

CH PUMPS (PTY) LTD

TERMS AND CONDITIONS

1. GENERAL

- 1.1. "Company" shall mean CH PUMPS (PTY) LTD with registration number 2015/217057/07 or any subsidiary or associated with CH PUMPS (PTY) LTD which accepts the Customer's order and their respective successors and/or assignees;
- 1.2. "Customer" shall mean the person, representative, agent, firm or company that has requested the Goods and/or Services and/or Quote;
- 1.3. "Goods" shall mean any tangible part, system or component/s supplied by the Company;
- 1.4. "Orders" shall mean all orders placed by the Customer for Goods;
- 1.5. "Services" shall mean supply, installation and maintenance services of the Goods and shall include repair services offered by the Company as the context require; and
- 1.6. "Quote" shall mean the offer or proposal made by the Company to the Customer for Goods and/or Services and are ex-works and exclusive of Value Added Tax;

2. ORDERS AND ACCEPTANCE

- 2.1. Any and all Orders made by the Customer to Company shall only be deemed to be an offer and shall only be deemed accepted by the Company upon the issue of a written acknowledgement of order by the Company or delivery of the Goods and/or Services.
- 2.2. All Orders for Goods or Services must be confirmed in writing and must be accompanied with sufficient information to enable the Company to proceed with such requests.
- 2.3. Any and all Orders for Goods and Services accepted by the Company may not be varied or cancelled without the written consent of the Company which, if given, shall be on the terms that the Customer shall indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of any such cancellation or variation. All Orders for Goods or Services to be varied shall be done in writing.

3. GOODS

- 3.1. Unless otherwise expressly agreed in writing, any specimen of Goods which may be submitted by the Company to the Customer is intended for the purpose of identification and illustration only and the contract shall not be deemed to be a contract for the sale of the Goods by sample.

- 3.2. Certified outline drawings will be supplied, if necessary, after the receipt by the Company of the Customer's written Order, but the Company does not undertake to supply copies of detailed drawings.
- 3.3. All information supplied to the Customer by the Company for Goods before an Order is made and the descriptions and the illustrations contained in the Company's catalogues, pamphlets, price lists and other advertisement posts are approximate, being a general description by way of identification only and such information and descriptions shall not in any circumstances constitute a sale by description, nor shall any statement made in any such document, or any other statement made, whether orally or in writing, by or on behalf of the Company be deemed to be a representation by which the Customer has been induced to enter into any contract.
- 3.4. Company may add a trade of discount at Company discretion.

4. PRICE AND PAYMENT

- 4.1. Unless stated otherwise by the Company, all prices of Goods and/or Services provided on the Quote are ex-works and is exclusive of Value Added Tax.
- 4.2. All prices on the Quote are valid for 7 days of date of issue by the Company and are subject to any increase in the cost price, including increases pursuant to currency variations occurring before dispatch of the Goods by the Company to the Customer.
- 4.3. Should the Company incur additional cost owing to suspension of the Services by the Customers for whatever reasons, including Customers instructions or lack thereof, such costs shall be added to the price of the Goods and/or Services for the Customer's account.
- 4.4. Unless otherwise agreed in writing, payment of Orders shall be due and payable upfront before delivery or collection of Goods.
- 4.5. In the event the Customers has an account with the Company, payment of Goods are due and payable within 30 days of issuing such invoice.
- 4.6. The Company shall be entitled to treat any failure by the Customer to pay the price of the Goods and/or Services or any part thereof on the due date for the payment thereof as a breach of contract and the Company may be discharged from further performance of its obligations (including its obligation to make deliveries or further deliveries) under any contract between Customer and Company, including these terms and conditions.
- 4.7. In the event the Customer fails to pay its credit account held with Company within 30 days, the Company shall charge Interest on overdue accounts. The Interest shall be payable by the Customer on overdue amounts compounded monthly at 2% plus the base rate of South African Reserve Bank from time to time on the outstanding amount until the total price for the Goods and/or Services and/or such costs and/or charges are paid in full.

