

INTRODUCTION

- 1.1 These are the standard terms and conditions of sale (“STCs”) on which the Seller sells the goods listed in the applicable Founding Document (“the goods”).
- 1.2 These STCs and the Seller’s acceptance of the Founding Document (as evidenced by the Seller’s signature thereto), constitute the entire agreement between the Seller and the Purchaser in respect of the goods, save to the extent explicitly otherwise agreed in writing between the parties.
- 1.3 Any condition stipulated by the Purchaser or any third party that is in conflict with the STCs and/or the Founding Document is expressly excluded. The Seller is not bound by any oral statements, figures, specifications, prices quoted or representations made if they are in conflict with the STC’s and/or the Founding Document.
- 1.4 The Seller may review, modify and/or update these STCs from time to time. Such amended STCs will be uploaded to the Website and such amended STCs will supersede and replace any previous versions with effect from the date on which it is uploaded to the Website. The Purchaser acknowledges that any future supply of goods shall be subject to the version of these STC's that is current when the agreement in respect of such goods is concluded.

2 DEFINITIONS

- 2.1 In these STC’s the following terms shall have the following meanings –
 - 2.1.1 CPA – the Consumer Protection Act, 68 of 2008, as amended and any regulations promulgated in respect thereof;
 - 2.1.2 Founding Document – the relevant document evidencing the parties’ intention for the Seller to supply the goods to the Purchaser and which may comprise of a purchase order, quote, invoice, delivery note or such other relevant document as sets forth the goods to be supplied to the Purchaser by the Seller;

- 2.1.3 load shedding - a national, regional, municipal, local and/or private interruption, failure or suspension of the electricity grid for whatsoever reason, whether due to damage, an inability and/or failure, partial or total, of the utility supplier to generate, transmit or distribute electricity;
- 2.1.4 NCA – the National Credit Act, 34 of 2005 as amended and any regulations promulgated in respect thereof;
- 2.1.5 parties – the Seller and the Purchaser;
- 2.1.6 protected consumer - a consumer as defined in section 1 of the CPA and whose annual turnover or asset value falls below the threshold of R2m (or such amended threshold as may be stipulated by regulation from time to time) as contemplated in section 5 of the Consumer Protection Act and to whom the Act applies;
- 2.1.7 Purchaser – the party, as evidenced by the Founding Document, which places an order on the Seller for the goods;
- 2.1.8 Seller – the party which is supplying the goods to the Purchaser as evidenced by the Founding Document;
- 2.1.9 VAT – value added tax as levied in terms of the VAT Act, 89 of 1991 as amended and any regulations promulgated in respect thereof;
- 2.1.10 Website – the website operated and maintained by the Seller or on its behalf at www.glacier.co.za.
- 2.2 Any reference to “in writing” or “written” in these STCs shall mean legible writing in English and includes a communication which is written or produced by any substitute for writing or which is partly written or partly so produced, and shall include printing, typewriting, lithography, facsimile and electronic mail and any form of electronic communication contemplated in the Electronic Communications and Transactions Act, 25 of 2002;

- 2.3 Unless a contrary intention clearly appears from these STCs, the terms used in this agreement shall have the meanings assigned to them in section 1, section 53 or any other section, as the case may be, of the CPA.

3 SALE AND DELIVERY OF THE GOODS

- 3.1 In any sale other than for cash, such sale shall be subject to all terms and conditions herein contained and shall not be inconsistent with the NCA, if applicable, noting that the NCA is not applicable if the Purchaser is a juristic person and its assets or annual turnover, at the time of entering into a transaction with the Seller, are equal to or exceed R1 million.

