

## TERMS AND TRADING CONDITIONS

### 1. INTRODUCTION

- 1.1 Schwalbe Import and Export cc T/A (SCHWALBE) is both a manufacturer and procurement company, selling merchandise and goods either manufactured in house or sourced from various suppliers to independent retailers.
- 1.2 These terms and conditions shall apply to any contract for the sale of any goods or services whether that contract arises out of any offer made by SCHWALBE and accepted by the APPLICANT or any offer made by the APPLICANT and accepted by SCHWALBE, including any such offer made by the APPLICANT in response to a quotation from SCHWALBE.

### 2. CONFIDENTIALITY

- 2.1 The APPLICANT acknowledges that it is of the utmost importance to SCHWALBE and its customers, that the terms and conditions of this contract and all and any pricing arrangements with SCHWALBE'S suppliers remain strictly confidential so as not to effect the business relationship and trading conditions with SCHWALBE's suppliers, customers and trading partners.
- 2.2 In view thereof the APPLICANT irrevocably undertakes in favour of SCHWALBE that it shall not at any time after signature of the Application for Credit, either directly or indirectly, itself or through the auspices of its companies, subsidiaries, holding companies, fellow subsidiaries, associated companies, shareholders, directors, agents, servants or employees, divulge, disclose, publish or otherwise make known to any party, any of the conditions contained herein, or of any pricing, cost of goods, cash rebates afforded to the APPLICANT by SCHWALBE or the suppliers, without the written permission of SCHWALBE first having been had and obtained.

### 3. METHOD OF PURCHASING

- 3.1 Orders for all goods are to be placed with SCHWALBE'S office, SCHWALBE employees or nominated sales agents, either verbally or in writing by the APPLICANT with a specified order number which will appear on the invoice and delivery note.
- 3.2 Any discounts or cash rebate to which the APPLICANT is entitled in terms hereof and agreed to in writing by SCHWALBE, shall be credited to the APPLICANT's account with SCHWALBE.

### 4. ACCOUNTING AND PAYMENT PROCEDURE

- 4.1 Each delivery will be separately invoiced and the invoice will be deemed payable once the applicant has signed and dated the invoice. No disputes will entitle the APPLICANT to withhold part or full payment due.
- 4.2 The APPLICANT will receive a month end statement from SCHWALBE and if necessary a provisional statement containing adjustments to month-end statements. The APPLICANT shall be obliged to settle and make payment of such statements as per the terms agreed to in writing with SCHWALBE.
- 4.3 Should SCHWALBE not receive payment relating to an invoice, reflecting in their Bank Account on or prior to the due date, SCHWALBE has the right to reverse all and any discounts, rebates or special concessions afforded and detailed on the respective invoice/'s.
- 4.2 SCHWALBE shall be entitled to charge interest at the maximum rate possible from time to time on all overdue amounts as set forth in the Usury Act No. 73 of 1968, as amended, or any other applicable legislation.
- 4.4 The applicant shall be liable for, and shall reimburse SCHWALBE for all cash deposit (bank notes deposit) charged by SCHWALBE's bank from time to time.

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## 5. DELIVERY

- 5.1 The APPLICANT recognises that although SCHWALBE effects deliveries, in some circumstances delivery is effected by the nominated transporters.
- 5.2 Delivery shall be completed when goods are off-loaded at their destination.
- 5.4 The risk in the goods shall pass to the APPLICANT on delivery of the goods to the APPLICANT, its agent or carrier referred to in 5.2
- 5.5 If the APPLICANT fails to take delivery of the goods then:-
- 5.5.1 the risk shall immediately pass from SCHWALBE to the APPLICANT
- 5.5.2 the APPLICANT shall refund to SCHWALBE on demand the reasonable cost (including storage and insurance) of keeping the goods during the period of that delay, should SCHWALBE be so charged;
- 5.7 Time shall not be of the essence of the contract and SCHWALBE shall be exempt from and shall not be liable under any circumstances for any complaints or claim for any alleged shortage or failure of the goods to comply with the APPLICANT's order.