- 4.8. The Customer shall be liable for all costs incurred on the attorney-and-client scale as well as for any collection commission payable by the Company. The Customer shall indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts on accounts.
- 4.9. In addition and without prejudice to any other rights of set off to which the Company may be entitled whether by statute, at common law, by custom or otherwise, be entitled (if it elects to do so) to set off all or any debts and liabilities (whether present or future, certain or contingent and whether ascertained or not) which the Company or any subsidiary or associated company of the Company may owe to the Customer on any account whatsoever.

5. DELIVERY AND RISK

- 5.1. The Company shall provide the Customer with an estimated time for delivery of Goods. Any date or delivery time period quoted for the delivery shall be an estimate time period only and the Company shall not be liable for any loss or damage whether direct or indirect and whether suffered by the Customer or by a third party, resulting from any delay in delivery of or failure to deliver Goods or provide the Services, howsoever caused.
- 5.2. Goods and/or Services shall be considered delivered on the date and time when the Goods are shipped/transported from the Company's premises, if the Goods are picked up from the Customer and/or the date on which the Customer receives notice that the Goods are ready for collection and in respect of Services, the performance of Services.
- 5.3. Goods delivered by the Company may be done in installments and Services performed by Company may be done in any order. Deliveries of further instalments and/or further parts may be withheld by the Company pending final payment of previous instalments and/or parts.
- 5.4. The responsibility and risk in the Goods shall pass to the Customer on delivery as per clause 5.2.

6. PACKAGING AND SHIPPING

- 6.1. The Customer shall give the Company despatch instructions (including any special marking of packing cases) and identify the packaging standard required at the time of placing its Order.
- 6.2. Any requests by the Customer to arrange for shipment of the Goods shall be done at the sole expense and risk of the Customer and as the agent of the Customer, which hereby authorises the Company to enter into any contracts with third parties for or relating to the shipment carriage and insurance of the Goods as such agent and undertakes forthwith on demand to pay and to indemnify the Company against any imposts, duties, taxes, fees or other charges involved in the export of the Goods from the country of origin or their importation into any other country.

7. STORAGE

- 7.1. If by reason of any default by the Customer the Goods are not despatched or as the case may be collected from the Company's premise within 14 days from delivery (as defined in clause 5.2) the Company shall be entitled in addition and without prejudice to any other rights and remedies which it may have against the Customer in respect of such default:
- 7.1.1. to store the Goods at the sole risk of the Customer making an appropriate charge to the Customer for storage; and/or
- 7.1.2. to give written notice to the Customer requiring it forthwith to remove the Goods from the Company's premises or from any other premises at which they may be stored.
- 7.2. If the Customer fails to comply with the notice referred to in clause 7.1.1 and 7.1.2 within 21 days from the date of such notice the Company shall be entitled to sell or otherwise dispose of the Goods and shall be under no obligation to account to the Customer for the proceeds of such sale or other disposition except to the extent that such proceeds and the value of any payments already made by the Customer (other than any deposit paid, or advance payments expressed to be non-returnable) may exceed the amounts owing to the Company. The Company shall be entitled in addition to its other rights and remedies as aforesaid to be credited or paid by the Customer for its charges and all expenses incurred in storage of the Goods and for any costs and expenses incurred in connection with the sale of Goods to Customer.

8. CUSTOMER'S PATTERNS OR OTHER PROPERTY

The Company will not be responsible for loss of or damage to the Customer's patterns or other property whilst in the Company's possession or in the course of being returned to the Customer, howsoever such loss or damage may be occasioned. Such materials are placed with the Company entirely at the risk of the Customer and should be insured by the Customer as appropriate.

