

TERMS AND CONDITIONS OF SALE

1. SCOPE OF APPLICATION

All products supplied and service offered by Mould and Die Solutions, herein referred to "MDS", to the Customer shall be governed strictly and exclusively on the basis of these terms and conditions of sale. These terms and conditions supersede any terms and conditions stipulated by the customer irrespective of that stipulated on a Customer's order. MDS may change the content of the Terms & Conditions of Sale at any time without prior notice. It is the Customer's responsibility to check regularly whether the Conditions have been changed. By placing an order with MDS the Customer agrees to its Terms and Conditions of Sale.

2. THE GOODS

Goods are defined as the subject matter of any offer made by MDS, and subsequent order placed by the Customer, whether verbal or in writing.

3. PRODUCT QUALITY AND SPECIFICATIONS

3.1 Unless otherwise specifically agreed between parties in writing, the quality of the goods is determined strictly and exclusively in accordance with MDS's product description and specifications, as updated by MDS from time to time and which have been made available to the customer.

3.2 MDS does not warrant the suitability for any specific purpose of the goods, and in so far as permitted under the Consumer Protection Act, any product specifications or other information provided by MDS shall not relieve the Customer of the need to conduct his own investigations and test as to the suitability and application of the goods for any particular purpose. The Customer shall have no claim against MDS if the goods are provided in accordance with the product specifications thereof, but are not suitable for any particular purpose not specifically agreed to in writing by MDS before the goods were supplied.

3.3 All products are sold subject to the warranties provided by the manufacturer or supplier.

4. PRICE

4.1 The purchase price of any goods or services supplied or rendered by MDS shall be the price reflected in a written quotation sent by MDS to the Customer. Prices are quoted exclusive of standard rate VAT.

4.2 All quotations are issued in good faith and will be honored for the period specified on the quotation, errors and omissions expected. Upon expiry, they become null and void.

4.3 MDS reserves the right to change its prices from time to time as it deems fit. Upon acceptance of the quotation, either verbally or in writing, the order becomes legally binding.

5. ORDERS

5.1 Orders shall constitute offers to obtain MDS' products or services at MDS' prevailing price or fee as quoted. Acceptance of the order shall be indicated by MDS through the delivery of goods and/or provision of the services, or by the written acceptance or confirmation of the order.

5.2 Goods will be available for collection from our offices as advised. Alternatively customers may elect to make use of a reputable carrier company elected by MDS. MDS shall engage the carrier on fair, just, and reasonable terms and conditions. Orders will be subject to a carriage charge that depends on the weight of the order and the location of delivery. MDS may choose to waive or subsidise the carriage charge at their discretion only. Carriage charges shall reflect on the quotation. Customers are responsible for having someone at the delivery address to sign for and accept the delivery.

Note: On rare occasions deliveries are delayed by unforeseen circumstances. (strikes, vehicle hi-jacking, incorrect routing etc.) Once MDS has handed parcels over to the elected courier company, these delays are out of MDS's control. Whilst every effort is made to facilitate a speedy correction of the problem, MDS cannot be held accountable for any such delays. By electing to use MDS's chosen service provider the customer agrees not to hold MDS accountable for these delays- no claims based on these delays will be entertained. However, should goods be lost or destroyed whilst in transit prior to delivery, MDS agrees to replace the goods in the quickest manner possible.)

5.3 If the Customer fails to take delivery of the goods ordered due to a direct / indirect act/omission by the Customer, its employees or agents, then the risk in the goods shall immediately pass to the Customer and the Customer shall be liable to pay MDS the reasonable costs of storing, insuring and the handling of goods until delivery takes place, as well as any additional charges for re-delivery.

