



ABACUS SPACE SOLUTIONS STANDARD CONDITIONS OF SALE

**ABACUS SPACE SOLUTIONS
(A Division of WACO AFRICA (PROPRIETARY) LIMITED)**

GENERAL TERMS OF SALE (INCLUDING, WHERE APPLICABLE, INSTALLATION) AND INCORPORATION A SURETYSHIP

1. The following expressions bear the meanings assigned to them hereunder and cognate expressions bear corresponding meaning namely:
 - 1.1 "the Contract of Sale" – a contract of sale concluded between the Parties, comprising of these General Terms of Sale and any relevant Schedule applicable to the Goods in question;
 - 1.2 "Customer" – means the Party detailed in the relevant Schedule who purchases the Goods in question;
 - 1.3 "the/these General Terms of Sale" – means these the general terms and conditions contained in this document;
 - 1.4 "the Goods" – means the goods sold by the Supplier to the Customer as described in the relevant Schedule;
 - 1.5 "Parties" – collectively, the Supplier and the Customer, and "Party" shall mean either one of them as the context requires;
 - 1.6 "Prime Rate" – the prime bank overdraft rate of interest as charged and calculated by Standard Bank of South Africa Limited to its corporate customers in respect of overdraft facilities from time to time, compounded monthly in arrears, as certified by an official of that bank whose appointment it shall not be necessary to prove;
 - 1.7 "the Schedule" – the schedule/s attached and to be attached from time to time to these General Term of Sale and forming the Contract of Sale, each Schedule of which shall set out details of the Goods, the price of the Goods, the Works (if applicable), the Customer's domicilium and any information relevant to the Contract of Sale;
 - 1.8 "the Supplier" – means Abacus Space Solutions, a division of Waco Africa (Proprietary) Limited, (Registration Number: 2005/038286/07);
 - 1.9 "the Works" – means the erection/installation by the Supplier of the Goods (if applicable)
2. Placement of any order by the Customer shall be in accordance with the Supplier's sale quotation. Notwithstanding any other conflicting terms contained in the Customer's order, the acceptance by the Customer of the Supplier's sale quotation and the furnishing by the Customer of its order for the Goods shall bind the Customer to these General Terms of Sale.
3. Quotations and prices exclude Value Added Tax ("VAT"). VAT will be charged and be payable at the current rates, unless the Customer provides written proof of its exemption from the payment of VAT.
4. Quotations are valid for 30 days from date of quotation. No Goods will be supplied without an official written order. The Goods shall be supplied to the Customer subject to their availability.
5. The price for the Goods shall be payable without deduction or set off against delivery or on or before the date reflected in the sales quotation. Should any amount payable by the Customer to the Supplier, whether in terms hereof or otherwise, not be paid on due date:
 - 5.1 all amounts payable by the Customer to the Supplier, whether in terms hereof or otherwise, shall immediately become due and payable;
 - 5.2 all amounts overdue shall bear interest at the rate of 2% (two percentage points) above the Prime Rate calculated from the due date for payment thereof until the actual date of payment thereof, which interest shall be calculated on the daily balance and shall be compounded monthly in arrears;
 - 5.3 the Supplier shall be entitled to suspend performance of any of its obligations pending payment of such amounts and interests;
 - 5.4 the Supplier shall have the remedies set out in 24 hereunder
6. All payments required to be made by the Customer to the Supplier in terms of the Contract of Sale shall be made without set off or counterclaim and without deduction or withholding whatsoever. The Supplier shall be entitled to appropriate any payments received from or on behalf of the Customer to any indebtedness of the Customer to the Supplier and whether in terms of the Contract of Sale or from whatsoever cause arising.
7. The prices quoted are those ruling at the date of quotation and the Supplier reserves the right to revise such quotations at any time after the expiry of 30 (thirty) days and may be withdrawn by the Supplier at any time and for any reason whatsoever prior to written acceptance by the Customer. In the event of there being any increase in the costs of the manufacture of the Goods to the Supplier by reason of any increase in wages, or prices charged to the Supplier by its suppliers or otherwise, between the date of the quotation and the date of delivery, such increase shall be payable by the Customer.
8. Ownership of the Goods shall not pass to the Customer until the price payable by the Customer in respect thereof has been paid in full.
9. The risk in the Goods shall pass to the Customer upon delivery of the Goods to the Customer.
10. Unless the Supplier and the Customer agree otherwise in writing, the Customer shall take delivery of the Goods at the Supplier's premises at the Customer's expense.
11. If the Supplier and the Customer agree in writing that the Goods are to be delivered at a place other than the Supplier's premises:
 - 11.1 the Customer shall pay the transport charges in an amount to be agreed upon in writing;
 - 11.2 the Customer shall be responsible for receiving and unloading the Goods and checking it in the presence of the Supplier's representative. In the event of any shortages or damage, the delivery note must be endorsed accordingly. In addition, separate written notification must be given to the Supplier within 3 (three) days of delivery. In the event that the foregoing is