9. RETURN OF GOODS

- 9.1. Goods returned must be accompanied with the original proof of purchase and original packaging, in a resaleable condition. No returns will be accepted without original proof of purchase.
- 9.2. Unwanted, unused parts returned after 7 working days of the invoice date will incur a 10-20% handling fee at the Company discretion. Parts returned after 30 days will not be accepted for return.
- 9.3. Parts that have been defaced (installed, disassembled, physically altered, or permanently installed, affixed, attached, joined, or added to, tampered with, oil stained, primed, or otherwise modified) and are therefore not in their original state as sold, including any damage to the packaging or lack of original packaging will not be accepted for return unless the Goods are defective.

- 9.4. Should the Company do a special order at the Customers request and such Special orders will not be accepted for a return as these parts are specifically ordered according to the customer's specific requirements.
- 9.5. There will be no return on electrical parts other than a warranty claim that is accompanied by the required diagnostic report indicating the part is faulty and which report is supplied by an entity with acceptable credentials and approved to conduct testing on the goods being returned.
- 9.6. Any returns must be in a saleable condition unless the return relates to defective products.
- 9.7. All returned Goods will be subject to a to a reasonable charge for repacking and re stocking.
- 9.8. The Company reserves the right to withhold a refund until the returned part has been examined and tested.
- 9.9. All parts have a 12-month warranty against manufacturing defects. Claims will be accepted if the part is returned within the warranty period and confirmed to a Company supplied part.

10. **WARRANTY**

- 10.1. The Company warrants to the Customer that Goods supplied new by the Company shall be free from defects in materials and will conform to specification, and workmanship appearing to the Customer within 12 months from delivery (as defined in clause 5.2) and that all Services shall be carried out with reasonable skill and care. This warranty also applies insofar as the Goods were designed by the Company, to defects resulting from errors in the Company's design insofar as such errors may render the Goods defective independently of any question of whether they are suitable for the Customer's requirements. The term of this warranty shall not be extended by the fact that a defect was latent or that it was not or could not have been discovered by the Customer within the said 12 month period. The Company shall have no obligation under this warranty unless:
- 10.1.1. the Company is notified of the defect in the Goods and/or Services in writing within 14 days of it becoming apparent.
- 10.1.2. the Company or its agent is given a reasonable opportunity to safely inspect the Goods which are alleged to be defective (the Customer shall bear all costs reasonably incurred in relation to such inspection).
- 10.1.3. the Goods which are alleged to be defective are returned to the Company's premises with transportation catered for unless the Company advises otherwise;
- 10.1.4. The Customer has complied with a 6 month maintenance service on Goods that are in continuance use, such Goods are to be serviced on a 6 month basis, failure to maintain such Goods shall be at the Customers fault; and

- 10.1.5. the Customer furnishes satisfactory evidence that the Goods alleged to be defective have been properly installed and maintained (6 month maintenance service on Goods operating continuously), correctly lubricated, operated only under normal conditions with competent supervision and within the load limits for which the Goods are designed. This warranty shall not apply to Goods which have been subjected to misuse, abuse, neglect or improper storage, handling or maintenance or which have been damaged after leaving the Company. The Company will not be responsible for any claims for work done by anyone other than the Company to correct any defects unless the work is authorised in writing by the Company prior to it being undertaken. Any unauthorised work will invalidate this warranty.
- 10.2. All re-conditioned / re-manufactured Goods will carry a 3-month warranty on material and 6 month warranty on workmanship.
- 10.3. Provided that the Customer shall have paid in full for all Goods and/or Services supplied to it by the Company, the Company will repair defective Goods or re-perform defective Services covered by the aforementioned warranty or if in the Company's judgement they cannot be satisfactorily repaired or re-performed, will provide either a refund of the price of the defective Goods and/or Services or, at the Company's option, replacement Goods.
- 10.4. The Customer accepts that the express benefits of this warranty represent the entire responsibility of the Company to the Customer in respect of all conditions and warranties express or implied, statutory or otherwise and any other obligations and liabilities whatsoever of the Company relating to the Goods and/or Services.
- 10.5. The aforementioned warranty does not extend to parts accessories and components supplied by the Company but manufactured by others, in respect of which the Customer shall only be entitled in conjunction with the Company to the benefit of any warranty or guarantee as is given by the manufacturer to the Company.

