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Terms and Conditions

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These General Terms and Conditions ("Terms") govern the sale and delivery of all goods and/or services (hereinafter jointly referred to as the "Goods") from or on behalf of Floodg8 IT (Pty) Ltd ("Floodg8 IT") to the purchaser ("Purchaser") and apply to all transactions between Floodg8 IT and the Purchaser.

Any general terms and conditions of the Purchaser do not find any application in relation to any agreement between Floodg8 IT and the Purchaser. These Terms supersede any and all terms and conditions, whether in writing or oral, communications, agreements and understandings between Floodg8 IT and the Purchaser in respect of the sale and delivery of the Goods.

Floodg8 IT reserves the right to amend these Terms at any time. Floodg8 IT will notify the Purchaser of any such amendments by sending the amended Terms to the Purchaser. The amended Terms will take effect immediately after notification is given to the Purchaser.

Any electronic communication between Floodg8 IT and the Purchaser shall be regarded as originals.

The placement by the Purchaser of any order for any Goods shall constitute the Purchaser's acceptance of these Terms, notwithstanding any trade usage or past dealings to the contrary.

Withdrawal of Credit Facilities

Notwithstanding the grant of any credit facilities to the Purchaser, Floodg8 IT shall be entitled, at any time and in its sole and absolute discretion, to withhold, suspend and/or cancel any credit facilities and to demand immediate payment of all amounts outstanding under such facilities.

Quotation and Prices

Unless stated otherwise by Floodg8 IT, quotations made by Floodg8 IT in whatever form are not binding on Floodg8 IT and merely constitute an invitation to the Purchaser to place an order. All quotations issued by Floodg8 IT are revocable and subject to change without notice. Floodg8 IT shall be entitled to refuse an order without indicating the reasons.

Unless prices have been indicated as fixed by Floodg8 IT to the Purchaser, Floodg8 IT is entitled to increase the price of the Goods if the cost price determining factors have been subject to an increase. Floodg8 IT shall notify the Purchaser of such increase. Price quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities.

All prices quoted are subject to change without notice and will be the ruling price as at the date of delivery. Any applicable taxes, levies and/or customs surcharges shall be for the account of the Purchaser. The Purchaser may not apply set off in respect of any claims which it may have against Floodg8 IT for any amounts due or for any other reason whatsoever. All prices quoted by Floodg8 IT exclude Value Added Tax ("VAT") and any other duties or taxes levied by any competent authority in relation to the Goods or the delivery thereof. No change from list or tender price, no discounts and no change in the specification of the Goods will be accepted by Floodg8 IT as a result of any variation contained in the Purchaser's official order except where such variations have been agreed to in writing by Floodg8 IT.

Terms of Payment and Interest

Payment shall be made by telegraphic transfer to Floodg8 IT:

- i. on placement of order
 - ii. within 30 (thirty) days of statement for the month when Goods were invoiced,
- as specified by Floodg8 IT, free of expenses for 100% of the invoice value. Any complaint with respect to the invoice must be sent to Floodg8 IT in writing within 7 (seven) days after receipt of the Goods. Thereafter, the Purchaser shall be deemed to have approved and accepted the invoice. All payments shall be made free of deductions, set-off, bank charges or commission.

Should the Purchaser fail to pay the amount due as set out herein, the Purchaser hereby agrees that Floodg8 IT may, without prejudice to any other rights of Floodg8 IT charge interest on the outstanding balance at 20% per annum 60 (sixty) days from receipt of the Goods until all outstanding amounts are paid in full. The Purchaser agrees that if the National Credit Act, 2005 ("the National Credit Act") applies to this credit application, interest shall be levied at the maximum legal rate prescribed in terms of the National Credit Act on all overdue amounts (at date of signature, 2% per month) calculated daily and compounded monthly in arrears, from the date on which payment was due to the date of actual payment. All costs and expenses incurred by Floodg8 IT with respect to the collection of overdue payments, including, without limitation, attorneys' fees on an attorney and own client scale and expert fees shall be for the Purchaser's account.

Every payment by the Purchaser shall first be applied to legal costs, then interest and lastly capital and shall be deducted from the oldest outstanding invoice/amount.