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not complied with, the Customer shall have acknowledged that it has received all of the Goods in good order and condition;

immediate steps to remedy the danger on an interim basis and shall forthwith notify the Supplier in writing of the danger.

- 11.3 if the Customer is not present at the agreed place of delivery, delivery may nonetheless be affected by offloading the Goods at such place and the above provisions regarding the separate written notification of shortages or damage, and recognition of claims, shall apply.
- 12. If the Goods are to be railed or transported by an independent carrier, the railways or the carrier, as the case may be, shall be the Customer's agent and delivery to the railways or the carrier shall constitute delivery to the Customer.
- 13. The Supplier shall be entitled to deliver the Goods in more than one consignment.
- 14. If the Supplier does not deliver the Goods on the date agreed upon in writing or within 30 (thirty) days from the date of receipt of notice calling upon it to deliver, the Customer shall be entitled to cancel the Contract of Sale and to reclaim any amounts paid in respect of such Goods but shall not have any other claims of any nature whatsoever against the Supplier. Notwithstanding the foregoing, should any deliveries be delayed, hindered, prevented or interfered with by any circumstance whatsoever outside the Supplier's control, the time or times for such deliveries shall be extended until the lapse of a reasonable period after the cessation of the said circumstance and the Supplier shall not be liable for any claims, loss or damage caused by such delay.
- 15. The Supplier warrants and represents that the Goods are:
 - 15.1 free of defects; and
 - 15.2 suitable for the purpose for which they are normally used.
- 16. In the absence of written agreement to the contrary, including an express negation of this clause, the Supplier does not warrant or represent:
 - 16.1 the suitability of the Goods for any special purpose for which the Customer may require it; or
 - 16.2 the accuracy, correctness, feasibility, safety and/or practicability of any advice, information, drawings, designs price lists, dimensions, delivery dates, performance figures or specifications as to its characteristics and capabilities, such latter information being intended to be approximate only and are furnished for information purposes only and shall not bind the Supplier in any way whatsoever.
- 17. It is recorded and agreed that no warranties, representations or guarantees other than those recorded herein have been given or made in connection with the sale of the Goods.
- 18. In the event of a breach of the warranties set out in 15 or, if applicable, any warranty which may have been given in terms of 16, the Supplier shall, at its election:
 - 18.1 repair or replace the Goods in question, or
 - 18.2 refund a proportionate share of the price relating to the defective or unsuitable portion of the Goods against the return of such Goods, provided that written notice specifying the defects or unsuitability is given to it within 3 (three) days of delivery of the Goods;
 - 18.3 and the Customer shall not have any other claims of any nature whatsoever against the Supplier.
- 19. Notwithstanding anything to the contrary herein contained, neither the Supplier nor any of its employees or agents shall be liable for any loss or damaged suffered by the Customer arising from any cause whatsoever in connection with the sale of the Goods or the use thereof, whether such loss or damage results from a breach of contract, negligence or any other cause.
- 20. If at any time a defect that could give rise to a claim against the Supplier by a third party should become visible in the Goods, the Customer shall take immediate steps to remedy the danger on an interim basis and shall forthwith notify the Supplier in writing of the danger.