11. LIMITATION OF LIABILITY

- 11.1. The Company shall not be liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof), (i) for any economic loss of any kind whatsoever, including without limit loss of profit, business contracts, revenues or anticipated savings, or (ii) for damage to the Customer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special indirect or consequential loss or damage of any nature whatsoever with regards to this terms and conditions.

- 11.2. Without prejudice to clause 10 and clauses 11.1 and 11.3, the Company shall not be liable for any injury loss or damage, whether direct or consequential, physical or pecuniary, which may be caused to the Customer or any third party or to any property or assets of the Customer or any third party by reason of any defect, whether of work or materials, and whether resulting from the negligence of the Company or not, in the design, manufacture, installation or repair of any Goods, replacement Goods or services supplied the Company or by reason of the use or operation thereof and the Customer is advised to have adequate insurance against all such risks.
- 11.3. Without prejudice to clause 5.1 if the Company shall be found or held liable to a Customer or any third party by reason of any failure to deliver the Goods or provide the Service (partial or total) or for breach of contract and whether in contract tort or otherwise howsoever the Company shall not be liable for any sum exceeding the price of the Goods and/or Services or, provided that the Company shall in case of part delivery or part performance receive payment pro rata to the price of the Goods and/or Services for the Goods delivered or Services performed. If the Customer wishes the Company to accept a greater or more extensive degree of liability it must notify the Company with the Order and the Company's prices will be adjusted accordingly.

12. TESTS INSPECTION AND PERFORMANCE

- 12.1. In the event any inspections and/or tests should be conducted of the Goods and/or Services, the Company shall give reasonable notice to the Customer in order for the Customer to make the necessary arrangements for the inspections and/or tests to be done. Any additional inspections and/or tests, that falls outside of the normal inspections and/or test performed by the Company, shall be brought the Customers attention and shall be for the Customer's account which costing shall be added to the price for Goods and/or Services.
- 12.2. The Company does not accept any responsibility or make any commitments regarding the suitability of the Goods the Customer needs, its is the Customers responsibility in determining the suitability of the Goods and ensuring that their rated performance and capacity meet its requirement. The Customers exercises its own skill and judgement in, and determining the Goods to meet its clients requirements.

13. MACHINING CUSTOMERS MATERIALS

- 13.1. The Company's prices for machining or cutting teeth do not include transport, handling, packaging or insurance. All metal removed shall be the property of the Company and has been allowed for in the Company's price. Should any material or blanks sent for machining, cutting teeth, grinding, hardening, flame cutting, welding, assembly or any other operation be spoiled, the Company shall not be responsible for the value of such material or blanks, or the cost of any prior operations performed thereon. This applies likewise to finished parts sent for fitting or other purposes. The Company further disclaims any responsibility for the failure of all or any such parts due to any defects therein whatsoever. The exclusion of liability contained in this clause 14.1 shall not apply to the extent that any spoiling is caused by the Company's negligence.
- 13.2. The Customer warrants that any material supplied by it shall be of suitable quality. The Company will charge for work carried out to any material which is spoiled due to the unsuitability of such material and for any consequential damage to its cutters or other tools and the Company shall not be responsible for replacements. The Company does not undertake to check or to rectify Customer's material or blanks, neither does the Company accept responsibility for loss or damage thereto after delivery.
- 13.3. The Company reserves the right to charge the Customer for any expenses incurred by the Company in rectifying the Customer's material, when such material has not been supplied to the correct dimensions.

