



TERMS AND CONDITIONS – TENDER, QUOTATION AND SALE

GENERAL TERMS AND CONDITIONS

1. TERMS AND CONDITIONS TO APPLY

Spec-Cast Wear Parts (Pty) Ltd, registration number 2009/019352/07 named herein ("SWP") and the addressee named herein ("Buyer") agree that these terms and conditions ("Sale Conditions") shall apply to the supply of all goods sold and services provided ("Goods") by SWP to the Buyer despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Buyer to SWP. These Sale Conditions supersede those in any previous form of SWP's sale conditions and may only be varied or added to by written agreement signed by an authorised representative of both the Buyer and SWP. When attached to a SWP Credit Application these Sale Conditions supersede those in any previous form of SWP Credit Application signed by the Buyer and do not affect the validity of any previous guarantee.

2. QUOTATIONS/TENDERS

If SWP has provided any quotation or tender specifically for the Goods ("Quotation"):

- [a] these Sale Conditions shall apply to the Quotation;
- [b] the price in the Quotation shall be SWP's current price as at the date of Quotation and the price actually payable for the Goods shall be SWP's current price as at the date of the Buyer's acceptance of the Quotation; and
- [c] subject to paragraph [b], the Quotation shall remain valid for acceptance by the Buyer for the period stipulated on the quotation provided and will be subject to stock availability.

3. ORDERS

If the Buyer has made an order for the Goods without there being a Quotation provided by SWP ("Order"):

- [a] the Order is subject to acceptance in writing by SWP; and
- [b] the price actually payable for the Goods is SWP's current price as at the date of SWP's acceptance of the Order.

4. VARIATION OR CANCELLATION

The Buyer's acceptance of the Quotation or SWP's acceptance of the Buyer's Order shall constitute an acceptance of these Sale Conditions absolutely and without amendment as the terms and conditions of the contract for the supply of the goods and as the case may be:

- [a] no change in the specification of the Goods shall bind SWP, unless SWP expressly agrees to the change in writing; and
- [b] if the Buyer cancels the Order for the Goods, the Buyer will pay SWP any loss, damage or expenses incurred by SWP in relation to the supply or proposed supply of the Goods.

5. PAYMENT TERMS

- [a] Subject to credit approval, the Buyer shall pay for the Goods within thirty (30) days after the date of the statement issued by SWP for the Goods and services supplied.
- [b] Should credit not be granted to the Buyer, payment terms shall be C.O.D "cash on delivery". If payment is not received by the time of delivery, SWP reserves the right to withhold the goods until payment has been received in full.
- [c] If payment is not made by the due date for payment, the Buyer shall pay to SWP on demand interest at the rate of one (1.0%) per cent per month calculated on the outstanding balance of the invoice and capitalised monthly until paid. This will not affect the other rights of SWP.
- [d] All losses, expenses and costs [including legal fees on an indemnity basis], consequent upon the Buyer's failure to pay on the due date, are payable by the Buyer upon demand and recoverable from the Buyer by SWP as a liquidated debt.
- [e] All 'stock items' ordered by the Buyer shall be invoiced for upon those goods being in stock. If any goods are placed on back order by SWP, the Buyer shall be invoiced for those goods as soon as available and shall be obligated to take delivery of and pay for those goods.
- [f] In order to be assessed, complaints regarding errors in dispatch must be laid within 7 calendar days of the date of delivery.
- [g] In order to be assessed, complaints regarding invoicing must be laid within 7 calendar days of the date of invoice.

6. DELIVERY

- [a] Unless otherwise agreed to by the Parties in writing, delivery of the goods to the Buyer will take place at SWP's place of business by way of collection by the Buyer or its agent.
- [b] The Delivery or collection Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any cause beyond the reasonable control of SWP; and
- [c] SWP will not be liable for any loss, damage or other liability (whether in contract, tort [including negligence] or otherwise) and whether directly or indirectly arising from the Goods not being delivered by the Delivery Date for any reason.
- [d] SWP may, with the agreement of the Buyer, deliver any of the Goods to the Buyer in instalments in which case SWP may separately invoice the Buyer for payment for each delivery instalment.