6. PAYMENT

The following payment terms are available at the discretion of Mould & Die Solutions:

6.1 Credit

- Credit terms may be offered to Customers who show an acceptably high turnover combined with notable creditworthiness.
- The Customer understands that MDS' decision to grant credit facilities to the Customer is at the sole discretion of MDS and is subject to MDS performing a credit check on the Customer
- A completed credit application needs to be completed by the customer and approved by MDS, whereupon the customer will be advised in writing as to the status of their application and credit limit granted.
- Payment terms are strictly 30 days net from date of statement, with no deductions or exceptions.
- Accounting periods close on the last working date of the month, and all invoices issued to the customer up until that date are deemed to be due within 30 days.

- Late payments may attract interest charged at the maximum legal rate. In addition, accounts will be placed on hold should payments not be timely received. Credit levels and payment terms may be adjusted periodically based on actual payment history and purchasing requirements.
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- If there are reasonable doubts as to Customer's ability to pay, or if Customer is in default of its payment obligations, MDS may, subject to further claims, revoke agreed credit periods and make further deliveries dependent upon the provision of sufficient security or payment by the Customer.
- Orders over certain values may be subject to a down payment at the discretion of MDS, dependent on the perceived risk.
- Special Imports may attract different payment terms – please see section 6.3
- MDS reserves the right to withdraw any credit facilities at any time without prior notice, and the nature and extent of such facilities shall at all times be in MDS' sole discretion.
- Should a customer default on the agreed credit terms, outstanding bills will be handed over to MDS's attorneys for collection. All legal fees associated with this will be for the customer's account.

6.2 COD Accounts

Unless a customer has a 30 day account in good standing, payment is due prior to goods being dispatched.

Payment methods:

- Electronic Funds Transfer - Proof of payment is to be sent to MDS either by fax or email.
- Credit Cards: Visa and Master card are accepted.
- Cash: Pick-up customers are welcome to pay in cash and may request a receipt.

6.3 Special Imports

The following order types are deemed a "Special Import":

- Certain high value product categories (e.g. Collapsible Cores, Expandable Cavities, Hot Runner items)
- Non-Stock items specially imported upon receipt of an order.
- Stock Items in unusually high quantities
- Products specially manufactured or assembled for a customer (e.g. Mould Bases, Vega Cylinders, items produced to own specification, or standard products currently "out of stock" at our suppliers)

- Special Imports attract unique payment terms irrespective of whether any credit agreement is in place. Payment terms will be listed on the quotation/customer offer.
- These goods will not be ordered or delivered unless payment terms are met in full.
- Special Imports are NOT returnable for credit or refund (unless proven faulty)
- Cancellation of orders once placed will be permissible only if agreed to by MDS AND their suppliers. Any costs incurred by either MDS or their supplier will be for the Customer's account, and shall be paid immediately on presentation of an invoice.

6.4 In the event that any agreement between the Customer and MDS is governed by the National Credit Act (NCA), then the interest payable by the Customer shall be the interest rate provided for in the NCA.

6.5 The Customer shall not be entitled to claim set-off for deduction in respect of any payment due by the Customer to MDS for goods or services supplied.

7. OWNERSHIP & RISK

7.1 Notwithstanding that all risk in and to all goods sold by MDS shall pass to the customer on delivery and irrespective of whether MDS may not be the distributor of the goods, ownership of all goods sold and delivered shall remain vested in MDS until the purchase price has been paid in full. In the event of a breach of these terms and conditions by the Customer, or if the Customer is sequestrated or placed under liquidation or judicial management or commits any act of insolvency or enters into compromise with its creditors or fails to satisfy a judgment granted against it within 7 date of the date of judgment or changes the structure of its ownership, MDS shall be entitled to take possession of the goods without prejudice to any further rights vested in MDS, and is hereby irrevocably authorized to enter upon the Customer's premises to take possession of such goods without an order of court.

7.2 The Customer shall have no claim against MDS for Damages caused due to loss of profits or otherwise occasioned by the removal of goods from the Customer's premises as aforesaid notwithstanding that such removal was effected without an order of court.

7.3 Goods in possession of the Customer bearing MDS name, trademarks and labels, or those supplied by MDS shall be deemed to be those for which payment has not yet been made, and should any breach of these terms occur, may be repossessed by MDS as set forth in paragraph 8.1.