14. INSTALLATION

Where there is a contract in place between the Customer and the Company which provides for the supervision of installation of the Goods by the Company the following provisions shall apply:

- 14.1. The Company shall provide the services of an engineer to advise upon:
- 14.1.1. the installation of the Goods; and
- 14.1.2. if specified, the checking for accuracy, testing and commissioning of the Goods.
- 14.2. The Customer will at its own expense provide all equipment, labour and other facilities required for the installation of the Goods.
- 14.3. The employees provided by the Customer shall remain the Customer's servants and under the Customer's control and the Company shall not be liable for any act or omission of such employees.
- 14.4. Subject to clauses 11.1, 11.3 and 11.4 the Company shall not be liable for any injury, loss or damage whether caused to the Customer or a third party by reason of any errors, omissions or negligence on the part of the engineer appointed by the Company.

15. TESTS AFTER INSTALLATION

- 15.1. Where there is a contract in place between the Customer and the Company which provides for the testing of the Goods on completion of their installation the tests shall be carried out, at the Customers expense, in the presence of the Company and the Customer and the Customer shall give the Company reasonable notice of the date on which and the time at which the tests are to be made.
- 15.2. Where the Customer has given the Company reasonable notice of the date on and time at which the tests are to be made in accordance with sub-Clause 16.1 and the Customer fails to attend such tests then the test will proceed in its absence and shall be deemed to have been made in its presence.

16. PROPERTY IN THE GOODS

- 16.1. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these terms and conditions, the property in the Goods shall not pass to the Customer until their full price and any other sums owing by the Customer to the Company, whether under the same or under any other contract has been paid.
- 16.2. The Customer shall if so required by the Company assign to the Company the Customer's right to recover the price of the Goods from any sub-purchaser or take steps to recover the same for the benefit of the Company and account to the Company therefore.
- 16.3. The Company shall be entitled to exercise all and any of its rights under this clause 17 notwithstanding that any period of credit provided for by any contract between Customer and Company has not expired at the time when it elects to do so.

17. FORCE MAJEURE

Should the performance by the Company of any of its obligations under the contract be prevented, hindered or delayed by or in consequence of any cause or event whatsoever beyond the reasonable control of the Company including (but not limited to) any outbreak of hostilities, strikes, lock-outs, trade disputes or other labour difficulties, breakdowns, delays in transport, accidents, fire, flood, inadequate performance of, failure of or incorrect processing by computer systems, default of suppliers or sub-contractors, delivery to the Company of defective materials or components or delay in delivery to the Company of materials or components, or in the event of national emergency, or if the Company's works should become either directly or indirectly so engaged on Government contracts under priority directions as to prevent, hinder or delay work on other contracts, the Company shall be entitled at any time, on notice to the Customer, to make partial deliveries only or to determine the contract without liability and without prejudice in any case to rights which have already accrued to the Company in respect of deliveries already made, or work already done.

18. TERMINATION

If the Customer (or, where the Customer is a firm, any partner therein) defaults in or commit any breach of any of the Customer's obligations to the Company or, if any distress or execution shall be levied upon the Customer, the Customer's property or assets, or if the Customer shall become insolvent or make or offer to make any arrangement or composition with its creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against the Customer, or if the Customer shall be a limited company and any resolution or petition to wind up such company shall be passed or presented (otherwise than for bona fide reconstruction or amalgamation and the resultant entity is or agrees to be bound by the Contract), or if a receiver of such company's undertakings, property or assets or any part thereof shall be appointed, or if a nominee is appointed, the Company shall be entitled forthwith to terminate any contract between the Customer and Company then subsisting between it and the Customer, and, upon written notice of such termination being posted by the Company to the Customer's last known address, any such contract then subsisting shall be deemed to have been terminated, without prejudice to the Company's accrued rights and existing remedies against the Customer.

19. QUANTUM MERUIT

Where from any cause, whether arising under the contract or otherwise and whether due to the Company's breach of contract between Customer and Company or otherwise work under the contract is only partly completed, the Company shall be entitled to payment on a quantum meruit basis in respect of all work done by the Company without prejudice to the Company's other rights and remedies should non-completion be occasioned by default of the Customer.

20. NO WAIVER

No time or other indulgence granted by the Company to the Customer shall operate or be deemed to operate as a waiver or suspension of the Company's rights under these Conditions. The Company shall be entitled at any time with or without prior notice, to hold the Customer to strict performance of any outstanding or recurring obligations under the contract.