- 3.2 For any sale on credit, the Seller or its authorised signatory by its/his signature to either the credit application or the relevant Founding Document as the case may be, warrants that -

- 3.2.1 all of the information supplied in terms of the credit application is true and correct, including any financial statements provided to the Seller in terms of such application;

- 3.2.2 it is authorised to apply for credit and bind the Seller in terms of the credit application, the Founding Document and these STCs;

- 3.2.3 it is authorised to give consent, as it hereby does, to the Seller to -

- 3.2.3.1 make inquiries to confirm any information provided by the Purchaser and to verify the information and obtain additional information from any registered credit bureau, when assessing the information provided by the Purchaser;

- 3.2.3.2 obtain a credit report on the Purchaser, and that all the directors and/or members of the Purchaser have consented in writing to the Seller instructing a registered credit bureau to conduct the credit enquiry on the Purchaser and that each director and/or member acknowledged that the enquiry will include an enquiry into the director and/or member's credit profile;
- 3.2.3.3 do an account verification check or instruct a registered credit bureau to verify that banking details provided to the Seller in terms hereof are correct or to enquire with the Purchaser's banker/s to obtain an opinion with regard to the amounts advanced to the Purchaser and lending terms applicable to the Purchaser and to retrieve bank reports;
- 3.2.3.4 obtain trade references;
- 3.2.3.5 submit the Purchaser's information, including payment profile and default information and any other relevant information, to a registered credit bureau and to allow such registered credit bureau to release the information for lawful purposes to third parties,

as part of the Seller's assessment of the Purchaser in granting credit.

- 3.3 All orders received are subject to acceptance by the Seller.
- 3.4 Risk in the goods supplied by the Seller passes to the Purchaser on delivery thereof in terms of clause 3.5 or 3.6, as the case may be.
- 3.5 Subject to clause 3.6 , delivery of the goods is deemed to have occurred when the goods are collected by or on behalf of the Purchaser and leave the Seller's premises ("delivery").
- 3.6 If the parties agree that the goods are to be delivered to the Purchaser the Seller will off-load and, to the extent applicable, position the goods at the agreed delivery point.

- 3.7 Should the Purchaser send a carrier to collect the goods from the Seller's premises, such carrier shall be deemed to be the agent of the Purchaser and the Seller is not liable for goods which are lost or damaged during transportation by such carrier. The Seller shall not be responsible for any loss or damage caused during transportation of the goods in these circumstances.
- 3.8 It is the Purchaser's responsibility to inspect the goods upon taking delivery thereof and to ensure that the goods are in good working order. The signature of any person apparently representing the Purchaser or the carrier which appears on the Seller's delivery note, invoice or waybill, as may be applicable, will constitute *prima facie* proof of delivery of the goods to the Purchaser in good working condition.
- 3.9 The Purchaser shall have no claim against the Seller for goods short delivered or wrongly delivered unless the Purchaser gives notice thereof in writing to the Seller within 24 hours of delivery.
- 3.10 If the Purchaser fails to take delivery of the goods when tendered at the agreed delivery point on the agreed delivery date, then the risk in the goods shall immediately pass to the Purchaser who shall refund to the Seller on demand the reasonable costs (including storage, transport and insurance) of moving the goods and keeping them during the period of the delay.
- 3.11 The Seller reserves the right to defer the date of delivery or to cancel the contract or reduce the volume of goods or parts ordered by the Purchaser (without liability to the Purchaser) if it is prevented from or delayed in the carrying on of its business due to circumstances outside the reasonable control of the Seller including, but not limited to acts of God, government actions, pandemic, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, drought, lockouts, strikes or other labour disputes or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or stock.
- 3.12 In the event of such a delay in the delivery or failure to effect delivery on account of circumstances beyond the control of the Seller -
- 3.12.1 the Purchaser may not cancel the agreement or withhold payment of any amount due to the Seller;

3.12.2 the Seller will not be liable to the Purchaser for any loss, damage, liability or expense arising from the delay in delivery of the goods.

3.13 The Seller shall promptly give notice of any delay described in clause 3.11 above to the Purchaser and, if the event in question continues for a continuous period in excess of 90 days, the Purchaser shall be entitled to give notice in writing to terminate the agreement.