## 6. CLAIMS / RETURNS

- 6.1 The APPLICANT shall as soon as possible and by not later than the seventh day after each delivery notify and forward copies of the relevant documentation of any claims or returns to SCHWALBE's credit controller when the APPLICANT has a claim against SCHWALBE for deliveries invoiced or to be invoiced, failing which the APPLICANT shall forfeit any right to that claim.
- 6.2 SCHWALBE will evaluate the claims or returns and should SCHWALBE dispute or repudiate this claim in writing or verbally, such dispute shall be deemed to be resolved and the APPLICANT shall not be entitled to withhold payment in respect of the invoice/s relating to such dispute and shall on demand pay to SCHWALBE such amount.
- 6.3 In reference to 6.2 above SCHWALBE shall not be obliged to pass a credit on the APPLICANT's account and the APPLICANT shall be liable for payment in respect of any claims or returned goods unless SCHWALBE has in writing confirmation of acceptance of such claim or returned goods.

## 7. DEFAULT

- 7.1 Should the APPLICANT default in paying his/its account on due date:-
- 7.1.1 then SCHWALBE shall be entitled, but not compelled, to forthwith demand that the whole amount outstanding by the APPLICANT, from whatsoever cause arising will immediately become due and payable notwithstanding the fact that a portion of the amount would not be owing in accordance with the agreed terms of payment.
- 7.1.2 or if the APPLICANT ceases to carry on business, SCHWALBE without prejudice to any other rights which it may enjoy may cancel the sale, retain all payments made and recover possession of the goods.

## 8. WARRANTY

- 8.1 All goods are supplied voetstoots and without any warranties or guarantees by SCHWALBE, except for such warranties issued in writing to the APPLICANT.

## **9. SUSPENSION OF SCHWALBE'S OBLIGATIONS**

- 9.1 If any amount owed by the APPLICANT is not paid on due date, then without prejudice to any other right it may have, SCHWALBE may immediately suspend and/ or cancel the carrying out of any of its then uncompleted obligations, the APPLICANT hereby indemnifying and holding harmless SCHWALBE in respect of any purported damages that it may suffer as a result of such suspension and/or cancellation.
- 9.2. Notwithstanding the aforesaid, SCHWALBE shall have the right in its sole and absolute discretion and without notice, to cancel or withdraw any credit facilities afforded to the APPLICANT, in which event the APPLICANT shall have no claim for damages in respect thereof and howsoever caused. In such event all amounts owing shall immediately become due, owing and payable.

## **10. OWNERSHIP AND SET OFF**

- 10.1 SCHWALBE shall be deemed to be the owner of the goods and notwithstanding the delivery of any goods to the APPLICANT, that ownership shall not pass from SCHWALBE to the APPLICANT, until SCHWALBE has received payment in full of all and any indebtedness of the APPLICANT to SCHWALBE.
- 10.2 In the event of SCHWALBE or any holding or subsidiary or fellow subsidiary company of SCHWALBE becoming indebted to the APPLICANT, SCHWALBE may set off such indebtedness against any monies which may become owing by the APPLICANT and a certificate issued under the hand of a manager of SCHWALBE (whose appointment does not have to be proved) shall be prima facie proof, for all purposes, to this effect.

## **11. EXCLUSIONS**

The APPLICANT shall not have any claim of any nature whatever against SCHWALBE for any failure by SCHWALBE to carry out any of its obligations under this Agreement for whatsoever reason and howsoever caused, including but not limited, as a result of causes beyond SCHWALBE's control, including, any strike, lock-out, shortage of labor or material delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier of SCHWALBE, no political or civil disturbances, the elements any act of any State of Government, any delay in securing any permit, consent or approval required by SCHWALBE for the supply of goods under the contract, or any other authority or any other cause whatever, including the liquidation or insolvency of any supplier.

## **12. CANCELLATION**

- 12.1 SCHWALBE may cancel the contract or any uncompleted part of it if the APPLICANT commits a breach of any of the terms or conditions contained herein, or being an individual dies or is provisionally or finally sequestered or surrenders or makes application to surrender his estate, or being a partnership the partnership is terminated, or being a company, close corporation or trust are placed under a provisional or final order of liquidation or judicial management or has a judgment recorded against it which remains unsatisfied for 7 days, or compromises or attempts to compromise generally with any of the APPLICANT's creditors, or closes the business for a period of 2 business days or more, or if SCHWALBE is dissatisfied on reasonable grounds with any information or the general creditworthiness of the APPLICANT or if there is a change in the ownership or equity of the APPLICANT.
- 12.2 SCHWALBE's rights in terms of 12.1 shall not be exhaustive and shall be in addition to its common law rights.
- 12.3 No relaxation which SCHWALBE may have permitted on any one occasion in regard to the carrying out of the APPLICANT's obligations shall prejudice or be regarded as a waiver of the APPLICANT's rights to enforce those obligations on any subsequent occasion.

