

STANDARD TERMS & CONDITIONS OF SALE

(which apply to the invoice on the face hereof)



1. The "Seller" means Kutting SA (Pty) Ltd and/or any of the subcontracted/mandated Kutting Group Companies as indicated on the front page of this application, its successors in title and assigns.
2. The "Purchaser" means any company, person, trustee, close corporation or any other legal entity on whose request or on whose behalf the Seller undertakes any business or provides any advice, information or services and includes the signatory of these terms. The "Purchaser" also means the APPLICANT who is an Approved Customer with agreed trade terms and credit facility with the Seller.
3. The "Parties" to this contract mean the Seller and Purchaser.
4. In these conditions "the Goods" means the goods indicated on any forms of the Seller, price lists, quotations, orders or invoices.
5. The Seller hereby sells to the Purchaser the goods described on the Seller's invoice on the terms and conditions as stated herein. Where the Purchaser's own conditions of purchase conflict with this agreement the provisions hereof shall prevail.

6. PAYMENT AND CREDIT TERMS

- 6.1 The Purchaser agrees that any amount reflected in a Tax Invoice shall be due and payable unconditionally (a) Cash on Delivery; or (b) if THE APPLICANT is a Credit Approved Customer, strictly within thirty (30) days from the end of the month in which a Tax Invoice has been issued by the Seller, unless otherwise agreed to in writing by the Seller.
- 6.2 The Seller is not a registered credit provider with the NCR and does not provide credit facilities.
- 6.3 The Seller reserves the right to place accounts over due on hold and on a "Cash on Delivery" basis without prior notice to the Purchaser.
- 6.4 The Purchaser agrees to accept the receipt of electronic format statements, tax invoices, shipment documents (proof of delivery), credit and debit notes from the Seller, which will be transmitted via email, and the following conditions thereto as required by South African Revenue Services and in terms of the provisions of the Value-Added Tax Act for the issuing of tax invoices, credit and debit notes:
 - 6.4.1. Electronic documents (tax invoices, credit and debit notes) will be transmitted and issued to the Purchaser in 128bit encrypted PDF file format.
 - 6.4.2. Both the Purchaser and the Seller shall retain the electronic documents in its original encrypted format for a period of five years from the date of the delivery to which it relates.
 - 6.4.3. The transmitted electronic document will constitute the original statement, tax invoice, credit or debit note. No other tax invoice, credit or debit note will be issued in respect of any specific delivery, unless as a copy of the original document.
- 6.5 All quotations given by the Seller shall be valid for a period of 30 days and shall be based as at the date thereof on delivery charges, ruling costs with regard to wages, materials, freight, applicable insurance, coastal and landing charges, customs, dock and import duties, cartage and rail age, rates of exchange and all other similar encumbrances but, if before delivery of the Goods, there is any increase in respect of the agreed cost or charges then such increase shall be for the Purchaser's account. Although a definite purchase price may have been provided, the Seller reserves the right to increase such purchase price in accordance with its updated price list by notifying the Purchaser of such price increases subsequent to the date of placement for the order. The Purchaser shall be entitled to cancel the order within 10 days of the date of a notice informing the Purchaser of the price increase as aforesaid, failing which the Purchaser shall be deemed to have consented and the agreement of purchase and sale shall be deemed amended in accordance with such price increase.
- 6.6 Unless otherwise stated, all prices shall exclude any Sales Taxes, Value Added Taxes, Levies or other charges by Government, regional or local authority, all costs of freight and transport, applicable insurance, coastal and landing charges, customs, dock and import duties, cartage and rail age, rates of exchange and all other similar encumbrances.
- 6.7 Payment may not be withheld pending the settlement of any claims or disputes. All amounts payable by the Purchaser to the Seller, together with the costs of packaging and delivery, unless specifically stated as being included, will be payable by the Purchaser to the Seller free of exchange, set-off or any other deduction at the Seller's premises.
- 6.8 A certificate signed by a director of the Seller, whose appointment need not be proved, will be prima facie proof for the purposes of any legal proceedings of all monies due by the Purchaser to the Seller as well as the rate of interest payable by the Purchaser to the Seller.
- 6.9 In the event of any overdue or unpaid amount being handed to attorneys for collection, the Purchaser agrees that it will be liable for all costs incurred in the collection of the aforesaid unpaid amount on the scale as between attorney and own client including collection charges and tracing fees.
- 6.10 All payments will be allocated firstly towards fees and charges referred to in 3.9 above, and thereafter to interest and finally to capital.

