

TERMS AND CONDITIONS OF LINCOLN LUBRICATION SA (PTY) LTD

1. GENERAL

- 1.1 These conditions are applicable, according to context, insofar as are specifically excluded or modified in writing to all contracts of sale, manufacture, installation, erection or otherwise. In the event of any conflict of contracts between our standard conditions and any other conditions which the customer may seek to impose, then and in such event our conditions shall be the overriding conditions.
- 1.2 Unless previously withdraw, a tender, quotation or offer shall remain open for acceptance for the period stated therein or, when no period is stated, for thirty days from the date thereof. Acceptance of a tender, quotation or offer may be subject to confirmation in writing by us and a contract shall not become binding and enforceable until the dispatch by us of a written confirmation, duly signed by an authorized officer of the company.
- 1.3 All particulars of tender, quotation or offer, including drawings, plans, illustrations and the like are to be regarded as approximate only, unless otherwise stated. All estimates, performance figures, measurements, weights, dimensions and the like are intended to present a general idea of the subject of the contract and are not intended to be construed as giving rise to guarantees, warranties or representations and no contractual obligation in regard there to shall exist unless expressly guaranteed and warranted by us in writing.
- 1.4 All drawings, plans, illustrations, written estimates and other documents submitted by us shall remain our property and shall be returned to us on request unless a contract is concluded, in which event they shall be retained by the customer for maintenance purposes only and shall not be made available by the customer to any third party, for any purposes whatsoever and which prohibition will be deemed to be absolute.
- 1.5 Our agents, salesmen, servants and employees have no authority to give guarantees or warranties, or to make any presentations or promises on our behalf and no guarantee, warranty or representation or promise shall be of force and effect unless incorporated in a document signed by our duly authorized officer.
- 1.6 All products supplied by the Company are strictly to the Company's specifications only, unless otherwise precisely specified in our written official communications.
- 1.7 The authorized signature of the customer on the credit application or delivery note signifies the acceptance of our Term and Conditions of the Contract.
- 1.8 The term "customer" includes the terms debtor, purchaser etc.

1.9 The terms “we”, “us”, “our”, used in the context in this Contract document implies “Lincoln Lubrication SA (Pty) Ltd.

2. DELIVERY

2.1 In the case of a contract not providing for installation or erection by us, delivery shall be deemed to have been completed as soon as the goods have been dispatched from our factory, stores or premises to the customer.

2.2 In the case of a contract providing for installation or erection as an inclusive price of the material supply and not tendered for as a separate price, delivery shall be deemed to have been completed as soon as the goods are installed or erected on site and in working order. If a separate price for these services is quoted, conditions as stated in Item 2.1 apply.

2.3 In the event of the customer being unable or unwilling to take delivery, upon notification by us that we are ready to effect delivery, the customer shall nevertheless adhere to the terms of payment and shall, in the case of contracts not providing for installation or erection, pay to us on request 2% of the contract price as storage for each month or part of the month during which the customer fails to take delivery as well as all reasonable sums expended by us for handling charges.

2.4 Notwithstanding anything herein contained to the contrary, if delivery is delayed through or by reason of any act, omission or default on the part of the customer, delivery shall, in such event, be deemed to have been effected as at the date of such act, omission or default, the customer irrevocably waives any lien which it may at any stage have over any goods affected by such contract.

2.5 If the contract includes installations or erection as provided for in Item 2.2 and if we are obliged to carry out a rest run of the subject matter of the contract, the customer shall permit and allow us to carry out the test run immediately upon completion of the installation or erection. If the said test run cannot be carried out for reasons beyond our control, within fourteen days after completion of the installation or erection, our obligations in respect of such test run shall be deemed to have been fulfilled.

2.6 As soon as delivery is effected or deemed to have been effected, the risk in the subject matter of the contract shall pass to the customer.

3. TIME FOR DELIVERY

3.1 The time given for delivery is the date from dispatch to us of the written confirmation mentioned in Clause (1.2) herein. We will use our best endeavours to adhere to the date given but accept no liability of any kind for failure to do so, unless a guarantee in writing shall have been given to deliver within a specified time.

3.2 If we shall have guaranteed delivery within a specified time and shall have failed to deliver within the time guaranteed or any extension thereof, and if the customer shall have suffered loss by our delay, we will honour a deduction from the contract price should this have been stated in our tender. If such amount becomes payable, it shall be in full satisfaction of our liability for such delay. We shall not accept any charges in the form of liquidated and / or consequential damages or other penalties.

3.3 Should delivery be hindered or delayed by an extension of the contract, deviations from specifications, suspension of the works, or any act or default on the customer, or any cause whatsoever beyond our control, including war, civil commotions, riots, rebellion, strikes, lockouts, floods, epidemics, unusual inclemency of the weather, fire or accidents and whether such hindrance or delay occurs before or after the time or extended time for delivery, the customer shall grant us from time to time such extensions of time, either prospectively, or retrospectively, as may be reasonable and any such extension of time shall exonerate us from liability in respect of delay.