4 PRICE AND PAYMENT

4.1 The price payable for the goods shall be the price stipulated on the relevant quote or invoice provided by the Seller to the Purchaser, as the case may be ("the price"). The price as stated excludes VAT and is nett of all other taxes, duties and transport costs.

4.2 If the Purchaser is a protected consumer, the price of goods supplied by the Seller to the Purchaser shall be the Seller's official price disclosed to the Purchaser prior to the conclusion of the sale. If the Seller has issued a quotation for the supply of goods to the Purchaser, then all prices quoted thereon are subject to change if, as a result of currency fluctuations and other factors beyond the Seller's control, there is an increase in the Seller's costs, at which point the Seller shall be entitled to issue a revised quotation and shall not be bound by the first quotation.

4.3 An order for the goods by the Purchaser only constitutes a sale once accepted by the Seller. The Seller shall confirm the price of the goods ordered to the Purchaser and shall state the period for which the quoted price is valid. The Purchaser is required to confirm within the period so stated that it wishes to proceed with the order (a "confirmed order"), it being specifically recorded that confirmation of the order after expiry of the stated period shall not be valid and shall not constitute a confirmed order. The Seller shall communicate acceptance of such confirmed order to the Purchaser within 10 days of receipt thereof and failing confirmation by the Seller within the 10 day period, the Seller shall be deemed to have accepted the order. Each confirmed order constitutes a separate agreement subject to these STC's, as amended from time to time, in terms of clause 1.4.

4.4 Unless otherwise agreed between the parties in writing, all sales of goods shall be for cash and the purchase price shall be payable on or before delivery. If credit facilities have been granted by the Seller to the Purchaser, payment must be made in

accordance with the credit terms agreed upon in writing between the parties in terms of any approved credit application and facility.

- 4.5 All payments shall be made in the currency stated in the Founding Document, free of bank exchange and other charges, by way of electronic funds transfer to the Seller's bank account as stipulated in the Founding Document. Any change of the Seller's bank account details shall only be valid if communicated in writing by the Seller, and the Purchaser shall upon receipt of a notice of a change in bank account, be obliged to confirm such change in bank account telephonically with the Financial Director of the Seller. Any failure by the Purchaser to follow the aforestated process shall be at the Purchaser's risk and the Seller shall have no liability to the Purchaser for any payments made to any account which may have been fraudulently communicated to the Purchaser.
- 4.6 If delivery is made in instalments, each instalment shall be invoiced and paid for separately, unless waived in writing at the Seller's sole discretion.
- 4.7 If any amount is not paid upon due date, all amounts owed to the Seller will at once become due, owing and payable. Any discount granted to the Purchaser will be forfeited and the Purchaser will pay interest on all overdue amounts at the prevailing overdraft rate as determined by First National Bank Limited, and shall in addition pay any legal costs incurred by the Seller on the attorney-and-own client scale, including collection commission.
- 4.8 Payment may not be withheld pending the settlement of any dispute.
- 4.9 All payments received shall be allocated by the Seller firstly as to interest, secondly as to legal and collection costs and lastly as to capital.

5 GUARANTEE AND LIMITATION OF LIABILITY

- 5.1 The Seller hereby provides the following warranties in respect of the goods –

- 5.1.1 the goods are guaranteed, from the date of delivery thereof to the Purchaser in terms of clause 3, for the applicable warranty period stipulated in the applicable warranty document separately provided to the Purchaser in respect of the replacement of all parts relating to such goods where such parts fail due to faulty materials or faulty workmanship;
- 5.1.2 any parts of the goods comprising glass, plastic, globes, fuses, elements and metal castings are excluded from the application of this warranty;
- 5.1.3 the Seller's liability under the guarantee shall be limited to the repair or replacement (at its election) of defective parts of the goods;
- 5.1.4 the Purchaser shall, at its cost and expense, deliver the defective materials and/or goods concerned to the Seller and make payment to the Seller when required, for all labour charges incurred by the Seller in connection with the repair or replacement concerned;
- 5.1.5 to the extent that any payment due by the Purchaser to the Seller in respect of the goods is overdue, the Seller shall not be obliged to effect the replacement or repair unless and until such overdue amounts have been paid in full.
- 5.2 The Seller shall not be bound to honour the warranty and it shall be void if –
 - 5.2.1 any damage or defect is caused to the goods as a result of, whether directly or indirectly –
 - 5.2.1.1 the improper use of the goods by the Purchaser or any of its employees or agents;
 - 5.2.1.2 due to power surges, fluctuations in voltage or current, malfunctioning or poor performance of equipment, occurring as a result of interruptions to power supply as a result of or in connection with load shedding.