- 21. Under no circumstances whatsoever shall the Supplier at any time be liable for any claims for consequential loss or damage which may be sustained by the Customer or for any claims made by any other person whatsoever in connection with the Contract of Sale and/or the Goods and the Customer hereby indemnifies the Supplier against all such claims.
- 22. The Customer shall not be entitled to cede or assign its rights or obligations in terms of the Contract of Sale without the written consent of the Supplier first having been obtained. The Customer agrees that the Supplier may cede or transfer its rights in terms of the Contract of Sale and its ownership of the Goods and in so far as consent may be necessary, the Customer agrees upon such cession or transfer to hold the Goods on the basis that the ownership therein has passed to the cessionary or transferee subject otherwise to the terms of the Contract of Sale and to the extent to which this clause may be construed as a stipulation alteri in favour of such cession of the Contract of Sale by the cessionary or transferee shall constitute an acceptance by the cessionary or the transferee of the benefits arising out of the Contract of Sale.
- 23. Whilst the Customer is indebted to the Supplier in respect of the price of the Goods:
 - 23.1 the Customer agrees to keep the Goods in good order and at all times to allow the Supplier and/or its agents and/or its servants to inspect the same;
 - 23.2 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;
 - 23.3 no alteration of or modification to the Goods may be made by the Customer;
 - 23.4 the Customer shall keep the Goods at the place of delivery and shall not move the Goods to any other destination without the prior written consent of the Supplier first having been obtained;
 - 23.5 the Customer shall not part with possession of the Goods or any part thereof or otherwise deal therewith save as contemplated in these Conditions of Sale.
- 24. Should the Customer default in the punctual payment on due date of the price payable in respect of any Goods or default in the punctual observance or performance of any of its other obligations or undertakings hereunder, then the Supplier shall have the right to cancel the Contract of Sale in respect of the sale of the Goods and to demand that the Customer forthwith returns, at its own expense, any Goods already delivered to the Customer and not paid for or not fully paid for, to the Supplier, and should the Customer fail to do so then the Supplier will have the right to apply to any competent court for an order to repossession of such Goods. Any such action taken by the Supplier shall be without prejudice to the Supplier's rights to recover all loss or damaged sustained by the Supplier, whether in respect of damage and/or depreciation and/or repairs required to be made to the Goods so recovered or otherwise. Alternatively to the foregoing remedies, the Supplier shall be entitled to institute proceedings for payment of the amount due and/or for specific performance.
- 25. In the case of the termination or rescission of the Contract of Sale, whether at the instance of the Customer or the Supplier or both of them, the Customer shall not be entitled to any allowance, credit, return or set-off of any payments or deposits previously made which shall be forfeited to and retained by the Supplier without prejudice to the rights of the Supplier to recover any damages suffered by it.
- 26. The Customer consents in terms of Section 45(1) of the Magistrate's Court Act No.23 of 1944 as amended in respect of any proceedings which may be instituted against it by the Supplier arising out of or in connection with the Contract of Sale, 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 Supplier may in its discretion disregard the foregoing consent to jurisdiction and institute any proceedings arising