7. RISK AND PROPERTY IN GOODS

- [a] For the purposes of the Personal Property Securities Act 2009 [as amended from time to time] ("the PPSA") "Goods" means any and all present and after acquired goods and services supplied by SWP to the Buyer;
- [b] If SWP arranges the delivery of the Goods to the Supplier's nominated delivery point, the Goods shall be entirely at the risk [including loss, damage or deterioration] of the Buyer until the time the Goods are delivered. Should the collection of Goods be arranged by the Buyer and collected from SWP's premises [the carrier of the Goods shall be taken to be the agent of the Buyer], the Goods shall then be entirely at the risk [including loss, damage or deterioration] of the Buyer at the time the Goods are collected.
- [c] SWP retains full title to the Goods until SWP receives payment in full for those Goods and all other amounts owed to SWP by the Buyer.
- [d] Until all such monies have been paid:
 - [i] SWP has the right to call for or recover possession of the Goods [for which purpose SWP's employees or agents may enter onto the Buyer's premises] and the Buyer must deliver up the Goods if so directed by SWP;
 - [ii] the Buyer:
 - A. agrees that the relationship between the Buyer and SWP shall be fiduciary and shall agree to keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to SWP;
 - B. shall not encumber or dispose of the Goods;
 - C. shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to SWP in their original state;
 - D. agrees that if, in breach of this clause, the Goods are incorporated with goods of the Buyer, other items or products such that the Goods are no longer separately identifiable, the resultant products or items shall become and be deemed to be the sole property of SWP. If the Goods are incorporated in any way with the property of a party other than the Buyer, the resultant product shall become and be deemed to be owned in common by SWP with that other party [or parties] on a pro-rata basis to be calculated by reference to the cost to the Buyer of the incorporated materials;
 - E. shall, as bailee for SWP, hold any proceeds [as that term is defined in the PPSA] of any resale, disposal or other dealing with the Goods or any product incorporating the Goods [including sale or supply to a party other than the Buyer in the ordinary course of the Buyer's business] in trust for SWP and shall pay the proceeds into a separate fiduciary account to be held in trust for SWP until accounted for to SWP at the demand of SWP; and
 - F. shall insure the Goods against theft and damage noting SWP's interest on the policies of insurance and provide SWP, on demand, with proof of the currency of such insurance

8. INTELLECTUAL PROPERTY

All patent, design rights, trade marks, copyright, original works and other intellectual property in any design, specification, process, method of working or other information relating to the Goods [other than that provided by the Buyer to SWP] shall vest for all time in SWP. SWP only grants to the Buyer an irrevocable licence to use and re-sell the Goods.

9. WARRANTIES

- [a] Subject to clause 8[a], SWP warrants that the Goods will, subject to SWP's general tolerance standards [available at the Buyer's request], conform to the specification for the Goods expressly agreed to in writing by SWP, and be free from defects in materials or workmanship.
- [b] SWP hereby guarantees that should a product fail due to common casting or forging defects or if the defective product fails under normal operator use, Spec-Cast will replace the products free of charge.
- [c] SWP's warranty shall not apply to normal wear applications where the product has been fully used or in the event where products are damaged as a result of misuse, abuse, neglect, improper application, modification, repair or attachments to the product.
- [d] Additional value to such products such as welding, machining, labour, as well as transportation fee's will not be the responsibility of SWP.
- [e] Any claims for other loss or damage of any type [including without limitation loss from failure of the product to operate for any period of time, other economic or moral loss, or direct, immediate, special, indirect, or consequential damage] are expressly excluded.
- [f] It is required that the Buyer return the product to SWP for inspection at our premises which will allow SWP to identify the cause of the defect as well as put possible corrective measures in place to avoid the defect from happening in future.