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12.4 Upon the cancellation of the contract for any reason whatever and without prejudice to any rights which SCHWALBE may have:-

12.4.1 All amounts then owed by the APPLICANT to SCHWALBE in terms of the contract shall become due and payable forthwith;

12.4.2 SCHWALBE may retake possession of goods in respect of which ownership has not passed.

### **13. JURISDICTION**

13.1 SCHWALBE shall be entitled but not obliged to institute any proceedings against the APPLICANT, arising out of the contract, for the full balance outstanding including current purchase in any Magistrate's Court having jurisdiction over the APPLICANT notwithstanding that the claim or the value of them later in dispute may exceed the jurisdiction of the Magistrate's Court.

13.2 Further, the APPLICANT agrees to be liable for all legal costs, including costs on the attorney-and-client scale and collection charges including tracing costs which may arise.

### **14. CERTIFICATE**

A certificate signed by any Manager of SCHWALBE (whose appointment does not have to be proved) showing the amount due and owing by the APPLICANT to SCHWALBE at any given time shall be prima facie proof of the facts therein stated for the purpose of all legal proceedings against the APPLICANT for recovery of the said amount.

### **15. DOMICILIUM**

The APPLICANT nominates its physical trading address as reflected in the Applicant for Credit to which these terms and conditions are attached as its domicilium citandi et executandi for service upon it of all notices and processes whether in connection with any claim for any sum due to SCHWALBE or otherwise.

### **16. NEGOTIABLE INSTRUMENTS**

16.1 Any promissory note, bill of exchange, cheque or other negotiable instrument received by SCHWALBE from the APPLICANT:-

16.1.1 shall not be a waiver or a novation of the debt for which it is given and the APPLICANT waives presentment, notice of dishonor and protest where applicable;

16.1.2 whether or not so marked, presented for payment or deposited, shall not be "in full and final settlement" of the APPLICANT's account unless agreed to in writing by SCHWALBE;

16.1.3 It is specifically recorded that in the event of any cheque or other negotiable instrument being delivered by the APPLICANT to SCHWALBE through the postal services, then such postal services shall be regarded as the agent of the APPLICANT and in the event of such cheque or other negotiable instrument being lost or stolen through the postal system, the risk of such loss shall be borne by the APPLICANT and not SCHWALBE until such time as SCHWALBE is physically in receipt of such cheque or negotiable instrument.

### **17. CESSION**

The APPLICANT does hereby irrevocably and in rem suam cede, pledge, assign, transfer and make over unto and in favour of SCHWALBE all and howsoever its rights, title, interest, claim and demand in and to all claims, debts, book debts of whatsoever nature and description arising which the APPLICANT may now or at any time hereafter have against all and any persons, companies, firms, partnerships, associations, syndicates and other legal personae whomsoever (the APPLICANT's) without exception as a continuing covering security for the due payment of every

sum of money, which may now or at any time hereafter be or become owing by the APPLICANT to SCHWALBE from whatsoever cause or obligation howsoever arising which the APPLICANT may be or become bound to perform in favour of SCHWALBE.

#### **18. LAW APPLICABLE**

This contract is governed by the laws of the Republic of South Africa.

#### **19. LIQUIDATION**

Should the APPLICANT at any time be wound up, whether provisionally or finally (which liquidation of sequestration shall be deemed to be a material breach by the APPLICANT) or in the event of the APPLICANT being an individual or partnership and having his/its estate sequestered, whether provisionally or finally, any goods delivered by SCHWALBE to the APPLICANT and in respect of which payment has not been made at the date of the winding up or sequestration (whether payment in respect thereof be due or not) shall immediately be returned to and recoverable by SCHWALBE and the agreement pursuant to which such goods were sold shall be deemed to have been cancelled in respect of the goods so returnable/recoverable.

