



COMPONENTS 2005

(PTY) LTD

t/a ENGINE & HEAVY DUTY COMPONENTS

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Export Code. 20535466

Vat No. 4790223137

GENERAL CONDITIONS OF SALE

1 INTERPRETATION

In this agreement the following words shall have the meanings set forth in this clause 1 –

- 1.1 “agreement” - these General Conditions of Sale which governs the terms on which the goods are purchased by the Purchaser and supplied by the Seller in terms of the invoice;
- 1.2 “Consumer Protection Act” - the Consumer Protection Act 68 of 2008, as amended, together with the regulations promulgated in respect thereof;
- 1.3 “delivery agent” – shall mean any courier or other entity, excluding the Seller, which undertakes delivery of the goods to the Purchaser;
- 1.4 “entity” – shall mean any natural person, association, business, close corporation, company, concern, enterprise, firm, joint venture, partnership, trust, organ of state and/or undertaking whether or not having legal personality;
- 1.5 “goods” - the products sold by the Seller to the Purchaser in terms of the invoice;
- 1.6 “invoice” – shall mean the written invoice furnished by the Seller to the Purchaser in respect of the goods;
- 1.7 “protected consumer” - means a consumer as defined in section 1 of the Consumer Protection Act and whose annual turnover or assets value falls

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below the threshold as contemplated in section 6 of the Consumer Protection Act and to whom the Act applies;

- 1.8 "Purchaser" – shall mean the entity reflected as such on the invoice;
- 1.9 "Seller" – shall mean EHD Components (Pty) Ltd and/or any of its subsidiaries.

2 DELIVERY

- 2.1 Where the Seller delivers the goods to the Purchaser, the sale shall be deemed to have been concluded and risk in the goods shall pass to the Purchaser upon the Seller having delivered the goods to the delivery address designated by the Purchaser when ordering the goods, against the Purchaser or its representative having signed a copy of the invoice to acknowledge receipt of the goods. The Seller reserves the right to impose a reasonable charge on the Purchaser for the delivery of the goods which charge shall not exceed the prevailing AA rates in case of vehicle deliveries alternatively per agreed courier charges reflected in the invoice. Should the Seller elect to impose such a charge, it shall be added to the invoice as a line item and shall be settled by the Purchaser together with payment for the goods as contemplated in 4 below.
- 2.2 Any other delivery agent being used for purposes of delivering the goods to the Purchaser shall be deemed to be acting as agent for the Purchaser and risk in the goods shall pass to the Purchaser when the delivery agent has taken possession of the goods.
- 2.3 The date of delivery stipulated in the invoice is an approximate date only. Whilst the Seller shall use its reasonable endeavours to effect delivery on the stipulated date, the Seller reserves the right to defer the date of delivery or to

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cancel the contract or reduce the volume of goods ordered by the Purchaser (without liability to the Purchaser) if the Seller is prevented from or delayed in performing under this agreement due to circumstances outside the reasonable control of the Seller including but not limited to acts of God, government actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, drought, lockouts, strikes or other labour disputes or delays affecting carriers or inability or delay in obtaining supplies of products. In the event of such a delay or failure to effect delivery the Seller shall not be liable to the Purchaser for any loss, damage or expense arising from such delay or failure.

- 2.4 If the Purchaser fails to take delivery of the goods when tendered by the Seller, the risk in the goods shall immediately pass to the Purchaser who shall refund to the Seller on demand the reasonable costs (including storage, transport and insurance) of moving the goods and keeping them during the period of the delay.
- 2.5 Claims by the Purchaser for any short delivery of goods shall only be considered if submitted in writing and received by the Seller within 10 days from the date of delivery. The Seller shall not be liable for any short deliveries where it is shown that the cause of the short delivery arises from the actions of any delivery agent.

3 OWNERSHIP

Notwithstanding delivery to and the Purchaser taking possession of the goods, ownership of the goods shall not pass to the Purchaser until the Seller has received payment in full of the price outstanding in respect of the goods.

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4 PAYMENT

- 4.1 The price of the goods is strictly as reflected in the invoice and shall not be subject to any further discount or deduction of any nature.
- 4.2 Payment is to be made strictly within 30 days nett from the date of the invoice unless specifically otherwise stipulated on the invoice.
- 4.3 All payments shall be made in the currency of the invoice, free of bank exchange and other charges, by electronic funds transfer to the Seller's bank account as stipulated the invoice.
- 4.4 All payments received shall be allocated by the Seller firstly to interest, secondly to legal and collection costs and lastly to capital.
- 4.5 The Purchaser may not withhold any payment pending the settlement of any dispute between the Seller and the Purchaser.
- 4.6 If any amount is not paid on due date –
- 4.6.1 any discount which may have been granted by the Seller to the Purchaser shall be forfeited;
- 4.6.2 the Seller may elect in its discretion to charge interest on such overdue amount at the prevailing overdraft rate as determined by First National Bank Limited plus 2%, and the Purchaser shall in addition pay any legal costs incurred by the Seller in seeking to collect such overdue amount on the attorney-and-own client scale, including collection commission.

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5 RETURNS

5.1 The Seller may in its sole discretion agree to accept returns of goods for credit, provided that –

5.1.1 the goods are saleable as new and returned in the original packaging;

5.1.2 the Seller may impose a handling fee equal to 15% of the value of the goods as reflected on the invoice;

5.1.3 no returns will be accepted more than 21 days from the date of the invoice.