7.4 MDS shall be entitled to identify its goods merely by way of packing and other distinguishing features, including proof of supply. MDS shall not be obliged to identify the goods by way of serial numbers or any other form of intricate identification.

8. CANCELLATION OF ORDERS

8.1 Cancellation of orders once placed will be permissible only if agreed to by MDS and, if applicable, their suppliers. If goods are already in transit, then no cancellation shall be allowed. A 10% cancellation fee may apply, as well as any other costs incurred by either MDS or their supplier.

8.2 Cancellation of "Special Imports" (See 6.3) may not be possible if the process to supply is already underway.

8.3 In the event that the Customer rejects delivery of goods ordered, where the goods are not damaged or defective and there is no reasonable explanation for the rejection of the goods, MDS may charge the Customer a reasonable cancellation fee, being 20% of the selling price, as well as any other costs incurred in procuring and delivering the goods, UNLESS the goods were a "Special Import", in which case the full value as invoiced will become payable as per the original agreement.

9. CUSTOMER'S RIGHTS REGARDING ALLEGEDLY DEFECTIVE GOODS

9.1 The Customer must notify MDS in writing of any defects within 10 (ten) days of delivery of the goods.

- 9.2 If the goods are supplied incorrectly or defective and the Customer has duly notified MDS in writing in accordance with 12.1 above, and MDS has agreed that the goods are defective/incorrect, then MDS has the right to either remedy the defects, supply the Customer with replacement goods, or refund the customer without accepting any liability arising out of such defects.

10. RETURNED GOODS

If goods sold by MDS are NOT defective or supplied incorrectly (as per clause 9 above), then the following shall apply:

- 10.1 The goods sold by MDS are only returnable at MDS's sole discretion
- 10.2 Unless alleged to be unsuitable or defective at the time of use as contemplated in Clause 9 above, all goods returned must be complete, clean, undamaged and in their original packaging.
- 10.3 The value of credit or refund for any goods will be calculated as per the original invoice less 10% handling charge. The original courier charges will not be refunded.
- 10.4 Goods must be returned within ten (10) working days of the original invoice
- 10.5 A copy of the invoice must accompany the goods
- 10.6 Goods need to be returned at the customer's expense to the office from which they were dispatched.
- 10.7 Credit notes will only be processed once the goods are in possession of MDS, and once a suitably qualified representative of MDS has evaluated them.

11. LIABILITY

- 11.1 MDS shall not be liable to the Customer in any manner in the event of impossibility or delay of MDS supply due to circumstances entirely beyond the control of MDS, and where MDS informed the Customer as soon as it became aware of impossibility or delay in the supply.
- 11.2 MDS shall not be liable to the Customer for goods delivered in good order and thereafter damaged in the possession of the Customer due to improper care or storage, use or application, contrary to any instructions and/or warnings provided or available for the goods, or any other direct or indirect act or omission by the Customer, its employees or agents resulting in the goods being damaged or causing harm to any person or damaged to any property.
- 11.3 MDS shall not be liable for any harm caused by the goods to a third party if the harm caused to the third party is due to the Customer, its employees or agents providing inadequate instructions or warnings in respect of the goods to the third party.

12. BREACH

Should the Customer fail to make any payment of any amount due on due date, or breach any of the other terms and conditions contained herein (all of which are deemed material) or commit an act of insolvency, or allow a judgment to be entered against it, or be provisionally or finally sequestered, or in the opinion of MDS has a cash flow problem or other financial or commercial difficulty which may in any way whatsoever negatively impact upon the ability of the Customer to comply with any of its current or future obligations in terms of this or any other contract of the Customer with MDS, then MDS without prejudice to and in addition to its legal remedies shall be entitled to close any 30 day account or unfulfilled part thereof; or to claim payment of the full price or the balance thereof as the case may be, and failing such payment, MDS is specifically authorized to repossess all unpaid goods in the possession of the Customer.