10. LIABILITY

- [a] If under any law, any terms which apply to the supply of goods or services by SWP under the Sale Conditions cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law;
- [b] All terms which would otherwise be implied are excluded except as stated in the Sale Conditions;
- [c] To the extent permitted by law SWP's sole liability for any breach of any term is limited:-



(i) In the case of goods supplied by SWP, to any one of the following as determined by SWP:-

The replacement of the goods or supply of equivalent goods;

- The repair of the goods;
 - The payment of the cost of replacing the goods or acquiring equivalent goods;
 - The payment of the cost of having the goods repaired;
- (ii) In the case of services supplied by SWP, to any one of the following:-

- The supplying of the services again;
 - The payment of the cost of having the services supplied again;
- (d) The Buyer does not rely on any representation, warranty or other term made by or on behalf of SWP which is not set out in the Sale Conditions; and
- (e) SWP is not liable for any damage, economic loss or loss of profits whether direct, indirect, general, special or consequential:
- (i) Arising out of a breach of an implied or expressed term; or
- (ii) Suffered as a result of the negligence of SWP or its employees or agents, apart from liability as set out in clause 11(a).

11. DEFECTIVE GOODS

(a) Within fourteen (14) days of the delivery of the Goods to the agreed delivery location, the Buyer shall both complete any inspection or testing required by it to confirm the Goods comply with the Sale Conditions and notify SWP in writing of the extent to which the Goods do not comply with the Sale Conditions.

(b) The Buyer shall not use the Goods [other than to the extent reasonably necessary for the inspection and testing] before the Buyer completes the inspection and testing and satisfies itself that the Goods comply with the Sale Conditions, or, if the Buyer notifies SWP under paragraph 12(a) that the Goods do not comply with the Sale Conditions, SWP has had a reasonable opportunity to inspect and test the Goods after SWP receives that notice.

12. RETURNS:

(a) SWP will accept returns within 60 days of the date of purchase if the item is returned in its original unaltered condition, providing they fall within our 'stocked item' range.

(b) Returns will not be accepted on any special or custom orders made for a specific client.

(c) Should SWP feel that the product being returned requires re-painting or other methods of repair to maintain the products appearance then SWP reserves the right to charge the Buyer for the cost of the paint, additional repair costs and labour incurred.

(d) Once the product is received and inspected at Spec-Cast, a credit or refund will be issued.

(e) Any products which have been modified or damaged by the Buyer will not be accepted.

(f) If the Buyer does not comply with the clauses above, the Buyer shall be taken to have unconditionally accepted that the Goods comply with the Sale Conditions.

13. DELAYS IN OR SUSPENSION OF WORK OR SUPPLY

Where SWP incurs any extra costs in relation to the supply of the Goods, directly or indirectly, as a result of any delay, interruption, suspension or alteration of any work or the supply of the Goods caused by or as a consequence of any act or omission of the Buyer, SWP shall be entitled to increase the price by the amount of the extra costs incurred.

14. BUYER'S INDEMNITY

(a) The Buyer indemnifies and holds harmless SWP, its successors, administrators and assigns, from and against all claims for loss or damage to persons or property or loss of property or for death or injury caused by or arising out of or in connection with any act matter or thing done, omitted or permitted to be done by SWP, its servants or agents.

(b) The Buyer indemnifies and holds harmless SWP, its successors, administrators and assigns, from and against all claims for loss, [whether direct, indirect or consequential], loss of profit, loss of opportunity or loss of use and any and all other economic loss, including and without limitation, any loss by reason of a breach of a term or condition of the Sale Conditions, or the negligence or any other act, matter or thing done, admitted or omitted to be done by the SWP.

15. SUBCONTRACTING

Unless otherwise agreed in writing SWP may, without the Buyer's consent, engage subcontractors to carry out the whole of or any part of supply or manufacture of the Goods.

16. DEFAULT, INSOLVENCY AND TERMINATION

If there is any default by the Buyer in making due payment to SWP of any monies owing by the Buyer, or if an administrator, liquidator or provisional liquidator or receiver and manager or controller is appointed in respect of the Buyer or the Buyer goes into bankruptcy or commits any act of bankruptcy, or if there is a breach by the Buyer of any of these Sale Conditions then all monies payable by the Buyer to SWP shall at SWP's election become immediately due and payable

notwithstanding that the due date for payment of any of the monies shall not have expired and, SWP may, without affecting SWP's other rights:

(a) immediately terminate any agreement for supply of any Goods, by notice in writing to the Buyer;

(b) refuse, suspend or withhold any further supply of the Goods;

