

TERMS AND CONDITIONS

1. All goods are sold by the company only in accordance with the standard specifications of such goods, and subject to these Terms and Conditions of Sale, and no contrary stipulations by the buyer shall be valid unless specifically accepted by the company in writing and then only to the extent of such acceptance.
2. Each order shall be a separate contract governed by these Terms and Conditions of Sale.
3. The goods in case of each sale and each order placed are sold with a one-year guarantee. In Case of misuse, abuse or non-maintaining or not sufficient maintaining of the equipment the guarantee shall become void. The warrantee will furthermore exclude fair wear and tear.
4. It is the sole responsibility of the customer to determine whether the goods required by the customer are suitable for the purpose for which the customer intends using them. The company gives no warranty express or implied, concerning the suitability of the goods supplied for any purpose whatsoever. The company shall not be liable for any direct, indirect, consequential or other loss to third parties arising out of any errors in carrying out a contract or in the application of the goods, or by delivery or by unsuitability of goods for use as intended.
5. Any advice or assistance given, whether concerning processing or application possibilities relating to the company products, technical recommendations or similar indications, plant, machinery or otherwise is given in good faith but without obligations and subject specifically to the exclusion of any liability whatsoever on the company's part, or on the part of the company's employees for damages whether direct or consequential, or otherwise, howsoever arising. All data, statements and recommendations made are based upon information believed to be reliable but are made without any representation or guarantee or warranty of accuracy. The company's goods are sold on the condition that the customer will examine, in relation to the company recommendations the uses to which company goods are to be put in order, to assess their suitability for such uses before adoption or application.
6. No drawings or layout-drawings will be provided free of charge.
7. If any drawing issued by Windmeul Engineering is used for any purpose other than for the specific tender it shall be considered to be prejudice to the rights and interests of Windmeul Engineering and the client will be subjected to prosecution.
8. Any work done that does not fall specifically under the agreed tender but is requested to be completed by the customer will be done on a cost plus basis which means actual cost plus mark-up on materials plus the going rate for labour by artisans as well as engineers.
9. All tenders are valid for 30 (thirty) days.
10. All prices though are subject to fluctuation of goods bought from suppliers and those goods will be debited at the prices applicable on the day of dispatch. An increase in cost between the date of the quotation and the date of the delivery will entitle the seller to increase the price by an amount sufficient to compensate it for such additional costs.

11. The company will take reasonable steps in acquiring the quoted goods, but is the supply thereof subject to the availability of the goods from the company's suppliers.
12. Orders are only binding on the company if in writing.
13. Unless customer's written orders specifically state a date on or before which delivery is required, and such delivery date is confirmed by the company in writing, delivery of the goods will be effected as and when the goods can be made available by the company to the customer and the company is entitled to execute the delivery of orders in instalments.
14. Unless otherwise stated the prices are ex-works and the customer shall take delivery of the goods as soon as they are either placed at the customer's disposal or tendered to the customer and the customer shall bear and be liable for all charges and risks in and to and in respect of the goods from the time when they have been so placed at the customer's disposal or tendered to the customer provided that the goods have been clearly set aside or otherwise identified as the contract goods.
15. The company shall choose routes and modes of transport. The customer's wishes shall be taken into account as far as possible, but in the event that the same should result in the incurrence of additional costs, said costs shall be for the account of the customer.
16. In the event that the goods are to be transported by an independent carrier, the carrier shall be the customer's agent and delivery to the carrier shall be deemed to be delivery to the customer. The company shall not be liable for any loss or damage to the goods after the carrier has received such goods.
17. It is condition of each contract that notwithstanding delivery of the sold goods and the transfer of the possession thereof to the customer, ownership of the goods shall remain vested in the company until the whole of the said purchase price shall have been paid. The risk in such goods shall however, pass to the customer immediately on delivery. Nothing in this clause shall entitle the customer to return or tender return of the goods to the company nor shall it affect in any way the customer's obligation to pay for the goods in full on due date. The customer shall not refuse deliveries by the company or its duly authorised agent unless by prior written agreement by the company.
18. Should any deliveries be delayed by any circumstances whatsoever outside the company's control, the times for such deliveries shall be extended until the lapse of a reasonable period after the cessation of the said circumstance and the company shall be liable for any loss or any damage caused by such delay.
19. Short deliveries will be made up and damaged or defective goods replaced by the company to the customer if –
 - 19.1 they are noted by the customer at the time of the delivery thereof on the delivery note;
 - 19.2 a claim is made by the customer on the company in writing within three days from the date of the delivery of the goods;