13. LEGAL PROCEEDINGS

- 13.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, these terms and conditions and all modifications and amendments hereto, shall be governed by and decided upon and constructed under and in accordance with the laws of the Republic of South Africa.
- 13.2 The customer hereby submits to the jurisdiction of Magistrate Court, notwithstanding that the amount of MDS's claim may exceed the jurisdiction of the Magistrates Court.
- 13.3 A certificate issued and signed by any member or manager of MDS, whose authority need not be proved, in respect of any indebtedness of the Customer to MDS or in respect of any other fact, including the fact that such goods were sold and delivered, shall be prima facie evidence of the Customer's indebtedness to MDS and prima facie evidence of such other fact and prima facie evidence of the delivery of the goods.
- 13.4 The Customer's physical address as given on the delivery address for the invoice shall be recognized as the Customer's address for receipt of notice and execution of legal documents for all purposes in terms of this agreement whether in respect of the serving of any court process, notices the payment of any amount or communication of whatever nature. Mould and Die Solutions cc chooses its domicilium as Unit 98E, Platinum Junction, School road, Millerton, Cape Town.
- 13.5 All legal costs, including attorney/own client costs, tracing agent's fees and collection charges which may incur in taking any steps pursuant to any breach by the or enforcement of these terms and conditions shall be the liability of the Customer.

14. ALTERNATIVE DISPUTE RESOLUTION

- 14.1 Where a statutory or accredited ombudsman has jurisdiction in terms of the Consumer Protection Act, all disputes falling under the jurisdiction of said ombudsman shall be referred to the ombudsman for a recommendation.
- 14.2 Where there is no ombudsman as contemplated in 14.1, and the dispute is one under the Consumer Protection Act, an Alternative Dispute Resolution Agent referred to therein shall be appointed to mediate the dispute or, by agreement between the Customer and MDS, the dispute will be referred to Arbitration as contemplated in 14.3 to 14.6 below.

14.3 MDS and the Customer may agree to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall be final and binding on both MDS Solutions and the Customer and shall only be subject to Review by the High Court if one of the established grounds for review exist and under no circumstances shall the arbitrator's decision be appealed to the High Court or any other body.

14.4 When MDS and the Customer have agreed to refer the matter to arbitration in terms of 14.3 above, in the interests of a speedy and cost effective resolution of the dispute, a short form or expedited form of arbitration shall be adopted and the rules of the arbitration shall not require that any party prepare and file any documents in a form identical to or similar to that of Court pleadings and Heads of Argument. This informality shall not detract from the onus to commence and the burden of proof which shall follow the High Court practice in this respect.

14.5 The arbitrator must be a person agreed upon by the parties and shall at least hold a tertiary qualification in the technical field of the dispute, except where the dispute relates predominantly to the interpretation of this agreement or any law, regulation, or by-law, in which case the appointed arbitrator shall have at least 10 years practical experience as an attorney in private practice or as an advocate of the High Court.

14.6 Failing the agreement on the appointment of an arbitrator or the rules of the arbitration, an arbitrator must be appointed by the Arbitration Foundation of South Africa, who shall then finally resolve the dispute in accordance with the rules of the Arbitration Foundation of South Africa.

15. GENERAL

15.1 This contract represents the entire agreement between MDS and the Customer and shall govern all future contractual relationship between MDS and the Customer and shall also be applicable to all debts which the Customer may owe to MDS prior to the Customer's acceptance hereof.

15.2 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, shall be of any force or effect unless reduced to writing and signed by the Customer and a director of MDS. No agreement purporting to obligate MDS to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions, shall be of any force or effect, unless reduced to writing and signed by the Customer and a member of MDS.

15.3 The Customer acknowledges that no warranties, representations or guarantees have been made by MDS or on behalf of MDS which may have induced the Customer to sign this agreement.

15.4 No relaxation or indulgence which MDS may give at any time in regard to the carrying out of the Customer's obligation in terms of any contract shall prejudice or be deemed to be a waiver of any of MDS's rights in terms of this agreement.