(c) enter upon [personally or by its employees or agents] any premises in the possession or control of the Buyer and use reasonable force for the purposes of retaking possession of any of the Goods [title to which has not passed to the Buyer], in which case the sale of those Goods shall be taken to be terminated and SWP shall have no liability to the Buyer whether for trespass, negligence, payment of damages or compensation or otherwise;

(d) terminate any credit arrangement with the Buyer, by notice in writing to the Buyer [in which case outstanding amounts will become immediately due and payable];

(e) forfeit any deposit paid for the Goods; or

(f) if payment in addition to a deposit has been made by the Buyer in respect of any of the Goods, the sale of which is terminated, appropriate that payment to any other debts of the Buyer to SWP or damages incurred by SWP as a result of the termination of the sale.

(g) In the event of SWP instituting legal proceedings against the Buyer for a breach of its obligations in terms of this credit agreement, or for damages in the event of the cancellation of this credit agreement by SWP pursuant to such breach, then the Buyer shall be liable for all legal costs incurred by SWP on the attorney and own client scale including collection charges and tracing agents' fees.

17. DUTIES, LEVIES, AND TAXES

The Buyer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods supplied and shall make any and all payroll deductions and withholdings required by law and hereby indemnifies and holds harmless SWP from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

18. GOVERNING LAW

All orders, sales and these terms and conditions shall be governed by the laws of the Republic of South Africa, excluding conflict of law rules. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply. If any provision of these terms and conditions is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions will not be in any way impaired and will remain valid to the fullest extent permitted by law.

19. NON-WAIVER

SWP's failure to exercise any right under these Sale Conditions or failure to insist on strict performance of any part of these Sale Conditions does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.

20. RIGHT TO REFUSE APPLICATION FOR CREDIT

SWP reserves the right to refuse any Buyer's application for credit in its sole discretion based on its credit risk analysis and shall not be obliged to give reason for its refusal unless reasons are requested in terms of section 62 of the National Credit Act.

21. PERSONAL INFORMATION

(a) The Buyer understands that the personal information given in the submitted credit application form is to be used by SWP for the purposes of assessing his credit worthiness. The Buyer confirms that the information given by him in his credit application form is accurate and complete. The Buyer further agrees to update the information supplied, as and when necessary, in order to ensure the accuracy of the above information, failing which SWP will not be liable for any inaccuracies.

(b) SWP has the Buyer's consent at all times to contact and request information from any persons, credit bureaux or businesses, including those mentioned in the credit application form and to obtain any information relevant to the Buyer's credit assessment, including but not limited to, information regarding the amounts purchased from suppliers per month, length of time Buyer has dealt with such supplier, type of goods or services purchased and manner and time of payment.

(c) The Buyer agrees and understands that information given in confidence to SWP by a third party on the Buyer will not be disclosed to the Buyer

(d) The Buyer hereby consents to and authorises SWP at all times to furnish credit information concerning the Buyer's dealings with SWP to a credit bureau or National Credit Regulator and to any third party seeking a trade reference regarding the Buyer in his dealings with SWP.

ADDITIONAL TERMS AND CONDITIONS FOR MANUFACTURE

23. MANUFACTURED GOODS

Where the Goods are to be manufactured by SWP to a specification prepared by or on behalf of the Buyer ("Manufactured Goods") clauses 22 to 25 of these Sale Conditions shall also apply.



24. PRICE FOR MANUFACTURED GOODS

Unless otherwise agreed in writing by SWP, the price for Manufactured Goods may be unilaterally adjusted by SWP:

- [a] in accordance with the price variation formula notified by SWP to the Buyer with the Quotation or Order
- [b] prices may be adjusted in accordance with the forex variation clause stipulated on the quotation to the Buyer, where applicable
- [c] estimated weights provided on quotations, either calculated by SWP or if given by the Buyer, shall be used as an estimated weight only. Should the actual weight differ once the product has been manufactured, SWP reserves the right to adjust the price according to the actual weight;
- [d] for increases in the cost of labour after the date of the Quotation or acceptance of the Order.