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- out of or in connection with the Contract of Sale in the High Court of South Africa having jurisdiction.
27. The Customer hereby appoints its address specified in the relevant Schedule as its domicilium citandi et executandi for all purposes incidental to or arising out of the Contract of Sale.
28. A certificate under the hand of any director, any manager or secretary of the Supplier stating that any particular sum or sum is/are due and payable by the Customer to the Supplier in terms of the Contract of Sale or stating the amount of any costs, charges or expenses taken into account in determining the amount of any claim in favour of the Supplier against the Customer in terms of the Contract of Sale, shall be admissible in any court of law as prima facie proof of the contents thereof and shall constitute a liquid document for the purposes of summary judgment or provisional sentence.
29. No relaxation or indulgence granted by the Supplier to the Customer shall be deemed to be a waiver of any of the Supplier's right in terms hereof nor shall any such relaxation or indulgence be deemed to be a novation of any of the terms and conditions of the Contract of Sale. The Contract of Sale constitutes the entire contract between the Parties. No agreement at variance with these General Terms of Sale shall be of any force or effect unless in writing and signed by the Parties hereto.
30. The Supplier shall be entitled to take all such steps as it may deem necessary to recover any such outstanding amounts and the Customer shall bear and pay all legal costs arising out of or in connection with any action required to be taken by the Supplier in respect of such recovery on the attorney-and-own-client scale, including but not limited to, collection charges of 10% per amount received, tracing and storage fees.
31. Customers may be requested to complete and submit a Customer particular form before commencement of the supply of Goods. The Supplier shall be entitled to check the Customer's credit worthiness before supplying Goods to the Customer and the Customer hereby acknowledges and agrees that the Supplier shall be entitled to obtain information concerning the Customer from any registered credit bureau and/or any other suppliers. The Customer hereby acknowledges and agrees that information concerning the creditworthiness of the Customer may be disclosed by the Supplier to any registered credit bureau and/or any other suppliers.
32. These General Terms of Sale shall apply to and govern any future agreements of sale of Goods by the Supplier to the Customer.
33. Each sale shall be a separate contact governed by these General Terms of Sale.
34. In the event that the Supplier is to perform the Works, the following provisions shall apply:-
- 34.1 the Customer shall assume all responsibility for all site conditions above and below the surface;
- 34.2 the Customer shall assume all risk for providing full and proper access to the site at all times necessary to allow the Supplier access without causing the Supplier any delay or additional cost. For the avoidance of doubt, this includes access for cranes, 40 tonne lorries, people and any access necessary for the carrying out of the Works;
- 34.3 it is assumed for the purposes of the contract price that there shall be adequate access to site for a large rigid or articulated vehicle. If the vehicle has to be cross unmade ground, the responsibility for loss and/or delay is that of the Customer;
- 34.4 the Customer will provide adequate secure storage for the Suppliers equipment along with adequate facilities to ensure that the Supplier can perform the works safely;
- 34.5 the Customer will be responsible for obtaining all necessary permits and approvals necessary for the performance of the Works and for paying all necessary fees/charges;
- 34.6 the following are excluded from the contact price unless specifically included in writing the Contract:-
- 34.6.1 groundworks, including foundations, paving, landscaping, brickwork;
- 34.6.2 any work in connection with services (gas, water, electricity, telephone and drainage) to and from the building including connections;
- 34.6.3 mechanical ventilations;
- 34.6.4 Fire fighting and First Air Equipment
- 34.6.5 Fire and security alarm installations;
- 34.6.6 Telephone and data installations;
- 34.6.7 Cranage – if carnage is necessary, for whatever reason, the Customer shall be responsible for the actual cost incurred plus handling and administration costs;
- 34.7 the Supplier may subcontract all or part of its obligations under this Contract.
- 35. SURETYSHIP**
- 35.1 The signatories to this Contract of Sale, by their signatures thereto, hereby bind themselves jointly and severally, the one paying the other to be absolved, in favour of the Supplier as sureties for and co-principal debtors in solidum with Customer, for the due and punctual payment by the Customer of all amounts payable by the Customer to the Supplier in terms of this Contract of Sale and for the due performance by the Customer of all of the Customer's obligations to the Supplier in terms of this Contract of Sale.
- 35.2 The suretyship in terms of 35.1 shall remain of full force and effect notwithstanding:
- 35.2.1 any amendment/s to this Contact of Sale and/or any other contract for the time being subsisting between the parties;
- 35.2.2 any indulgence, concession, leniency or extension of time which may be shown or given by the Supplier to the Customer.
- 35.3 The signatories to this Contract of Sale hereby renounce the benefits of the legal exceptions "non causa debiti", "errore calculi", "excussion", "division", "de duobus vel pluribus reis debendi", "no value received" and "revision of accounts", with the meaning and effect of all of which they declare themselves to be fully acquainted.

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THE APPLICANT AND THE SIGNATORY/IES HERETO HEREBY ACKNOWLEDGE:

1. Acknowledge/s that they have read and understood the contents of the Standard Conditions of Sale and contents of the Standard Conditions of Hire and Erection attached hereto and initialled by us.
2. Agree to be bound by the terms set out in the Standard Conditions of Sale and Standard Conditions of Hire and Erection attached hereto and initialled by us.
3. Acknowledge that they are aware that a Suretyship is incorporated in the Standard Conditions of Sale and Standard Conditions of Hire and Erection attached hereto and initialled by us.

CONFIRMATION

NAME (print) _____ CUSTOMER SIGNATURE _____
(WARRANTING MY AUTHORITY TO EXECUTE THIS DOCUMENT)

CAPACITY _____ DATE _____

WITNESS NAME (print) _____ WITNESS SIGNATURE _____

DATE _____

SIGNED _____
ABACUS SPACE SOLUTIONS REPRESENTATIVE

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