- 5.2.2 the Purchaser fails to notify the Sender in writing of any defect in the goods within 7 days of such defect coming to the knowledge of the Purchaser;
- 5.2.3 the Purchaser fails to return the defective part or goods (where necessary) to the Seller within 7 days of the notification contemplated in clause 5.2.2;
- 5.2.4 the Purchaser is in breach of any material provision of these STCs.
- 5.3 Save for the warranty set forth in clause 5.2, the goods are sold *voetstoots*. The Seller gives no warranty as to the suitability of the goods for the purpose for which the Purchaser intends to use them.
- 5.4 To the fullest extent permissible in law, the Seller shall not be liable for any loss or harm suffered by the Purchaser arising from or in connection with the goods sold to the Purchaser, whether as a result of faulty materials, faulty workmanship, as a result of any repairs or replacements not having been effected timeously or at all or arising from any other cause whatsoever.
- 5.5 The Purchaser shall not have any claim of any nature whatsoever against the Seller for any failure by the Seller to carry out any of its obligations in terms of this agreement as a result of any circumstances beyond the reasonable control of the Seller, including, without limitation of generality of the foregoing, any default or delay on the part of any subcontractor, carrier, supplier or their agents.
- 5.6 To the fullest extent permissible in law, the Seller's total liability, if any, whether in contract, delict (including negligence), misrepresentation or otherwise, arising in connection with the supply of the goods, the performance or contemplated performance of this agreement, shall always be limited to the price of the goods and the Seller shall not be liable to the Purchaser for loss of profit, loss of business or depletion of goodwill, in each case, whether direct or indirect or consequential in nature.

6 OWNERSHIP

6.1 Ownership of the goods will only pass to the Purchaser once the Seller has received payment of the full price for the goods and, until such time, ownership of the goods shall remain vested in the Seller.

6.2 For so long as any amount of the price for the goods remains outstanding, the Purchaser undertakes to –

6.2.1 keep the Seller apprised at all times of the exact whereabouts of the goods, including the name and address of any landlord of any premises where the goods may be stored, operated or kept by or on behalf of the Purchaser and to inform any such landlord that the Seller is the owner of the goods;

6.2.2 to maintain the goods in good order and to retain possession and control of the goods at all time and not allow for the removal of the goods from its possession or control;

6.2.3 to maintain insurance, at its cost, for the benefit of the Seller, against any loss of or damage to the goods.

7 TERMINATION AND BREACH

7.1 The Seller may cancel the sale of the goods, in whole or in part, if the Purchaser commits any breach of its obligations to the Seller in terms of these STCs, including any of the events of breach contemplated in clause 7.2, such cancellation being without prejudice to the Seller's right to claim damages.

7.2 The Purchaser is in breach if it:

7.2.1 fails to pay any amount of money due to the Seller on the due date there of;

7.2.2 is sequestrated or placed in liquidation (whether voluntary, compulsory, provisional or final) or placed under business rescue;

- 7.2.3 commits any act of insolvency or what would be an act of insolvency if committed by a natural person;
- 7.2.4 enters into an arrangement or compromise with its creditors generally;
- 7.2.5 fails to satisfy any judgment granted against it within 7 days of the date of judgment.
- 7.3 If an amount owed by the Purchaser to the Seller from any cause whatsoever, is not paid on the due date, then without prejudice to any other rights which it may have, the Seller may –
 - 7.3.1 require that all amounts then owed to it by the Purchaser, from any cause whatsoever shall immediately become due and payable;
 - 7.3.2 retain in its possession any goods of the Purchaser until all those amounts have been paid;
 - 7.3.3 may until payment is made, suspend the carrying out of any of its then uncompleted obligations from any cause whatsoever;
 - 7.3.4 terminate or suspend any credit facilities granted to the Purchaser.
- 7.4 If a sale is cancelled through the fault of the Purchaser, the Purchaser will be liable for any reasonable expenses, cost, loss or damage incurred or suffered by the Seller.