21. INDEMNITY

- 21.1. The Customer warrants that the use by the Company of any information, materials, drawings, designs or other matter provided by the Customer shall not infringe the intellectual property rights (including without limitation trademarks, service marks, design rights, registered designs, patents, copyright, utility models, know how) of or asserted by any third party and shall indemnify the Company against all damages, penalties, losses, costs and expenses to which the Company may become liable in the event that any allegation of infringement of such intellectual property rights is made or any work done by the Company pursuant to the contract constitutes an infringement of any such intellectual property rights.

- 21.2. The Customer shall indemnify the Company against any loss, damage or expense which may be incurred or sustained by the Company in the handling, defence, compromise or satisfaction of any claims addressed to the Company by any third parties, including but not limited to claims brought by any of the Company's employees or agents, which arise from any breach on the part of the Customer or any of its obligations under these terms and conditions.
- 21.3. The Customer shall further indemnify the Company in respect of the handling, defence, compromise or satisfaction of any claims whatsoever by such third parties which may be brought against the Company to the extent that the Company shall thereby have incurred any liability or expense arising out of any contract between the Customer and the Company (including liability resulting from the reasonable compromise of such claims) which is in excess of the obligations assumed by the Company under such contract as between the Company and the Customer, whether or not such claims arise or are founded upon any breach of contract or default, including negligence, upon the part of the Company.
- 21.4. The Company has no control over the nature and conditions in which the Goods are used and the Customer shall in particular indemnify and keep indemnified the Company in respect of any and all loss, damage, expenses and liabilities which the Company may incur or sustain in the handling, defence, compromise or satisfaction of claims in connection with any Goods supplied under any contract between Customer and Company which may be made against the Company under the South African Consumer Protection laws by any third parties (including but not limited to any employees or agents of the Customer) or which may be made against the Company by any of its suppliers or by another person's for an indemnity against or contribution towards claims or liabilities under the South African Consumer Protection laws. This shall apply whether or not there has been breach by the Company of its obligations under these Conditions and whether or not the Company may have any defence under the said Act or otherwise to the relevant third-party claim.

22. **APPLICABLE LAW**

These terms and conditions and any contract between the Customer and the Company shall be governed in terms of the laws of the Republic of South Africa.

23. CONFIDENTIALITY

- 23.1. Any drawings, and any documents conveying technical or confidential information with regard to the Company's products or its business, which may be supplied in connection with the contract between the Customer and Company shall remain the Company's property and shall be returned immediately upon the Company's request and the Customer shall ensure that all copyright in all such drawings and documents is not abused. The Customer shall also at all times treat all such drawings and documents and any other information regarding the Company's products or business which is of a confidential nature as matters confided to the Customer in strict confidence and shall not itself use, or show or divulge such matters to any third parties without the Company's prior written consent, except so far as such use or such disclosure to employees or other persons is necessary for the business efficiency of the contract between the Customer and Company, and in the event of such matters being disclosed to third parties, whether or not the disclosure be permitted, the Customer shall ensure that such third parties observe similar confidence and shall take all necessary steps to prevent any infringement. The provisions of this clause 26 shall not apply to information which is or becomes part of the public domain (other than through any breach of contract), or which comes lawfully into the possession of the Customer without any breach of confidentiality.
- 23.2. The Customer shall not, under any circumstances, acquire any right in or to any intellectual property rights (as described in clause 22.1) subsisting in, resulting from or relating to the Goods, or any documents, drawings and/or specifications relating thereto either supplied by the Company to the Customer in connection with the Goods and/or Services, or resulting from the provision of the Goods and/or Services, unless otherwise expressly agreed by the Company in writing. If the Customer shall in any way acquire any such rights, then the Customer shall immediately inform the Company and shall forthwith take such steps as may be required by the Company to assign such rights or vest such title in the Company.