

SALES TERMS AND CONDITIONS

(2022-11)

H PISTORIUS & CO (PTY) LTD

SALES TERMS AND CONDITIONS

1 INTRODUCTION

- 1.1 The Customer wishes to purchase goods from the Supplier.
- 1.2 This document contains the terms and conditions that will apply to transactions between the Customer and the Supplier.

2 HOW TO INTERPRET THESE TERMS

2.1 In these Terms, certain words and expressions will have specific meanings, unless it is clear that something else was meant. Words and expressions with specific meanings start with capital letters if they are used in these Terms. Those words and expressions and their meanings are as follows:

- 2.1.1 **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in South Africa;
- 2.1.2 **“CPA”** means the Consumer Protection Act, 2008;
- 2.1.3 **“Customer”** means any cash customer and credit customer, identified in the Customer Application Form;
- 2.1.4 **“Cash Customer”** means any customer acquiring Goods from the Supplier, which is not a Credit Customer;
- 2.1.5 **“Credit Customer”** means the customer that has submitted a credit application in the Supplier’s prescribed form to the Supplier and which application the Supplier has approved by written confirmation to the customer,
- 2.1.6 **Customer Application Form** means the customer application form completed by the Customer to open an account with the Supplier.
- 2.1.7 **Goods”** means goods supplied by the Supplier to the Customer, including agricultural lime and gypsum;
- 2.1.8 **“Parties”** means the Customer and the Supplier, and **“Party”** means any one of them;
- 2.1.9 **“Supplier”** means H Pistorius & Co Proprietary Limited (Registration No. 1949/035514/07), a private company incorporated in terms of the laws of South Africa; and
- 2.1.10 **“Terms”** means these sales terms and conditions.

2.2 The headings that are used in these Terms are for convenience only and will not affect the interpretation of these Terms.

2.3 Unless it is clear that something else was meant, in these Terms:

- 2.3.1 a reference to one gender includes a reference to the other gender;
- 2.3.2 a reference to a natural person includes a reference to a juristic person and the other way around; and
- 2.3.3 if a word is used in the singular form, it also includes the word in the plural form, and the other way around.
- 2.3.4 If these Terms require payment to be made within a number of days, and the last day of that period falls on a day that is not a Business Day, the payment must be made on the previous Business Day.
- 2.3.5 When a period of days needs to be calculated under these Terms, the first day must be excluded and the last day will be included. If the last day is not a Business Day, the last day will be the next Business Day.
- 2.3.6 The rule of interpreting contracts that provides that a contract must be interpreted against the party who draft it will not apply.

3 WHEN THE TERMS AND CONDITIONS WILL APPLY

- 3.1 These Terms will apply to all transactions between the Parties. No other terms and conditions will apply to the sale of Goods to the Customer. If the Customer has any standard terms and conditions, those terms and conditions will not apply, and these Terms and Conditions will be followed.
- 3.2 Each order arising from these Terms will be a separate and independent transaction between the Supplier and the Customer.

4 ORDERS

- 4.1 The Customer must place orders in accordance with the minimum order determined by the Supplier from time to time. Loads delivered by the Supplier range between 25 and 36 tons and only full loads are delivered.
- 4.2 The Customer may place orders by telephone, text or mobile message, or in writing. If requested by the Supplier, the Customer will confirm an order in writing.
- 4.3 The Supplier will not be bound to accept orders from the Customer and may reject orders.
- 4.4 After receipt of an order, the Supplier will provide the Customer with a quotation. The Customer must accept a quotation by e-mail.

4.5 Once the Supplier has accepted an order, or the Customer has accepted a quotation, the Customer will be bound to the order. Orders can only be varied if both the Customer and the Supplier agree to vary the order and both sign a document that records the variation.

5 DELIVERY OF GOODS

5.1 The Customer can request delivery of the Goods at the Customer's address or it can elect to collect the Goods from the Supplier's premises. The Customer's election will be indicated on the quotation issued to the Customer.

5.2 If the Supplier is to deliver the Goods, the Supplier will appoint a carrier to deliver the Goods at the Customer's delivery address. The Customer will always be liable to pay the Supplier for the costs and expenses in respect of the delivery of the Goods.