4. INSTALLATION OR ERECTION

4.1 In the case of a contract providing for installation or erection by us, the following special provisions shall be complied with by the customer:

4.1.1 Ensure that, the site and the roads leading thereto are leveled and cleared, all foundations are completed and dry and all foundation walls are in position and leveled with soil.

4.1.2 Ensure that, in the case of indoor installations or erections, all walls, ceilings, doors and windows are complete.

4.1.3 Provide adequate and dry premises, which can be locked for storing our machinery, parts, materials, tools and the like and provide adequate working space and suitable accommodation for our personnel.

4.1.4 Provide lifting tackle, props, wedges, bedding cement, cleaning and joining materials, lubricants, fuel, cooling water, driving ropes and belts, including their installation and necessary alternations, scaffolding, and all the like materials and requisites.

4.1.5 Provide all necessary workmen, excluding specials, fitters, engineers and supervisors which are supplied by us, but including carpenters, mechanics and other skilled or unskilled labour required by us.

4.1.6 Provide heating, lighting, power, potable water and air, including connections therefore to the site, as may be required

4.2 The customer shall ensure that, prior to the commencement of installation or erection all masons, carpenters, mechanics' and other preliminary work is sufficiently advanced to enable us to proceed with the installation or erection immediately on arrival of our employees, workmen or agents and shall further

ensure that our employees, workmen or agents shall be able to proceed without interruption or delay.

4.3 If the installation or erection is delayed through no fault on our part, the customer shall be liable for and pay all costs incidental to or in respect of the waiting time and travelling expenses of our employees, workmen or agents.

4.4 The customer shall, when so required, certify and confirm in writing such completion and/or acceptance of work.

4.5 All labor supplied by either party shall remain in the employ of that party who shall undertake all liability in respect of Sick Benefits, Workmen's Compensation, Unemployment Insurance and the like items.

4.6 In the event of the contract providing for installation or erection by our employees, workmen or agents at piece work rates :

4.6.1 fixed per diem rates will be charges, together with any time, Sunday or holiday pay which may be required in terms of the LRA.

4.6.2 Waiting and traveling time will count as working time

4.6.3 Fares for return traveling by rail, boat or plane (as agreed) shall be borne and paid for by the customer who shall bear the transport charges for luggage, tools and the like.

4.6.4 If board and lodging are available at or near the site of installation or erection the necessary arrangements for the same will be our responsibility. If such board and lodging are not so available, the customer will be responsible to make the necessary arrangements for the employees, workmen or agents.

5. PRICE ADJUSTMENTS

5.1 The contract price, expressed in South African currency, is based upon the rate of exchange against the foreign currency/ies of origin in relation to imported materials as pertain at the date of submission of our tender/quotation or offer and furthermore based on our existing labour and raw material costs as at such date. If during the period of the contract there is any fluctuation in any of the foregoing the amount of any increase/decrease shall at our option be added to/subtracted from the contract price and shall be for the account of and payable by the customer or be credited to the customer as the case may be.

5.2 In the event of the suspension of or delay in delivery arising from instruction given or lack of or change in instructions given by the customer, any loss or extra costs thereby incurred shall be added to the contract price and shall be for the account of and payable by the customer.

5.3 In the event of the contract providing for erection or installation and in the event of delay in completion thereof arising as a result of any default on the part of the

customer, any loss or extra cost thereby incurred shall be added to the contract price and shall be for the account of and payable by the customer.

5.4 Notwithstanding any provisions in regard to the passing or incidence or risk generally between the parties, any increase in commodities, customs duties, import duties, currency exchange rates (relating to those items on the contract which may be imported), transport costs, cost of demurrage, freight charges (whether air, ocean, road or rail) Government surcharge on any imported goods and similar such duties howsoever arising and items of a similar nature shall be borne and paid for by the customer and to the extent that any dispute may arise in regard thereto the provisions of sub paragraph 5.4.1 shall be applicable.

5.4.1 A certificate by our Auditors certifying that the contract price has been increased by reason of any of the aforementioned provisions and further certifying the amount of such increase from time to time shall be final and binding.

6. TERMS OF PAYMENT

6.1 The contract price is to be paid free of exchange at Johannesburg or as specified in the contract and without deduction of any kind, either by way of discount or otherwise. Payments effected through the post shall be at the risk of the customer. Payments effected by way of electronic fund transfers (EFT) payments shall be at the sole risk of the customer

6.2 Unless otherwise agreed upon and in the case of contracts not providing for installation or erection, payment of the contract price shall be effected on the thirtieth day of the month following that in which delivery was affected or deemed to have been affected.

6.3 Unless otherwise agreed upon and in the case of contracts providing for installation or erection, payment of the contract price shall be effected as to one-third immediately the contract is confirmed in writing by us as provided in Clause 1.2 hereof, as to a further one third upon expiration of half the time for delivery stipulated in the contract and as to the remaining one- third on the thirtieth day of the month following that in which delivery is effected or deemed to have been effected.

6.4 Notwithstanding that delivery and possession of the subject matter of the contract may have been given to the customer and that the risk therein may have passed to the customer, ownership therein shall remain vested in us until the whole of the contract price (including interest on the same or any part thereof and any other charge or sums payable by the customer) shall have been paid.