8 PERSONAL INFORMATION

- 8.1 For the purposes of this clause 8, the following words shall have the following meanings –
 - 8.1.1 “applicable laws” –

- 8.1.1.1 all and any statutes, subordinate legislation and common law;
- 8.1.1.2 regulations;
- 8.1.1.3 ordinances and bylaws; and
- 8.1.1.4 directives, standards, guidelines, codes of good practice, circulars, guidance notices, judgments, and decisions of any competent authority, and any governmental body, agency, department and regulatory, self-regulatory and other authority or organisation,

from time to time, compliance with which is mandatory;

- 8.1.2 “personal information” – any information provided to the responsible party by the Purchaser which is of a personal nature and includes but is not limited to, the customer’s identity/registration number, gender, marital status, education, financial and/or employment history, email addresses, physical addresses, location, data billing information and/or personal information as defined in any applicable data protection legislation including the Protection of Personal Information Act 4 of 2013, as amended from time to time (hereinafter referred to as “POPI”) but specifically excluding information which is (i) in the public domain; and (ii) required to be disclosed by any applicable law;

- 8.1.3 “processing” – any operation or activity, whether or not performed by automatic means, concerning personal information, including, but not limited to, the distribution, collection, use, alteration, storage and/or destruction of the personal information; and

- 8.1.4 “responsible party” – the Seller and its directors, officers, agents and/or employees.

- 8.2 The Purchaser acknowledges and agrees that the personal information of the Purchaser supplied to the Seller by virtue of these STCs, the Founding Document and/or any credit application is to be used by the Seller for the purpose of assessing the Purchaser’s creditworthiness, where credit is applied for, and for purposes of entering into these STCs with the Seller generally. The Purchaser hereby confirms

that the information as aforesaid is accurate and complete and undertakes to update such information whenever necessary to ensure the accuracy thereof. The Seller shall not be liable for any inaccuracies relating to the personal information of the Purchaser as aforesaid.

8.3 The Purchaser hereby consents to the responsible party –

8.3.1 processing the personal information;

8.3.2 sharing such personal information with its affiliates and companies that help it to provide its services to the Purchaser and which have agreed to keep the personal information secure, confidential and to only use it for the authorised purpose of enabling the efficient delivery of goods and services by the Seller to the Purchaser;

8.3.3 altering or deleting the personal information to the extent so required by the Purchaser.

8.4 The responsible party is entitled to process and/or disclose the personal information if such processing and/or disclosure is required in order to comply with any applicable law, subpoena, order of court or legal process served on the Seller, or to protect and defend its rights or property.

8.5 The Purchaser warrants to the responsible party that the Purchaser –

8.5.1 is the sole beneficial owner of the personal information; and

8.5.2 has obtained, to the extent necessary, the required consent in order to furnish the responsible party with any personal information of which the Purchaser is not the sole beneficial owner.

9 **PROTECTED CONSUMER**

To the extent that the Purchaser is a protected consumer –

- 9.1 the provisions of this agreement shall not negate the Purchaser's rights in terms of the CPA nor preclude the Purchaser from exercising such rights;
- 9.2 in the event of any conflict between the provisions of this agreement and the CPA, the provisions of the CPA shall take precedence and this agreement shall be interpreted so as to give effect to the provisions of the CPA.