5.3 The Supplier will not be liable for and the Customer indemnifies the Supplier against any death, injuries or damages which may be attributed to the actions or omissions of the carrier or its staff.

5.4 The estimated delivery costs in respect of the delivery and for which the Customer shall initially be invoiced shall be calculated with reference to the distances as initially determined and at the carrier's tariffs which apply at the time when the order was accepted. Should the actual distance travelled exceed the distance initially determined, or the carrier's tariffs increased since the time of the order, the Customer shall be liable for the additional costs.

5.5 The Customer shall designate a specific delivery point which is easily accessible and appropriate for delivery. The Customer must provide the Supplier with all details necessary for the delivery. Any cost that may arise from problems experienced by the carrier which may be attributed to non-appropriate transport routes or points of delivery, will be recoverable from the Customer. Notwithstanding the above, should it be dangerous or impractical to deliver the Goods at the designated delivery point, the carrier shall be entitled, in its sole discretion, to deliver the Goods at another delivery point. The Customer shall be liable for any damages or losses suffered by the Supplier and/or the carrier, should the Customer insist or demand that the Goods be delivered at the designated delivery point which the carrier deems dangerous or impractical for delivery.

5.6 If more than 1 (one) delivery of Goods takes place in a week, the Customer will receive one invoice for all deliveries that have taken place during such week.

5.7 If the Supplier gives a delivery date, the delivery date is only an estimate. The Supplier does not have to deliver the Goods on or close to that date. The Supplier is not liable for any delay in delivery for whatever reason, including (but not limited to) production shortages, adverse weather conditions or a carrier being unavailable. A delay in delivery will not be grounds for cancellation of an order for Goods.

5.8 If the Customer has ordered Goods, the Customer must accept delivery of the Goods and pay for it.

5.9 The Customer must provide the labour, equipment and

facilities to off-load Goods.

5.10 If the Customer does not collect the Goods promptly, the goods might become unavailable due to stock being depleted in the meantime and the Customer acknowledges that this may cause delayed delivery. Further, if the Supplier cannot deliver in such circumstances, the costs of transport might increase in the interim and the Customer agrees to be liable for the increased transport or fuel costs.

6 HANDLING AND USAGE OF GOODS

6.1 The Customer is solely responsible for storage, stacking, handling and use of the Goods. The Customer is solely responsible for ensuring that the Goods are used correctly and appropriately, and the Supplier will have no liability in this regard.

6.2 The Customer hereby safeguards (indemnifies the Supplier against any claims as a result of the Customer failing to obey or comply with the Customer's obligations under this clause 6.

7 DEFECTS

7.1 The Customer must inspect Goods when delivered. If Goods are defective or in the incorrect quantity has been delivered, the Customer must inform the Supplier in writing within 48 hours after the delivery of the Goods. If the Customer does not do that, it will be accepted that the Goods were delivered free of defects and in the correct quantity.

7.2 The Customer may not return Goods to the Supplier without the Supplier's prior written agreement.

8 OWNERSHIP AND RISK

8.1 If the Goods are delivered to the Customer, the risk of damage to or loss of the Goods will pass to the Customer when the Supplier delivers the goods to the Carrier. Alternatively, if the Customer collects the goods at the Supplier's premises the risk of damage to or loss of the Goods will pass onto the Customer when the Goods have been weighed at the weighbridge and a weighbridge slip has been issued.

8.2 Despite clause 8.1 above, if the Customer refuses to accept delivery of the Goods or delays delivery or collection, then the risk of loss of or damage to the Goods will pass to the Customer from the day that delivery was tendered.

8.3 The Supplier retains ownership of Goods until the Customer has paid for the Goods. For as long as the Supplier is the owner, the Customer will make sure that all other parties know that the Supplier owns the Goods.

9 PRICING

9.1 The price charged for Goods will be the Supplier's list price on the date on which the Supplier accepts the order of the Customer. However, if delivery takes place more than 30 days after the date of order, the selling price will be the list price on the delivery date.

9.2 The Customer may be entitled to a discount, rebate or

specific payment terms in accordance with the Supplier's policies, as updated and amended from time to time. Such policies are published or made available by the Supplier from time to time.