7. INTEREST

- 7.1. Should any amount not be paid by the Purchaser on the due date then the whole amount in respect of all purchases by the Purchaser shall become due, owing and payable irrespective of the dates when the Goods were purchased and the Purchaser shall be liable to pay interest in respect of amounts unpaid as at the due date compounded monthly at the rate of two (2) % above the prime overdraft lending rate of the Seller's Bank on all the said interest not be paid in full as aforesaid, the same shall be added to the principal sum, and the total shall form the principal debt which shall then bear interest in the manner as set out in the Terms.

8. DELIVERY

- 7.1 The date for delivery of the Goods shall be as and when the Goods become available for delivery, unless a specific date for delivery is accepted by the Seller in writing.
- 7.2 All dates of delivery must be treated as approximate dates only and the Purchaser shall not be entitled to cancel this Agreement, nor bring any claim of whatsoever nature against the Seller as a result of a delay/s in delivery, howsoever arising, save in so far as the Seller has agreed thereto in writing. Whilst every effort will be made to despatch the Goods as advised, the Seller does not guarantee despatch on any specific date and shall not be liable for any damages for failure to effect delivery/despatch timeously for any reason beyond the Seller's control, including but not limited to, inability to secure labour, power, materials, equipment or supplies or by reason of an act of God, war, civil disturbance, riot, state emergency, strike, lockout or other labour disputes, fire, flood, drought or legislation. The Purchaser shall not be entitled to cancel any order by reason of such delay and time of delivery shall not be a material term of this Agreement.
- 7.3 The Seller shall not be liable for any loss or damage of whatsoever nature arising out of delay or failure to deliver. The Seller may select any mode of transport to deliver. Inability of the Seller to fulfil any part of this Contract does not give purchasers the right to cancel the remain of order. Quantity may be sent wholly or in part.
- 7.4 The Seller Shall not be responsible for delay on non-fulfilment of an order because of war, riots, strikes, lookouts, acts of God or accidents, accidents to factories, are house or failure of manufacturers and/or suppliers of component parts or any other cause whatsoever and howsoever arising beyond the Seller's control.
- 7.5 Notwithstanding anything contained herein, the Seller shall be under no obligation to supply or deliver the Goods where the Purchaser is in arrears with any payment to the Seller, howsoever arising. The Seller reserves the right to cancel any order and cease delivery of the Goods in the event of such non-payment.
- 7.6 If within seventy (72) hours after collection or delivery of the Goods at the Purchaser's or his nominee's premises, no claims are received from the Purchaser regarding the quantity of Goods delivered by the Seller, the quantities will be deemed to be correct.
- 7.7 The Seller will be under no obligation to accept Goods returned by the Purchaser. Components that are manufactured to special requirements are non-returnable.
- 7.8 If the Purchaser does not accept delivery or requests in writing the Seller to suspend or delay delivery of the Goods, the Seller reserves the right:
 - to refuse to comply with such non-acceptance request;
 - to comply therewith and, in any event, to claim additional costs and/or damages sustained as a result of such non acceptance or request, from the Purchaser.
- 7.9 Proper delivery of the Goods invoiced shall be deemed to have taken place when the Seller delivers the Goods to the Purchaser's premises or the Purchaser collects from the Seller's premises and any employee of the Purchaser signs the delivery note or invoice.
- 7.10 A carrier engaged by the Purchaser, or on behalf of the Purchaser by the Seller, shall be deemed to be the agent of the Purchaser and the risk of the Goods shall pass to the Purchaser upon delivery to such carrier. The signature of any employee of the carrier on the Seller's invoice or delivery note shall be deemed to be proof of delivery.
- 7.11 Should the Seller, at the Purchaser's request and on the Purchaser's behalf, agree to engage a carrier to transport the Goods to the Purchaser, the Seller shall engage the carrier on such terms and conditions as it deems fit and the Purchaser indemnifies the Seller against all demands and claims which may be made against it by the carrier so engaged and all liability which the Seller may incur to the carrier arising out of the transportation of the Goods.
- 7.12 Where the Seller agrees to consign on a cost insurance and freight (CIF) or a cost and freight (C&F) basis, the Seller or its insurers shall under no circumstances be responsible for losses incurred in transit.

- 7.13** Notwithstanding anything contained herein, the Seller shall be under no obligation to supply or deliver the Goods where the Purchaser is in arrears with any payment to the Seller, howsoever arising. The Seller reserves the right to cancel any order and cease delivery of the Goods in the event of such non-payment.
- 7.14** All Goods sold in terms hereof will remain the exclusive property of the Seller until the purchase price is paid in full by the Purchaser. The risk in the Goods shall pass to the Purchaser upon delivery. The Purchaser shall not dispose of the Goods until such time as the Purchaser has paid the Seller in full for such Goods. Whilst ownership remains vested in the Seller, the Purchaser undertakes to do all that is necessary to ensure that the Goods remain unencumbered and, inter alia, do not become the subject matter of any lien, hypothec, pledge or other encumbrance or judicial attachment from whatsoever cause arising.
- 7.15** The Seller shall not be able to accept return of any Goods sold and delivered. Accordingly, Goods shall not be returned for credit and any deposits paid will be forfeited should the Purchaser purport to cancel any sale.