6.5 Interest at the maximum permissible legal rate per annum will accrue to us on all overdue payments, calculated from the day on which any payment is overdue and in the event of any dispute, as certified by the company's auditors substantiating the rate of interest and/or the amount payable shall be final and binding.

7. WARRANTY

Refer to terms and conditions available on application.

8. LIMITATION OF LIABILITY

8.1 We shall not be liable for any consequential damages of whatsoever nature and we shall not be liable for any damages, injury or loss to the customer, the customer's property or the customer's employees, workmen or loss to the customer, the customer's property or the customer's employees, workmen or agents, whether such damage, injury or loss be caused by our negligence or not. We shall further not be liable for any damage or loss caused by or arising out of stoppages, viz major floods, strikes, lockouts, riots, civil commotions, wars or rebellion.

8.2 In the event of our partial or total inability to complete the contract for reasons beyond our control, the customer shall have the right to claim a pro rata reduction in the contract price to be agreed upon by us but the customer shall have no right to claim for compensation of any damaged of whatsoever nature from us.

9. INDEMNITY

It is understood and agreed that all the Company's personnel engaged in an upon the services covered by any agreement are covered under the provisions of the Workmen's Compensation Act and that the Company does hereby formally indemnify the Customer against any claim or claims which may be made against the Customer as a result of death of, injury to or illness contracted by any of the Company's personnel.

10. INSURANCE

The company's liability is restricted to the remedy of defects in materials and workmanship that the company supplied. The Customer shall ensure that it has made suitable provision for resultant / consequential damages and/ or loss of production and indemnifies the Company against such resultant damages or loss of production notwithstanding the fact that the Company maintains Public Liability Insurance cover.

11. BREACH OF CONTRACT

In the event of the customer committing a breach of an or all of the provisions of the contract or in the event of the customer being placed under a Provisional or Final Order of Sequestration and/or Liquidation and/or Judicial Management or in the event of the customer effecting a compromise with creditors or if the customer suffers anything to be done which, in our sole discretion may prejudice us, then we shall, without prejudice to any other rights we may have, be entitled:

- 11.1 to claim immediate payment of the full balance of the contract price outstanding as well as payment of all other sums due to us or
- 11.2 to cancel the contract and retake possession of the subject matter thereof, and
- 11.3 in either event to claim any damages which we may have suffered and to the extent that the customer may have effected any payments on account of the contract, then at our option such payment shall be forfeited to us or at our option retained by us pending the outcome of any litigation or arbitration confirming our entitlement thereto.
- 11.4 On cancellation the ownership of the goods relating to that portion of the contract which has been cancelled and which may have passed to the customer, shall, at our option, revert to us, but we shall nevertheless, be entitled to retain possession of the same as security for the payment by the customer to us of all amounts which the customer shall become liable to pay to us in terms of the contract as a result of any breach of the contract by the customer. To the extent that it may be applicable, the customer hereby renounces any lien which may have on the goods.

12. CESSION

The customer shall not have the right to cede, assign or transfer any of his rights or obligations arising out of the contract without our prior written consent.

13. SEVERABILITY OF CONTRACT

In the event of any provision of the contract being valid, such provisions shall be regarded as severable from the remainder of the contract which shall remain of full force and effect.

14. ARBITRATION

All disputes, differences or claims (other than a claim for payment of the contract price or for any amount due by the customer to us in terms of the contract) shall at our option be determined by arbitration under the Arbitration Act of 1965 or any amendment thereof.

15. NON-WAIVER

Any relaxation of any of the terms of these Conditions of Contract or any indulgence shown by either ourselves or the customer to the other shall in no way prejudice the rights of such party, and shall not be construed as a waiver or notation thereof.

16. JURISDICTION

The customer consents to the jurisdiction of the Court of the Witwatersrand in respect of all proceedings arising out of this contract, notwithstanding the amount claimed or the nature of the claim. In no way derogating there from, we shall be

entitled to institute any action arising out of this contract in any other court of competent jurisdiction.

17. COSTS

Should any action be taken by us against the customer in consequence of a breach by the customer of any of its obligations under the contract, then and in such event, the customer shall be obliged to effect payment on demand, of all Attorney and the Client costs incurred by us in such regard, irrespective of whether proceedings have actually been instituted.

18. RIGHT TO APPROPRIATE

We shall be entitled, at any stage during the subsistence of this contract, to appropriate any monies received by us from the customer to any indebtedness of the customer extent, this notwithstanding anything to the contrary elsewhere contained.

19. WHOLE CONTRACT

This contract constitutes the entire contract between ourselves and the customer and it is recorded save as specifically referred to herein, that no representations of whatsoever nature or kind were given which induced the contract, and no variation of this contract shall be of level efficiency save insofar as the same is reduced to writing and signed by our authorized officer and the customer.

20. DOMICILIUM

The customer chooses its domicilium citandi et executandi as set forth on the face of the relevant contract / agreements for all purposes arising hereout, whereas we select the address 66, Cnr 5th Avenue and Louise Trichardt Street, Alberton North, 1449 – South Africa.