9.3 If the Customer fails to pay for any Goods on the due date the Customer forfeits any discounts, rebates, incentives and specific favourable payment terms and all discounts, rebates, incentives and specific favourable payment terms already received will be reversed. This will apply to all orders and Goods that have not yet been paid. Furthermore, if the Customer is in arrears with any payment, the Supplier shall be entitled, without prejudice to such other rights as it may have under these Terms or in law, to revoke any payment terms granted to the Customer and/or to change the Customer's payment terms to cash on order and/or to cease supplying Goods to the Customer.

9.4 The Supplier's prices are exclusive of value-added tax (VAT). The Customer must pay the amount on the Supplier's invoice plus any taxes and other costs which become payable due to circumstances beyond the control of the Supplier. If costs increase because of a delay caused by the Customer, the Supplier may increase the price for the Goods and the Customer will then pay the higher amount.

9.5 The selling price of the Goods and the invoiced amounts will be determined with reference to the actual tonnage according to the Supplier's weighbridge slips, which can deviate with up to 10% (ten percent) from the tonnage ordered. The Customer agrees to accept the Supplier's weighbridge slips as being accurate. The Customer agrees to pay the selling price for the actual tonnage delivered. If the actual tonnage is less than the tonnage on an invoice, the Supplier will refund the excess payment to the Customer.

10 PAYMENT

10.1 The Customer must make all payments into the bank account specified by the Supplier. Payment must be in South African Rand, and the Customer may not make any deductions or apply any set-off to any payment made to the Supplier. The Customer is liable for any bank commission charged on cash deposits.

10.2 The Supplier shall provide statements on a monthly basis to a Credit Customer. The statement will be sent by e-mail.

10.3 The total amount owed by the Customer in respect of all deliveries of Goods that have taken place during a particular calendar month will be payable to the Supplier by the last day of the immediately following calendar month.

10.4 The Customer must verify the accuracy of invoices and statements received from the Supplier. Should the Customer dispute any item or debit on an invoice or statement, the Customer must within 10 days of the date of issue notify the Supplier of the dispute in writing. Thereafter the Supplier will investigate the dispute, obtain relevant documents pertaining to the dispute and will revert back to the Customer within a reasonable time. Should the Customer fail to notify the Supplier

accordingly the relevant invoice or statement will be deemed correct.

10.5 If the Customer fails to indicate to which invoice a payment relates, the Supplier may allocate that payment in its discretion.

10.6 If the Customer fails to pay for any Goods on the due date, then the full outstanding amount for all Goods delivered to the Customer shall become immediately due and payable. This applies to all purchases regardless of the dates when the Goods were delivered or invoiced

10.7 A certificate, duly signed by a director of the Supplier will be considered prima facie evidence in a Court of Law to prove an amount owed by the Customer to the Supplier.

11 INTEREST AND COSTS

11.1 All arrear amounts bear interest at the rate of 2% per month from due date to date of payment.

11.2 The Customer will be liable for all legal costs incurred by the Supplier to enforce its right under these Terms, and which legal costs will include, without limitation, costs on the scale as between attorney-and-own-client, advocates' fees, tracing fees and collection commission

12 WARRANTIES

12.1 Subject to clause 12.2 below, the Supplier makes no representations nor gives warranties regarding the Goods.

12.2 If the CPA applies to the transaction between the Supplier and Customer, the Customer will be entitled to the warranties provided in the CPA in accordance with the CPA's provisions, but only to the extent that the CPA is applicable.

13 LIABILITY

13.1 To the fullest extent permitted by law, the Supplier shall not be liable for any losses, liabilities, damages, costs and expenses (including legal fees, disbursements and costs of investigation, litigation, settlement, judgement), fines, interest and penalties in respect of any claims arising out of the use of the Goods by the Customer or any third party ("Losses"). The Customer indemnifies and holds the Supplier harmless from any and all such Losses.

13.2 If the Supplier is found to be liable to the Customer for any reason or cause (despite the other provisions stated in this clause 13, the Supplier's total liability to the Customer will not exceed the total of R50 000 or the actual damages suffered, whichever is the lesser amount. In calculating the amount of R50 000, the Customer must add together all the amounts under all the claims for which the Supplier is liable.

13.3 To the fullest extent permitted by law, any claim that the Customer might have against the Supplier will lapse unless it is instituted in writing within 30 (thirty) days from date of delivery.