8. COPYRIGHT

The purchaser acknowledges the Seller's intellectual property rights in the goods and shall not infringe such intellectual property rights.

9. OWNERSHIP & RISK

Notwithstanding that all risk in and to all Goods sold by the Seller to the Purchaser shall pass on delivery, ownership in all Goods sold and delivered shall remain vested in the Seller until the full purchase price has been paid. In the event of a breach of contract by the Purchaser or if the Purchaser is sequestered or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgement granted against it within 7 days of the date of judgement or changes the structure of its ownership, the Seller shall be entitled to take possession of the Goods without prejudice to any further rights vested in the Seller and the Seller is hereby irrevocably authorised to enter upon the Purchaser's premises to take delivery of such Goods without a court order. In such event the Purchaser shall have no claims whatsoever against the Seller including without limitation any claims for consequential loss arising therefrom.

The Purchaser shall fully insure the Goods purchased from the Seller against loss or damage, until the full purchase price has been paid by the Purchaser for such Goods. Pending payment to the Seller for the Goods purchased, all benefits in terms of the insurance policy relating to the insurance of such Goods are ceded to the Seller.

10. WARRANTIES AND INDEMNITY

The Seller warrants the fitness of the Goods in accordance with the standard specifications applicable to the Goods, and subject to the conditions of sale, for a period of 12 months after the delivery of the Goods unless otherwise agreed to in writing. The Seller shall not be responsible for damage to the Goods caused by inadequate storage, tampering or negligence by any persons or abnormal use thereof. The Seller's obligations shall be limited to the supply of replacement goods or parts or the repair, free of charge at the Seller's discretion of any Goods found to be faulty during any applicable warranty period due to faulty design, material or workmanship, provided such faulty goods are returned by the Purchaser to the Seller at the Seller's premises at the Purchaser's cost within the applicable warranty period (or such shorter period as may be applicable). Goods returned under the terms of this clause and found not to be defective due to faulty design, material or workmanship will be returned to the Purchaser at the Purchaser's expense and subject to a charge of 10% of the invoice value to cover testing by the Seller.

Save as aforesaid, the Seller disclaims all liability to the Purchaser in connection with the Seller's performance or the Purchaser's use of the products supplied.

Subject to any specific warranties given by the Seller in terms hereof, the Seller gives no other warranties whether expressed or implied in respect of the Goods sold hereunder, and shall under no circumstances be liable for any direct or indirect damages or losses of whatever nature and howsoever occurring, including but not limited to consequential damages or loss of profits.

The Purchaser hereby warrants that the National Credit Act, 34 of 2005, as amended, does not apply to this Agreement in that:

- the Purchaser is a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold value determined by the Minister in terms of section 7(1) of the Act, which is presently R1 000 000 (one million Rand); or;
- this agreement constitutes a large agreement, as described in section 9(4) of the Act, in that it is a credit transaction in terms whereof the principal debt equals or exceeds R250 000, 00 (two hundred and fifty thousand Rand), in terms of which the Purchaser is a juristic person whose asset value or annual turnover is, at the time the agreement is made, below the above-mentioned threshold value determined by the Minister in terms of section 7(1) of the Act, as contemplated in terms of section 4 of the Act.

No warranty, guarantee, or representations whether express or implied has been made by the Seller or any of its employees in respect of the fitness of the Goods for any particular purpose whether or not that purpose is known to the Seller and no representations of whatsoever nature which may be made by the Seller or any of its employees shall be binding unless reduced to writing and signed by the duly authorised official of the Seller.

Notwithstanding anything else contained herein, the Seller shall not be held liable for damages resulting from events over which it has no control. Such events shall include, but are not to be limited to, Acts of God or Government, wars, strikes, lockouts, civil commotion, embargoes, sanctions, epidemics, crude oil and associated by-products shortages or delays/damages or loss during transit.

Any liability of the Seller for breach of contract will not exceed in the aggregate of damages, costs, fees and expenses capable of being awarded to the Purchaser, the total price paid or due to be paid by the Purchaser for the services rendered or Goods supplied.

The Purchaser shall have no claim for any injury, loss or damage of any kind, suffered by the Purchaser and/or any other person by reason of the Seller failing to carry out its obligations in terms of this agreement and or by reason of any defect in the Goods supplied by the Seller to the Purchaser.