In addition, if any amount is not paid on or before the due date therefor, without prejudice to any other rights which Floodg8 IT may have in terms of these Terms or at law, Floodg8 IT shall be entitled to cancel any outstanding orders, and Floodg8 IT, or a third party appointed by Floodg8 IT, may enter all locations where its Goods are located at that time, and remove such Goods.

Ownership and Risk in the Goods

Risk in the Goods sold will pass to the Purchaser on delivery. However, ownership therein shall only pass to the Purchaser when the purchase price therefor is paid in full. If Floodg8 IT becomes dissatisfied with the financial status of the Purchaser for whatever reason, or should any adverse information come to the attention of Floodg8 IT, Floodg8 IT shall at its election be entitled, without notice to the Purchaser, to inter alia:

- i. cancel any order in respect of which the full purchase price has not been paid, and/or;
- ii. recover possession of the Goods to which any such order relates.

Change of Address

The Purchaser undertakes to notify Floodg8 IT in writing within 7 (seven) days of any change of its address.

Delivery and Acceptance

Unless collected by the Purchaser directly at Floodg8 IT depots or offices or unless stated otherwise by Floodg8 IT, all deliveries of Goods shall be CIP (Carriage and Insurance Paid to) Incoterms® 2010 named place of destination. The term CIP shall have the meaning as defined in the latest version of Incoterms published by the International Chamber of Commerce in Paris, France, at the time of Floodg8 IT's confirmation.

The risk of the Goods shall pass to the Purchaser according to the applicable Incoterms. Ownership of the Goods is reserved by Floodg8 IT until receipt of payment in full of the purchase price of the Goods, which shall include costs such as interest, charges, expenses, delivery charges, demurrage, additional handling, etc.

Unless stated otherwise by Floodg8 IT, any times or dates for delivery by Floodg8 IT are estimates and shall not be of the essence. Floodg8 IT is entitled to deliver the Goods in part and to invoice accordingly. Any delay in the delivery of any Goods shall not entitle the Purchaser to refuse collection/delivery of the Goods or to withhold any payment for any reason whatsoever.

Examination and Conformity to Specifications

On delivery and during the handling, use or on collection of the Goods, the Purchaser shall examine the Goods and satisfy itself that the Goods delivered/collected meet the agreed specifications for the Goods. The Purchaser agrees to accept delivery of Goods which differs from the quantity specified in the order acceptance by 10% or less and to pay to Floodg8 IT the quoted purchase price in respect of the Goods actually delivered.

Any complaints about the Goods shall be made in writing and must reach Floodg8 IT not later than 7 (seven) days from the date of delivery or collection in respect of any defect or shortage which would be apparent from a reasonable inspection on delivery or collection thereof, and 7 (seven) days from the date on which any other hidden defect/s was or reasonably ought to have been apparent, but in any event no later than 1 (one) month from the date of delivery of the Goods. Any use of the Goods shall be deemed to be an unconditional acceptance of the Goods as at the date of delivery and a waiver of all and any claims in respect of the Goods or of any loss or damage which may arise.

The signing of Floodg8 IT's, or Floodg8 IT's agents, delivery note by the Purchaser in respect of delivery or collection of any Goods shall constitute prima facie proof that the Goods, to which such delivery note relates, have been delivered to the Purchaser in undamaged condition and in accordance with these Terms.

A determination of whether or not the Goods conform to the specifications shall be done solely by Floodg8 IT.

Defects in part of the Goods do not entitle the Purchaser to reject the entire delivery of the Goods, unless the Purchaser cannot reasonably be expected to accept delivery of the remaining non-defective parts of the Goods. The Purchaser's obligation to make payment will remain, notwithstanding defects in part of the Goods.

Goods may not be returned and delivery may not be refused except by arrangement with Floodg8 IT. As a general rule, once Goods have been delivered by Floodg8 IT to the Purchaser, Floodg8 IT is precluded from accepting the return for those Goods for credit. However, in the event of Floodg8 IT agreeing to accept the returned Goods, Floodg8 IT may in its sole direction levy a handling charge in respect of the Goods to be returned. Notwithstanding the above, should the Goods delivered contain in the sole opinion of Floodg8 IT, any defects, then Floodg8 IT's liability will be limited only to the replacement of the defective Goods.

Under no circumstances will Floodg8 IT accept any Goods returned unless in fully sealed original cartons or packaging.