15.5 The Customer shall not cede its rights nor assign its obligation in terms hereof without MDS prior written thereto.

15.6 MDS shall at any time in its sole discretion be entitled to cede all of its rights in terms of this application for credit facilities including all terms and conditions to any third party with prior notice to the Customer.

15.7 The Customer undertakes to notify MDS in writing within a period of 7 (seven) days of any change of address, change in ownership, name change or any changes in information as set out on the invoice, and shall likewise inform MDS of any such changes affecting MDS.

15.8 The headings in this document are included for convenience only and are not to be taken into account for the purpose of interpreting this agreement.

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

15.10 Provided that they do not conflict with any of the terms and conditions contained herein, such as general practices, terms and conditions applicable to the industry in which MDS conducts business shall be applicable to all dealings between MDS and the Customer.

16. FORCE MAJEURE

To extend any incident or circumstance beyond MDS's control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction or delays in transportation, breakdown of manufacturing equipment, fire, explosion, acts of Government), reduces the availability of goods from the sources from which MDS receives the goods such that MDS cannot fulfill its obligation under this agreement, and MDS has informed the Customer accordingly and without delay, MDS shall:

- (i) Be relieved from its obligation under this agreement to the extent that MDS is prevented from performing such obligations and
- (ii) Have no obligation to procure goods from other sources. If the aforementioned occurrences last for a period of more than 3 (three) months, MDS is entitled to withdraw from the agreement without the Customer having any right to compensation.

17. DISCLOSURE OF PERSONAL INFORMATION

17.1 The Customer understands that the personal information given in any credit application form is to be used by MDS for the purpose of assessing the Customer's credit worthiness. The Customer conforms that the information given is accurate and complete. The Customer further agrees to update the information supplied, order to ensure the accuracy and completeness of the information given, failing which MDS will not be liable as a result of any inaccuracies or lack of completeness of information.

17.2 Mould and Die Solutions has the Customer's consent at all times to contact and request information from any persons, credit bureaus or business, including those mentioned in any credit application form and to obtain any information relevant to the Customer's credit assessment, including but not limited to, information regarding the amounts purchased from the Suppliers per, length of time the Customer has dealt with such supplier, type of goods or services purchased and manner and time of payment.

17.3 The Customer agrees and understands that information given in confidence to Mould & Die Solutions by a third party on the Customer will not be disclosed to the Customer.

17.4 The Customer hereby consents to and authorises Mould and Die Solutions at all times to furnish credit information concerning the Customer's standing with MDS to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with MDS.

18. NATIONAL CREDIT ACT

In the event that the National Credit Act ("the NCA") applies to any transaction between MDS and a Customer, then,

18.1 If any provision of these terms and conditions are in conflict with the NCA, such conflicting terms and conditions shall not apply;

18.2 MDS and the Customer shall conclude an agreement in compliance with NCA and MDS shall not be obliged to deliver any goods or provide any services until such agreement is signed;

18.3 The costs and charges which MDS is entitled to recover from the Customer shall be the maximum allowed by the NCA and MDS shall be obliged to comply with the NCA before instituting any legal proceedings against the Customer.

19. NOTICES

19.1 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee as stipulated on the invoice.

19.2 Any notice to a party sent by prepaid registered post (by airmail if appropriate) in a correct addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved).

19.3 Any notice to a party delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have received on the day of delivery.

20. PRIVACY POLICY

We do not disclose information about our customers to any third parties, other than when order details are processed as part of the order fulfillment. We will store the personal details that you provide us in accordance with our rigorous data storage policy so that we can provide you with information about products, services and developments in the field. In submitting your order, we infer that you agree for us to store your data and use it for the above mentioned purposes. You can contact us by email, telephone or in writing if you decide in the future that you would rather not receive such information. We do however have to keep some of your personal data for an indefinite period in order to comply with regulations regarding the auditing of our accounts.