Insofar as any of the Seller's obligations under the contract are carried out by any of its employees, sub-contractors, or subsidiaries, the provisions contained in this paragraph 8 are stipulated for their benefit as well as for the Seller and each of them shall be exempted accordingly.

The Purchaser indemnifies and holds the Seller (including its employees, sub-contractors, or subsidiaries) harmless against all claims of whatsoever nature that may be brought or threatened against the Seller or its employees by any third party arising from or in connection with any breach of the aforementioned warranties by the Purchaser.

The Purchaser indemnifies the Seller against any claims that may be made against the Seller arising from any purported infringement of any patent, trade mark or copyright in respect of the Goods.

Save as aforesaid, all Goods are sold voetstoots and without any warranties whatsoever, whether express or implied.

11. JURISDICTION

This Agreement shall be governed by the laws of the Republic of South Africa.

The Seller shall, at its option and notwithstanding that the amount of its claim exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such Court.

Notwithstanding any applicable clause above, the Seller may, at its sole and absolute discretion, elect to refer any dispute to arbitration to be finally resolved in accordance with the expedited rules of the Arbitration Foundation of Southern Africa (AFSA) by an arbitrator appointed by the Foundation.

In the event of any default by the Purchaser of any provision of this Agreement, the Purchaser hereby consents and authorizes the company to furnish the name, credit record and repayment history of the Purchaser to any credit bureau as a delinquent debtor, it is also agreed that the Seller may use any means to verify the information contained in this document.

12. TERMINATION

Without prejudice to any other rights which the Seller may have in terms of this contract or at law, the Seller shall be entitled to cancel this agreement or any part thereof without notice if:

- the Purchaser commits any breach of any of the terms and conditions of this agreement, all of which are deemed material; or
- being an individual, the Purchaser is provisionally or finally sequestered or surrenders his/her estate;
- being a partnership, the partnership is terminated;
- being a company or close corporation, such entity is placed under provisional or final order of liquidation or judicial management;
- any judgment is granted against the Purchaser;
- any interdict is granted against the whole or any portion of the Purchaser's assets;
- the Purchaser makes or attempts to make any composition or arrangement with its creditors;
- the Purchaser advertises its intention to sell or dispose of its assets or any portion thereof save in the ordinary course of business;
- the Purchaser ceases to carry on business;
- the Purchaser furnishes the Seller with any information, returns, budgets or accounts which are incorrect or misleading.

13. GENERAL

The signatory hereof for the Purchaser, when acting in a representative capacity warrants that he/she has the authority to bind his/her principal to this agreement and furthermore bind himself/herself as surety and co-principal debtor in solidum under renunciation of the benefits of division and excussion for all amounts owing hereunder by the Purchaser to the Seller.

No extension of time or waiver or relaxation of any of the provisions or terms of this agreement shall operate as an estoppel against the Seller in respect of its rights under this agreement, nor shall it operate so as to preclude the Seller thereafter from exercising its rights strictly in accordance with this agreement.

The parties choose as their respective domicilium citandi et executandi, for all purposes the addresses that appear on the front of the order/invoice.

The Purchaser shall not cede its rights nor assign its obligations.

The Seller shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of these conditions of sale including all terms and conditions to any third party without prior notice to the Purchaser.

This agreement constitutes the whole agreement between the parties in regard to the subject matter thereof and no warranties or representations of any nature whatever other than set out in this agreement have been given by any of the parties. No agreement of variance hereof shall be effective unless reduced to writing and signed by both the Seller and the Purchaser.

Each of the terms herein, shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.

ACCEPTANCE OF TERMS AND CONDITIONS OF SALE:

The terms and conditions in this document apply's to all the Following Entities.

- Kutting SA (PTY) (LTD)
- Kutting North West (PTY) (LTD)
- Kutting Limpopo (PTY) (LTD)
- Kutting Mpumalanga (PTY) (LTD)
- Kutting Western Cape (PTY) (LTD)
- Kutting Northen Cape (PTY) (LTD)
- Kenja Group (PTY) (LTD)
- Mohlosane hydraulics (PTY) (LTD)
- SKS (PTY) (LTD)
- Hydraulicworld (PTY) (LTD)
- Hydraulicworld Middleburg (PTY) (LTD)
- Kalkfontein hydraulics and mining supplies (PTY) (LTD)
- Hydraulics mining supplies (PTY) (LTD)
- Mooinooi mining supply (PTY) (LTD)

And this applies to all/any other companies that is part of the Kutting Group of Companies

Please be advised that by accessing, viewing, or continuing to read this document, you signify your understanding and acceptance of the terms and conditions contained within. Should you not agree with these stipulations please contact us on the following

011 392 6727

Ksa-Finance@kutting.co.za