14 BREACH

- 14.1 Should the Customer fail to pay any amount on due date or breach any of the other terms of this agreement and fail to remedy such default or breach within 7 days after receiving a written demand that it be remedied, the Supplier shall be entitled, without further notice, to cancel this agreement with immediate effect; to claim all outstanding amounts from the Customer; whether due or not and in addition claim any damages that the Supplier suffered as a result of the Customer's breach.
- 14.2 Should the Customer be placed under provisional or final liquidation or sequestration or enters business rescue, or the Customer makes an arrangement with its creditors, the Supplier may terminate the agreement and all outstanding amounts will become due and payable.
- 14.3 For as long as the Customer is in breach of these Terms, the Supplier does not have to perform its obligations towards the Customer.
- 14.4 The Customer will not have any claims against the Supplier if any agreement arising from these Terms comes to an end.

15 ADDRESSES

- 15.1 The Customer choose it's in the Customer Application Form addresses as the addresses where all notices or court proceedings can be delivered.
- 15.2 The Supplier chooses its addresses stipulated in the Customer Application Form as the addresses where all notices relating to this agreement of Court proceedings must be delivered.
- 15.3 Notices can be sent by e-mail and will be regarded as received on the date of submission.

16 LAWS AND COURTS

- 16.1 The laws of South Africa will apply to these Terms.
- 16.2 The Customer hereby consents to the jurisdiction of the Magistrates Court for purposes of any action arising from these Terms or any transaction with the Supplier, but the Supplier reserves the right to, within its sole discretion, to institute action in any other Court or forum that may have jurisdiction.

17 CONSUMER PROTECTION ACT

- 17.1 Where the CPA applies to these Terms or to any Goods supplied, it is not intended that any provision of these Terms will go against or ignore any provision of the CPA. Thus, all provisions of these Terms must be treated to ensure that all the provisions of the CPA are always properly observed and obeyed.
- 17.2 Nothing in these Terms limits or exempts the Supplier's liability in any way if the law does not allow such a limitation or exemption. This includes, without any restriction or limitation, liability for any loss that may be directly or indirectly caused by the Supplier as a result of its gross negligence or deliberate default, or by any

person representing the Supplier or acting under its control.

18 PROTECTION OF PERSONAL INFORMATION

- 18.1 In line with the Protection of Personal information Act, 4 of 2013 (POPIA), the Customer acknowledges that it has been adequately informed of its rights and the purpose for which its Personal Information will be processed by the Supplier and that it accepts the terms of notice.
- 18.2 The Customer consents to the Supplier and approved third parties (such as contractors, carriers, couriers and agents) with whom the Supplier has contracted in order to perform its obligations towards the Customer, to lawfully collect, process ,retain and distribute relevant Personal Information where it is required by the Supplier in order for the Supplier to comply with its obligations towards the Customer and for the purposes of performing its obligations in terms of this Agreement, statutory compliance, statistical analysis as well as to direct market additional products and services to the Customer by means of electronic communications.
- 18.3 The Customer understands its right to privacy and the right to, upon request, have information reviewed and/or object to the Supplier's processing of Personal Information in relation to any Personal Information pertaining to any third party/ies (such as the Customers, directors, members, employees or representatives) in respect of which The Signatory on behalf of the Customer declares that he is a competent person or authorised, to share any Personal Information as contemplated in terms of this Agreement with the Supplier and consent to the processing thereof.
- 18.4 The Customer specifically consents to the Supplier at any time procuring or sharing information relating to the Customers, directors, members credit worthiness and risk profile from or with any registered credit bureau.

19. GENERAL

- 19.1 Changes to these Terms will only be binding if they are in writing and signed by both Parties.
- 19.2 If the Supplier does not enforce its rights or does not enforce them on time, it still has those rights and can take legal steps if it wants to. If the Supplier extends any time or relaxes any provision, the Supplier will not lose its rights to enforce the provision.
- 19.3 The provisions in these Terms can be separated from each other. If any provision in these Terms is not enforceable, the remaining provisions will still stay in force.
- 19.4 The Customer may not transfer its rights and obligations under these Terms to a third party unless the Supplier gives written consent before the time.
- 19.5 The Supplier may transfer its rights and obligations under these Terms to a third party without the need to obtain permission from the Customer.