5.2 Goods specifically sourced for the Purchaser shall be returnable only if the Seller agrees thereto.

5.3 Electrical goods will not be accepted for returns.

6 WARRANTIES AND LIMITATION OF LIABILITY

6.1 Unless the Seller has provided the Purchaser with an express, separate warranty in respect of the goods or where the Seller, in its sole discretion, elects to pass on to the Purchaser the benefit of any warranty the Seller may receive from its suppliers in respect of the goods, the Seller -

6.1.1 gives no warranty, whether express or implied, in respect of the goods or the suitability of the goods for any intended purpose;

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6.1.2 the Seller shall, to the fullest extent permissible in law, not be liable for any loss of any nature suffered by the Purchaser arising from or in connection with the goods sold to the Purchaser.

6.2 The Purchaser's attention is specifically drawn to the fact that all manufacturer's names, numbers, symbols and descriptions which may be reflected in the Seller's documentation are used for reference purposes only and does not imply that any part or product so listed is indeed a part or product manufactured by a specific manufacturer.

7 BREACH

7.1 If the Purchaser commits any act of default as contemplated in clause 7.2 below, the Seller may at its election –

7.1.1 cancel the agreement and claim from the Purchaser all reasonable expenses, costs, loss and damages as the Seller may have suffered as a result of such cancellation; or

7.1.2 claim specific performance of all of the Purchaser's obligations under the agreement, whether then due for performance or not. In such event, all amounts then owed by the Purchaser to the Seller under the agreement shall become immediately due and payable, the Seller may retain in its possession any of the goods until all outstanding amounts have been so paid and may terminate any credit facility or incidental credit granted to the Purchaser.

7.2 The Purchaser shall be deemed to have committed an act of default if the Purchaser –

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- 7.2.1 fails to pay any amount of money due to the Seller on the due date;
- 7.2.2 is sequestrated or placed in liquidation (whether voluntary, compulsory, provisional or final) or has business rescue proceedings commenced in respect of it;
- 7.2.3 commits any act of insolvency or what would constitute an act of insolvency if committed by a natural person;
- 7.2.4 enters into an arrangement or compromise with its creditors generally;
- 7.2.5 fails to satisfy any judgment granted against it within 7 days of the date of judgment.
- 7.3 Should the Seller cancel the agreement as a result of an event of default occurring, the Seller shall be entitled to enter the premises of the Purchaser or to trace the goods to such premises at which they may be located and to take possession of the goods.

8 GENERAL

- 8.1 The Purchaser chooses *domicilium citandi et executandi* for all purposes hereunder at the delivery address set out on the invoice, at which address all notices shall be deemed to have been received by the Purchaser on the date of delivery by hand or through a courier.
- 8.2 No alteration or variation of these General Conditions of Sale shall apply unless agreed to in writing by the Seller and the Purchaser.

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- 8.3 The Seller may in its discretion and at any time modify or withdraw any credit granted to the Purchaser.
- 8.4 Any indulgence or leniency granted by the Seller to the Purchaser in respect of any of the terms hereof shall not be construed as a waiver or novation of the Seller's rights in relation thereto.
- 8.5 The Purchaser undertakes to notify the landlord of any premises in which any goods subject to a reservation of ownership in favour of the Seller may be stored of the Seller's rights in terms of this agreement and shall procure that the landlord agrees to release such goods from the operation of the landlord's hypothec in respect of unpaid rental and/or other amounts due to the landlord.

9 APPLICABLE LAW AND JURISDICTION

- 9.1 This agreement shall be interpreted in accordance with and governed in all respects by the laws of the Republic of South Africa.
- 9.2 The Purchaser irrevocably consents to the jurisdiction of the Magistrates' Court in regard to any action or application concerning or arising out of this agreement, notwithstanding that the amount in issue may exceed the jurisdiction of such court, but this shall not preclude the Seller from proceeding in any high court having jurisdiction. The Purchaser irrevocably consents to the non-exclusive jurisdiction of the Gauteng High Court, Local Division, Johannesburg.

10 PROTECTED CONSUMER

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To the extent that the Purchaser is a protected consumer –

- 10.1 the following sentence shall be deemed to have been added at the end of clause 2.3:

“The Seller shall deliver the goods to the Purchaser as soon as reasonably possible in the circumstances. Should the delivery date be deferred by more than 30 days or should the Seller not be able to deliver the full volume of goods within a deferred period of 30 days, the Purchaser shall be entitled to cancel this agreement, to return any goods already received (provided such goods comply with the requirements of clause 5.1.1) and the Seller shall refund to the Purchaser all amounts already paid to the Seller on account of the purchase price.”

- 10.2 clause 2.4 shall not apply only to the extent that the Purchaser refuses to accept delivery by relying on the provisions of sections 19, 20 or 21 of the Consumer Protection Act;

- 10.3 clause 2.5 shall not apply to the extent that the Purchaser seeks to rely on sections 19, 20 or 21 of the Consumer Protection Act;

- 10.4 clause 5 shall not apply only to the extent that the Purchaser wishes to return goods by relying on the provisions of section 20 of the Consumer Protection Act;

- 10.5 clause 6 shall not apply only to the extent that the Purchaser is relying on the provisions of sections 55 and 56 of the Consumer Protection Act.

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