.5 Should the circumstances delay the agreed performance:
- a) the affected party shall forthwith and in good faith take all reasonable steps to mitigate the delay and to recover lost time
 - b) having regard to all relevant factors and in good faith to notify the other party as soon as possible of the steps to be take to mitigate the delay and recover lost time and keep the other party updated on changes and progress there on
 - c) the other party may, if the extent to which the delay may be mitigated and lost time be recovered are unacceptable to it, elect to cancel Contract
- 24.6 Neither of the parties shall have any claim, arising from the circumstances, on the other
- 24.7 Without limiting the generality and intention of 'Clause 25.1' in any way, the circumstances may include, without being limited thereto:
- a) Acts of God
 - b) War, riots, civil or military insurrection and like political occurrences
 - c) Natural disasters (i.e. earthquakes, fire, storms and floods etc.)
 - d) Governmental Acts and Omissions
 - e) Terrorism or sabotage
 - f) Labour unrest (i.e. Strikes and Lockouts etc.)
 - g) Sudden material shortages by Producers and/or price fluctuations beyond the Sellers control
- 25 Where any of the conditions remain unfulfilled the Seller shall be entitled to refuse or suspend performance without being liable in any manner whatsoever therefore to the Purchaser or any other Person whatsoever, and without prejudice to the Seller's rights to recover monies then due to it in respect of services and products already provided by it.
- 26 The Purchaser undertakes that no claim shall be made against any director, servant or employee of the Seller in respect of anything whatsoever arising from the rendering of any such services which are subject to these trading terms and conditions and hereby waives all and any such claims.
- 27 **I/We the Purchaser, do hereby bind myself/ourselves as surety and co-principal debtor in accordance with the surety ship Terms and Conditions set out herein:**
- a) All sales of material, goods and products of the Seller to the Purchaser shall be made subject to the terms and conditions contained herein.
 - b) All directors and/or servants and/or partners and/or representatives of the Purchaser who have signed this document and or the Credit Application shall, unless the content clearly indicates otherwise, also be bound by the terms hereof and upon signature hereof, bind themselves as co-principal debtors and sureties with the Purchaser
 - c) All directors and/or servants and/or partners and/or representatives of the Purchaser who have signed this document warrant that he/they are of full legal capacity, duly empowered and authorised to bind the applicant, and that all the information furnished above is correct and that the contents hereto are true and correct

Thus completed and signed at _____ on this _____ day of _____ 20____

Full Names:	Full Names:
Designation:	Designation:
Identity Number:	Identity Number:
Signature:	Signature:
Physical Address:	Physical Address:
Witness Name:	Witness Name:
Witness Signature:	Witness Signature:

COMPANY STAMP:

In the event that the Purchaser does not sign this document, the order and or the deposit paid constitutes an acceptance of the above terms and agreement.

Initial