Limited Warranty

Floodg8 IT warrants that on the date of delivery the Goods shall conform to the specifications. If and to the extent that Goods do not comply, then Floodg8 IT may at its sole election and within a reasonable time either repair or replace the Goods at no charge to the Purchaser, or issue a credit note for such Goods in the amount of the original invoice price. Accordingly, Floodg8 IT's obligation shall be limited solely to repair or replacement of the Goods or to credit of the Goods.

Floodg8 IT's obligation to repair, replace, or credit shall be contingent upon receipt by Floodg8 IT of timely notice of any alleged non-conformance of Goods and, if applicable, the return of the Goods as set out herein.

This warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express or implied including, but not limited to, any warranty of merchantability, suitability or fitness for any purpose whatsoever, or absence of infringement of any claim in any intellectual property right covering the Goods.

Floodg8 IT gives no warranties or representations whatsoever (whether express, implied or tacit) in relation to or in connection with the merchantability, suitability or fitness for the purpose for which they were bought, of the Goods.

Warranties by the Purchaser

The Purchaser warrants that it has the power and authority to sign these Terms and perform in terms thereof.

The Purchaser warrants that for the purposes of section 4(2) of the National Credit Act, the total annual turnover and the total value of the Purchaser are true and correct, which annual turnover or total value exceed R1 000 000. Accordingly, this credit application comprising the Terms falls outside of the ambit of the national Credit Act

The Purchaser indemnifies and shall on demand hold Floodg8 IT, its directors, officers, employees, advisers and agents harmless against all claims, demands, damages, awards, judgements, losses, interest, charges or expenses whatsoever resulting from or in any way connected with the breach by the Purchaser of the warranties set out herein.

Limited Liability and Indemnity

Floodg8 IT shall only be liable for its gross negligence and wilful misconduct and that of its employees and agents.

Floodg8 IT's liability in case of gross negligence shall be limited to typical contractual damages as they were foreseeable at the time of order and shall in no event or under any circumstances exceed the sum of the Purchaser's payment for the Goods. Without limiting the foregoing, should Floodg8 IT be found to be liable, its liability for delay of delivery shall under any and all circumstances be limited to 5% (five percent) of the sum of the Purchaser's payment for the Goods. However, in no circumstance shall Floodg8 IT be liable to the Purchaser or any other person for



any kind of special, incidental, indirect, consequential or punitive damage or loss, cost or expense, including without limitation, damage based upon lost goodwill, lost sales or profit, work stoppage, production failure, impairment of other Goods or otherwise.

Neither of Floodg8 IT, its associated companies, directors, shareholders, officers or employees shall be liable for any damages, losses, claims, liabilities, expenses or costs, of whatsoever nature, howsoever arising (including, without limitation, direct, indirect, consequential, incidental, general and special damages) which may be:

- suffered by the Purchaser and/or any third party in relation to (i) the supply of Goods by Floodg8 IT, (ii) the failure, refusal or neglect by Floodg8 IT to supply such Goods, or (iii) from any other cause whatsoever (save if caused by fraud or wilful misconduct on the part of Floodg8 IT);
- incurred by Floodg8 IT arising out of the provisions of sections 56 and 61 of the Consumer Protection Act, 2008 ("CPA") as a direct or indirect result of the supply of the Goods to the Purchaser or by virtue of Floodg8 IT falling, in respect of any Goods, within any of the definitions of "producer", "importer", "distributor" or "retailer" as defined in section 1 of the CPA, and the customer hereby indemnifies Floodg8 IT accordingly.

Save as is provided for above, under no circumstances shall Floodg8 IT be liable for any consequential or indirect damages, including but not limited to loss of profits, loss of goodwill or business interruption.

The Purchaser agrees that section 61 of the CPA shall not apply to the Goods or to Floodg8 IT as between Floodg8 IT and the Purchaser.

Force Majeure

Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws and regulations, administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, natural disasters, war, civil disturbance, terrorism, riot, acts of sabotage, states of emergency, accident, strike, lockout, slowdown, labour disturbances, difficulty in obtaining necessary labour or raw materials, lack or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in Goods supplied by suppliers or subcontractors and acts of authority (whether lawful or unlawful) (each an event of "Force Majeure").

Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the cause of the event, the expected duration thereof and how it will affect its performance of its obligations. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure.