#### **20. NO WAIVER**

No extension of time or any other relaxation or indulgence granted by the SCHWALBE to the APPLICANT shall operate as or be deemed to be a waiver by SCHWALBE of any of its rights under this contract or a novation of any of the terms and conditions of this contract.

#### **21. CONSENT**

21.1 The APPLICANT consents and acknowledges that :-

- 21.1.1 SCHWALBE may carry out a credit enquiry in respect of the APPLICANT by accessing any credit bureau's database
- 21.1.2 SCHWALBE may transmit details to any credit bureau of how the APPLICANT has performed in meeting the APPLICANT's obligations in terms hereof and share such information with other credit grantors for the purposes of making any risk management decisions.
- 21.1.3 If the APPLICANT fails to meet its commitments to SCHWALBE, SCHWALBE may record the APPLICANT's non performance with any credit bureau
- 21.1.4 SCHWALBE may Monitor the APPLICANT's payment behavior by researching the APPLICANT's record at any one or more of the registered credit bureaus
- 21.1.5 Schwalbe may Record the existence of the APPLICANT's account with SCHWALBE with any credit bureau.

#### **22. COSTS OF ACTION**

In the event of SCHWALBE taking any legal action against the APPLICANT, the APPLICANT hereby agrees to be liable for all legal costs, including costs on the attorney and client scale, as between attorney and own client, collection charges and tracing costs which may arise.

#### **23. INTERPRETATION**

The headings in these conditions are for convenience only and are not to be taken into account for the purpose of interpreting the Contract.

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#### 24. GENERAL

- 24.1 Any indulgence shown to the APPLICANT shall not constitute a waiver or novation of SCHWALBE's rights.
- 24.2 SCHWALBE shall not be liable for any loss of profit or any damages direct or indirect, consequential or otherwise arising from defective goods or the like whether due to negligence, late delivery or any other cause.
- 24.3 Advices, recommendations or opinions by representatives of SCHWALBE, are given and expressed in good faith and shall not constitute representations of any description, and shall not give rise to any claim against SCHWALBE or such representatives.
- 24.4 The granting of any credit facilities based on this application shall be entirely in SCHWALBE's discretion and may be curtailed or terminated at any time without notice to me/the APPLICANT.
- 24.5 Failure to make payment on any due date shall result in all outstanding amounts becoming due and payable immediately irrespective of the date/s when the goods were purchased or credit facilities arranged.
- 24.6 The APPLICANT hereby acknowledges that any credit facilities granted to the APPLICANT may be withdrawn and/or altered by SCHWALBE at any time without prior notice and that the decision as to whether or not to grant credit facilities to the APPLICANT, is at the sole discretion of SCHWALBE.
- 24.7 No alteration of any of the above conditions shall be binding on SCHWALBE unless agreed thereto by SCHWALBE in writing. These conditions and every contract in which they are incorporated, shall be governed by and construed in accordance with the Laws of the Republic of South Africa.
- 24.8 If any provisions of these Standard Terms and Conditions is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be pro non scripto, but without effecting, impairing or invalidating any of the remaining provisions of these terms and conditions which shall continue to be of full force and effect.
- 24.9 To the extent that any of the provisions of the Trading Terms and Conditions contained in this document, being at variance or in conflict with this clause 24, the provisions of clause 24 shall be applicable and binding on the parties.

**WARRANTY**

1 I \_\_\_\_\_ in my capacity as \_\_\_\_\_ by my signature hereto do warrant that:

- 1.1 All the information in this application is true, correct and up to date;
- 1.2 I am a Director/Partner/Member/the Sole Proprietor of the APPLICANT;
- 1.3 I am duly authorised to seek credit facilities for the APPLICANT and to pledge APPLICANT's credit;
- 1.4 I am duly authorised generally to represent and to act for and bind APPLICANT;
- 1.5 I have read and understand the conditions of sale.

Signed by the Applicant or his duly authorised agent at \_\_\_\_\_

on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature \_\_\_\_\_

As Witnesses:

1. Full names \_\_\_\_\_ 2. Full names \_\_\_\_\_

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

NB:- We will endeavor to ensure that prior to purchases clients (APPLICANTS) accept our terms and conditions via an electronic acceptance button, however all purchases via e-commerce (the internet or other) and sales paid by electronic means, Credit Card or EFT etc, once concluded will be deemed as the client agreeing to these terms and conditions and will act as a signature to this document.