25. BUYER'S PATTERNS

Where any patterns or core boxes are provided by or on behalf of the Buyer for use by SWP to produce Manufactured Goods ["Buyer's Patterns"]:

- [a] despite clause 11, SWP shall have no responsibility and will not be liable for any non-conformity of the Buyer's Patterns to any drawings or specifications for the Manufactured Goods and the Buyer irrevocably releases SWP from any claims in relation to such non-conformity;
- [b] the Buyer must satisfy itself as to and ensure that the Buyer's Patterns meet the requirements of SWP relating to the Buyer's Patterns;
- [c] the Buyer acknowledges that SWP will not insure the Buyer's Patterns and despite clause 11 SWP shall have no liability (whether in contract, tort [including negligence] or otherwise) to the Buyer for or in connection with any loss of or damage to the Buyer's Patterns or any other goods or materials in SWP's possession in connection with the Manufactured Goods; and
- [d] the Buyer agrees to pay SWP, in addition to the price payable for the Manufactured Goods any costs incurred by SWP in storing the Buyer's Patterns or carrying out repairs or alterations to the Buyer's Patterns.
- [e] In the event of the Buyer requesting return of their Patterns, the Buyer will be liable for all transportation costs incurred for the delivery of the Buyer's Patterns.

26. INSPECTION AND TESTING

Where Manufactured Goods are required to be tested or inspected by SWP prior to supply to the Buyer, the Buyer shall pay the costs of that testing (including the cost of obtaining certificates) or inspection in addition to the price for the Manufactured Goods, and the results of tests (including as to weight, size, quantity or composition of Manufactured Goods) and inspections shall be final and binding on the Buyer.

27. BUYER'S INFORMATION

Where the Buyer has provided to SWP any design, specification, process, method of working, or any other information in connection with the Manufactured Goods ["Buyer's Information"]:

- [a] SWP shall be under no obligation to check or confirm the conformity, accuracy or adequacy of the Buyer's Information;

[b] the Buyer grants to SWP an irrevocable licence to use all copyright, design right or other intellectual property in the Buyer's Information for any purpose connected with the Manufactured Goods;

- [c] the Buyer indemnifies SWP, its officers, agents and employees against all claims, demands, actions, costs (including legal costs on a full indemnity basis), charges, expenses, loss, damages or other liability arising out of or in connection with any claim against SWP in connection with the use of the Buyer's Information (including for infringement of any intellectual property rights); and
- [d] despite clause 11, SWP shall have no liability to the Buyer (whether in contract, tort (including negligence) or otherwise) in connection with any error, omission or inaccuracy in the Buyer's Information.

28. GENERAL

[a] EVIDENCE OF MONIES PAYABLE

A statement in writing signed by any director, secretary, administration manager or credit manager of SWP stating the balance of the monies due to SWP by the Buyer shall be prima facie evidence of the amount of indebtedness of the Buyer to SWP at the date of that statement.

[b] BUYER AS TRUSTEE

Where the Buyer is a trustee the Buyer warrants that it has full power and authority to agree to be bound by the Sale Conditions on behalf of the trust and that it shall be bound by the terms of the Sale Conditions both personally and as trustee.

29. CONSENT

The Credit Applicant specifically CONSENTS that the Credit Grantor:

- [a] May carry out a credit enquiry in respect of the credit applicant.
- [b] May access the data base of any Risk Information Agency before granting credit to the credit applicant
- [c] May, where credit is granted, transmit details to Risk Information Agency of how the Credit Applicant has performed in meeting its obligations under the account, and share the information with other Risk Information Agencies for purposes of assessing further applications for credit by the Credit Applicant (and its members, directors, trustees or partners as the case may be) and for occasional debt tracing, debt collection and fraud prevention purposes.

If credit is granted in favour of the Credit Applicant and the Credit Applicant fails to meet its financial commitments to the Credit Grantor, the Credit Grantor may record the Credit Applicants default with Risk Information Agency:

- [a] May refer information relating to the Credit Applicant's credit performance to a Risk Information Agency for banking and credit assessment, statistical analysis, and credit scoring purposes and use such information to identify products (including those supplied by third parties) which may be relevant to the Credit applicant.
- [b] May record the existence of a Credit Applicant's account with the Credit Grantor at Risk Information Agency(s)
- [c] The Credit Applicant specifically acknowledges that it shall under no circumstances hold the Credit Grantor liable for any damages relating to any of the aspects as set out in this paragraph.