Modifications and Information - Indemnity

Unless the specifications have been agreed to be firm for a certain period of time or quantity of Goods, Floodg8 IT reserves the right to change or modify the specifications and/or manufacture of Goods and to substitute materials used in the production and/or manufacture of Goods from time to time without notice. The Purchaser acknowledges that the data in Floodg8 IT's product data sheets and other descriptive publications distributed or published may accordingly be varied from time to time without notice.

The Purchaser must utilise and solely rely on its own expertise, know-how and judgement in relation to the Goods and the Purchaser's use thereof. Consultations provided by Floodg8 IT shall not give rise to any additional obligations. The Purchaser shall indemnify and hold Floodg8 IT harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the Goods and the Purchaser's use thereof.

Any advice or assistance given, whether concerning processing or application possibilities, technical recommendations or similar indications, is given in good faith but without obligation and subject specifically to the exclusion of any liability whatsoever on the part of Floodg8 IT, its employees or agents, for damages or loss whether direct, indirect, consequential or howsoever caused.

Suspension and Termination

If the Purchaser is in default of performance of its obligations towards Floodg8 IT and fails to provide to Floodg8 IT adequate assurance of its performance before the date of scheduled delivery, or if the Purchaser becomes insolvent or unable to pay its debts as they arise, or if the Purchaser goes into liquidation, whether provisionally or finally, or if the Purchaser compromises or attempts to compromise with any creditor, or if the Purchaser undergoes business rescue proceedings, then Floodg8 IT may by notice in writing forthwith, without prejudice to any of its other rights, demand return and take possession of any delivered Goods which have not been paid for and all costs relating to the recovery of the Goods shall be for the account of the Purchaser.

In any such event all outstanding claims of Floodg8 IT shall become due and payable immediately with respect to the Goods delivered to the Purchaser and not repossessed by Floodg8 IT.

Legal Costs

The Purchaser undertakes to pay all legal expenses incurred in connection with recovery of any amounts due by it, including collection charges and legal costs on the scale as between attorney and own client. Every payment by the Purchaser shall in the first place serve to pay legal costs then interests and then the capital outstanding and shall be deducted from the oldest outstanding debt regardless of any advice to the contrary from the Purchaser.

Choice of Domicilium

The Purchaser agrees that the registered address set out in its purchase order is its domicilium citandi et executandi for all purposes under this agreement whether in respect of court processes or any other notices of whatsoever nature.

Jurisdiction of Magistrate's Court

The Purchaser consents to the non-exclusive jurisdiction of the Magistrate's Court of the district concerned to hear the action. This consent does not exclude the jurisdiction of any other competent court. It shall nevertheless be entirely within the discretion of Floodg8 IT as to whether to proceed against the Purchaser in such magistrate's Court or any other court having jurisdiction.

These Terms to Prevail

No waiver of, or alterations to or modification of the Terms set out herein shall be binding on Floodg8 IT unless contained in writing and signed by both parties.

No Relaxation of Rights

No relaxation or indulgence which Floodg8 IT may grant to the Purchaser shall constitute a waiver of its rights to enforce strict compliance with the terms of this contract.

No Cession of Rights

Floodg8 IT shall be entitled, on written notice to the Purchaser, to cede any of its rights, and to delegate any of its obligations under this credit application comprising of the Terms to any third party. The Purchaser may not cede its rights or delegate its obligations under this credit application comprising of the Terms without the prior written consent of Floodg8 IT.

South African Law

The Terms as between the Purchaser and Floodg8 IT shall be governed by and construed in accordance with the laws of the Republic in South Africa.

Arbitration

In case of dispute that cannot be settled amicably, the matter shall be referred to arbitration in Johannesburg and the arbitration shall be governed by the Arbitration Act, 1965 or any replacement act, and shall take place in accordance with the rules of the Arbitration Foundation of South Africa or its successors in title.

Certificate of Indebtedness

A certificate signed by any director or manager of Floodg8 IT (whose appointment need not be proved) reflecting the amount due and owing by the Purchaser to Floodg8 IT at any time, shall be prima facie evidence of the Purchaser's indebtedness to Floodg8 IT for the purposes of obtaining provisional sentence and/or judgement against the Purchaser or for any other purpose whatsoever.

Language

The original version of the Terms is made in the English language. In the event of any inconsistency or contradiction between the English version and any translation thereof, the English version shall prevail.