- 19.3 in the case of short deliveries the customer is able to demonstrate to the company's satisfaction the company has failed to deliver the quantity of goods ordered;
- 19.4 in the case of goods claimed to be damaged or defective, such goods must be returned to the company within a period of seven days from the date of delivery and that the company satisfies itself that such goods were in fact damaged or defective at the date of delivery. Furthermore, in the case of goods claimed to be damaged or defective, the company at its option may elect not to replace said goods, but to take said goods back and refund to the customer the purchase price paid in respect thereof. Any liability by the company to the customer in respect of short deliveries and/or damaged or defective goods is limited to an amount not exceeding the invoice value of the order to which the loss relates. Save as aforesaid the company shall not incur any liability whatsoever in respect of short deliveries or damaged or defective goods nor any loss of damage or consequential loss or damage, which the customer may claim was caused thereby.
20. The signature appearing on the company's delivery note of that official/employee/agent
Or representative of the customer who received the goods shall be deemed to be confirmation of the complete delivery of the goods in all respects and that same were delivered in good order and condition. The signatory that signs the company's delivery note shall be duly authorised to accept delivery of the goods by the company.
21. The company shall be relieved from any payment owing of its obligations towards the customer and more specifically the obligation to deliver any goods due, if the customer is in arrears with any payment owing to the company from any cause whatsoever. If the customer should commit an act of insolvency, be placed in provisional or final liquidation, be placed under provisional or final judicial management, be sequestered (whether provisional or final), have a judgement recorded against the customer's name and fail to apply for rescission of this judgement of liquidate same within ten days of the granting of such judgement against the customer. In the event of any of the aforesaid happening, the company will be entitled to cancel any sale or order or to stop further deliveries and to immediately institute action against the customer for payment of any amounts then owing whether same is due and payable or not.
22. Under no circumstances whatsoever shall the company at any time be liable for any claims for consequential lose or damage which may be sustained by the customer or for any claims made by any other person whatsoever in connection with the contract and of the goods, and the customer hereby further indemnifies the company against all such claims.
23. The customer shall not be entitled to cede or assign its rights or obligations in terms of the contract without the written consent of the company first being obtained.
24. The customer agrees that the company may cede or transfer its rights under the contract and its ownership in the goods sold. The customer agrees to the acceptance of cession of the contract by the cessionary or the transferee of the benefits arising out of this contract.

25. All payments made by the customer to the company shall be made at the company's head office unless otherwise specified and agreed in writing. Payments are due in 30 (Thirty) days from date of statement. In the event of the customer failing to pay any amount due by it in terms of this agreement, on the due date, it shall then be obliged to pay the company interest at the prime rate charge by the company's bankers, ABSA Ltd. to it, from time to time plus 2% from the date when payment became due to date of final payment, or such other rate as may be agreed between the parties in writing, from time to time.

Furthermore should the company refer the matter to its attorneys for collection of any overdue monies or for any claims whatsoever, the customer shall bear and be liable for all legal charges thus incurred by the company as between the company and its own attorney and shall be further liable for collection charges on such overdue payment payable by the company to its attorneys and for any tracing agents charged and other disbursements necessarily incurred by the company or its attorneys in tracing or endeavouring to trace the customer or the goods, if the customer changes its address or removes the goods without notice to the company and in collection and/or endeavouring to collect overdue monies or the goods.

26. In the event of projects running for periods longer than 1 (one) month, progress payments can be requested, in that case be invoiced and would be payable within 30 (thirty) days from date of statement.
27. Windmeul Engineering can request a deposit which would be invoiced and be payable within 7 (seven) days from date of invoice. No work will commence until such deposits are not reflecting on our bank account of sufficient proof thereof presented.
28. Unless otherwise agreed in writing where orders are part delivered, payment of each such part of an order shall be due against delivery of such part.
29. If the company in respect of an order or a contract has confirmed no definite price, then the price of the goods shall at all time be subject to the company's ruling price list at the time of delivery.
30. Goods may only be returned by the customer to the company, for credit, by prior written arrangement and must be accompanied by the relevant delivery note or reasonable facsimile thereof. A reasonable handling charge will be levied on the invoiced price of the goods so returned.
31. The company may at any time during the subsistence of any contract, appropriate and apply, in its discretion any money received by the customer either to any liability under this contract or any other liability of the customer to the company at the time of such payment.
32. In the event of termination of the contract whether at the insistence of the customer or the company or of both the customer and the company, the customer shall not be entitled to any allowance, credit, return or set-off of any payment or deposits previously made which shall be forfeited to and retained by the company without prejudice to the rights of the company to recover the damage thereby suffered.
33. Whilst the customer is indebted to the company in respect of the purchase price of the goods:

- 33.1 The customer shall, at its own expense, keep the goods properly insured for their full value against loss or damage through fire, accident, theft and other risks designated by the company.
- 33.2 The customer shall at no time, without the written consent of the company, store or keep said goods on any premises other than the premises where the customer conducts its business and upon the customer applying for such written consent, the customer shall be entitled to take possession of the said goods and store same and recover from the customer reasonable charges or rental or other consideration for so doing.
- 33.3 The customer shall be responsible for all losses of or damage to the goods and the company shall not be liable or in any way responsible for any loss or damage thereto arising from any cause whatsoever, and the customer shall give the company immediate notice in writing of any loss or damage to the goods.
- 33.4 The customer shall not do anything, which renders the goods liable to attachment, encumbrance hypothec or any lien. In the event that a third party seeks to or asserts and/or substantiates any rights and/or claims over or into any goods of the company, the customer shall be obliged to immediately notify or same in writing.
34. Should the customer default in the punctual payment on due date of the purchase price in respect of any goods or default in the punctual observance or performance of any of its other obligations or undertakings then the company shall have the right to cancel the contract in respect of the sale of any goods not yet delivered and to demand that the customer forthwith return, at its own expense any goods already delivered to the customer and not paid for or not fully paid for to the company and should the customer fail to do so then the company shall have the right to apply to any competent court for an ex parte order for repossession of such goods. Any such action taken by the company shall be without prejudice to the company's rights to recover all loss or damage sustained by the company, whether in respect of damage and/or repairs required to be made to the goods so recovered or otherwise.
35. Where the goods are processed further the use of the company's trademark in connection with the end product is subject to the company's express written agreement. This shall apply to all processing stages. The company will endeavour to comply with the trademark laws. Any designs, manufacturing and/or related information supplied by the company remains the property of the company, and may the customer only use such designs, manufacturing or related information with the company's written permission, failing which the customer will be held liable for damages or loss of income.
36. The customer bears all devaluation risks in the goods from the time the order is placed until the customer makes payment to the company, whether devaluation may occur before or after delivery to the customer.
37. The customer consents in terms of section 45(1) of the Magistrate's Court Act No. 32 of 1944 as amended, in respect of any proceedings which maybe instituted against it by the company arising out of or in connection with the contract, to the jurisdiction of any magistrate's court which at the time of such proceedings has jurisdiction over it in terms of section 28(1) of the said Magistrate's Court Act. Notwithstanding the foregoing the customer specifically agrees that the company may

in its discretion disregard the foregoing consent to jurisdiction and institute any proceedings arising out of or in connection with the contract in the High Court of South Africa having jurisdiction.

38. A certificate under the hand of any Director, any Manager or Secretary of the company or of any branch of the company stating that any particular sum or sums are due and payable by the customer to the company in terms of this contract or stating, the amount of any such costs, charges or expenses taken into account in determining the amount of any claim in favour of the company against the customer in terms of the contract shall be admissible in any court of law and at face value "prima facie" proof of the contents thereof and shall constitute a liquid document for the purpose of summary judgement or provisional sentence proceedings.
39. No relaxation or indulgence granted by the company shall be deemed to be a waiver of any of the company's rights in terms hereof nor shall any such relaxation or indulgence be deemed to be a novation of any terms and conditions of this contract. The contract constitutes the entire contract between the parties. No agreement at variance with the terms and conditions of this contract shall be of any force and effect unless in writing and signed by the parties hereto.
40. No failure by the company to perform or execute any of its obligations in respect of any order placed for the supply of goods in regard to which these conditions shall apply shall constitute a breach of its obligations to the customer for which the company will be liable. If the failure arose through force majeure including but not limited to, acts of God, war, strike, boycott, labour disputes, embargo sanctions or changes in law, regulations, ordinances or the like made by any competent authority or any other circumstances wholly outside the control of the company.
41. The company has made no warranty or representation to the customer, which induced the placing of the order in respect of which these conditions are applicable, save as are contained herein.