10 INDEMNITY

- 10.1 The parties acknowledge that in terms of section 61 of the CPA, the producer, importer, distributor, retailer, and/or supplier of goods or services, may be jointly and severally liable for any harm caused wholly or partly as a consequence of—
- 10.1.1 supplying unsafe goods;
- 10.1.2 a product failure, defect or hazard in any goods; or
- 10.1.3 inadequate instructions or warning provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor, retailer or supplier, as the case may be.
- 10.2 In respect of clause 10.1 above, each party ("indemnifying party") hereby indemnifies and holds harmless the other party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other party as a result of or arising out of any harm alleged or proven by a consumer himself or herself, or other person contemplated in section 4(1) of the CPA, to the extent that such harm is attributable to the conduct of the indemnifying party or any contravention by the indemnifying party of any applicable law.
- 10.3 It is recorded that the Seller entering into an agreement with the Purchaser in terms of these STCs, is without prejudice to any rights or defences which the Seller may have under and in terms of the CPA or at law in respect of any claims made or

brought against it by the Purchaser and/or any protected consumer or purchaser of any goods supplied by the Seller.

11 JURISDICTION

11.1 If the Purchaser is a resident of or carries on business in the Republic of South Africa then the Seller shall be entitled to institute any proceedings against the purchaser in any Magistrate's Court having jurisdiction, even if the cause of action in question exceeds the jurisdiction of that Court.

11.2 If the Purchaser is not a resident in nor carries on business in the Republic of South Africa, then the Purchaser consents and submits to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg for all purposes arising herefrom.

12 DOMICILIUM AND NOTICES

12.1 The Parties choose *domicilium citandi et executandi* ("domicilium") for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from these STCs as follows –

the Seller – at its registered address;

the Purchaser – the Purchaser at the address specified by it for delivery of the goods and if the Purchaser is to collect the goods from the Seller's premises, then at such address as specified in the Founding Document.

12.2 Each of the Parties shall be entitled from time to time, by written notice to the others, to vary its domicilium to any other physical address.

12.3 Any notice given and any payment made by any party ("the sender") to any other ("the addressee") shall be in writing and if -

12.3.1 delivered by hand during the normal business hours of the addressee at the addressee's domicile for the time being shall be presumed to have been received by the addressee at the time of delivery;

12.3.2 delivered by way of courier service shall be presumed to have been received by the addressee on the 7th business day following the date on which the courier service was placed in possession of such notice.

12.4 Notwithstanding anything to the contrary contained in this clause 12, written notice or other communication actually received by a party shall be adequate written notice or communication to it notwithstanding that the notice was not sent or delivered to its chosen address or email address.

13 **GENERAL**

13.1 These STCs, as read with the credit application, where applicable, and the relevant Founding Document (collectively "the agreement documents") constitute the sole record of the agreement between the parties in relation to the subject matter hereof and supersedes all other agreements which may have been concluded between the parties in relation to the subject matter hereof.

13.2 No party shall be bound by any representation, warranty, promise or the like not specifically recorded in the agreement documents.

13.3 No addition to, variation, or agreed cancellation of the agreement for supply of goods entered into between the parties subject to this version of the STCs (or this clause 13.3) shall be of any force or effect unless recorded in a written document and signed by or on behalf of the parties. For the purposes of this clause 13.3, a "written document" shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act 25 of 2002 of the Republic of South Africa, and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.

13.4 No indulgence which any party ("the grantor") may grant to any other ("the grantee") shall constitute a waiver of any of the rights of the grantor, who shall not

thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

- 13.5 The expiration or termination between the parties of the agreement for supply of goods entered into between the parties subject to this version of the STCs shall not affect such of its provisions as expressly provide that they shall continue to apply after such expiration or termination or which of necessity must continue to apply after such expiration or termination.
- 13.6 The agreement documents shall be governed by the laws of the Republic of South Africa.
- 13.7 All provisions of these STCs are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of these STCs which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of these STCs shall remain of full force and effect. The parties declare that it is their intention that these STCs would be concluded without such unenforceable provision if they were aware of such unenforceability at the time of conclusion hereof.