

Terms and Conditions of Sale

[1] Definitions

In these Terms and Conditions, unless the context indicates otherwise

- [1.1] “**Agreement**” means the agreement between the Seller and the Purchaser for the sale and purchase of the goods as set out in these Terms and Conditions and the Invoice;
- [1.2] “**day**” means any calendar day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa;
- [1.3] “**Goods**” means the goods described in the Invoice.
- [1.4] “**Invoice**” means the Invoice for the sale of the Goods which incorporates these Terms and Conditions by reference;
- [1.5] “**Parties**” means the Purchaser and the Seller and “Party” shall be a reference to any one of them as the context may require;
- [1.6] “**Purchaser**” means the person identified as such in the Invoice;
- [1.7] “**Purchase Price**” means the purchase price payable by the Purchaser to the Seller for the Goods as indicated on the Invoice as “Total Due”;
- [1.8] “**Seller**” means A&A Containers (Pty) Ltd 1999/025452/07
- [1.9] “**Terms and Conditions**” means the terms and conditions as set out in this document and the Invoice;
- [1.10] “**under this Agreement**” means, in terms of, pursuant, under, and arising from this Agreement, including its breach or termination;
- [1.11] a stated number of days shall be determined by excluding the first and including the last day,
- [1.12] an expression which denotes a gender includes the other genders;
- [1.13] an expression which denotes a natural person includes a juristic person and the other way around;
- [1.14] an expression which denotes the singular includes the plural and the other way around;
- [1.15] a reference to a clause is a reference to a clause in these Terms and Conditions.

[2] Sale and Purchaser

- [2.1] The Seller hereby sells to the Purchaser, who purchases, the Goods on these Terms and Conditions.

[3] Retention of Ownership

- [3.1] Ownership of, and the risk of loss and profit in, the Goods shall pass to the Purchaser upon payment by the Purchaser of the Purchase Price.

[4] Terms of Payment

- [4.1] In the event that the Goods are sold without the need for the Seller to convert such Goods according to the Seller’s specification and detailed on the Invoice, the Purchaser shall make payment of the full Purchase Price upon receipt of the Invoice.
- [4.2] In the event that the Goods need to be converted to the specification as detailed on the Invoice, the Purchaser agrees to pay a deposit equal to 50% (fifty percent) the value of the Purchase Price upon receipt of the Invoice.

[4.3] Subject to 1, the balance of the Purchase Price shall be paid prior to release and delivery of the Goods to the destination detailed on the Invoice.

[4.4] In the event that the Purchaser fails to settle the outstanding amount of the Invoice as per 2 or otherwise agreed, the Purchaser shall be liable for storage costs in respect of the Goods, which the Purchaser shall pay prior to release and delivery of the Goods.

[5] Delivery of Goods

[5.1] The Seller shall not be liable to deliver the Goods to the Purchaser unless expressly stated on the Invoice.

[5.2] All periods stated for delivery or completion run from the date of payment by the Purchaser in accordance with 1 above.

[5.3] The date for delivery or completion shall be deemed as estimates only and the Seller shall not be liable for any delay whatsoever.

[5.4] If delivery is delayed due to any act or omission of the Purchaser, or if having been notified that the goods are ready for despatch, the Purchaser fails to take delivery or provide adequate shipping instructions, the Seller shall be entitled to place the Goods into a suitable store at the Purchaser's expense. Upon placing the Goods into storage, delivery shall be deemed to be complete, risk in the Goods shall pass to the Purchaser and the Purchaser shall pay Seller accordingly.

[6] Condition of the Goods

[6.1] The Goods are sold as is and may be defective.

[6.2] The Seller does not warrant that the Goods are fit for the Purchaser's purpose.

[6.3] The Purchaser shall solely be responsible for procuring collection of the Goods, unless otherwise specified on the Invoice.

[6.4] The Purchaser shall be liable for any duties that may be payable in respect of the Goods.

[7] Method of Payment

[7.1] All payments due by the Purchaser to the Seller in terms of this Agreement shall be paid –

[7.1.1] On due date, without demand, and free of any set-off or exchange and without any deduction whatsoever;

[7.1.2] By way of an electronic transfer of cleared funds, immediately available to the Agent to the following account:

A&A Containers (Pty) Ltd
Standard Bank of South Africa
Account number: 022729402
Account Type: Business Current Account
Branch: Sandton City
Branch Code: 018105
Branch Code (electronic transfer): 051001
SWIFT Address: SBZA ZA JJ

[7.1.3] in such manner that

- [7.1.3.1] the payer bank shall not in any manner whatsoever be entitled or obliged to reverse such payment; and
- [7.1.3.2] the payee bank shall have immediate, unrestricted and irrevocable access to all such funds.

[8] Breach

- [8.1] In the event of breach by the Purchaser, the Seller shall afford the Purchaser 5 (five) days written notice of such breach and call upon the Purchaser to remedy the breach.
- [8.2] In the event of the Purchaser committing any breach of these terms and conditions including, but not limited to, the failure to make payment of the Purchase Price as agreed, the Seller shall be entitled forthwith to claim repossession of the goods, for which purpose the Purchaser hereby irrevocably authorises the Seller, through its duly authorised representative/s, to enter upon the premises where the Goods are kept, to take repossession of the goods.
- [8.3] The exercise of this right in 3 shall not preclude the Seller from its right to claim damages from the Purchaser occasioned by its breach.
- [8.4] The Seller shall, in the alternative, be entitled to enforce the provisions of these Terms and Conditions and claim payment of the full amount due by the Purchaser, any instalments of the price falling due in the future to become due and payable immediately.
- [8.5] In the event of breach the Seller shall be entitled to charge interest on overdue amounts at a rate of prime plus 2% per month.
- [8.6] Should the Seller take legal action against the Purchaser in the event of the Purchaser's breach, the Purchaser shall be liable for all legal fees incurred by the Seller in the recovery of any amounts owing, including costs on the attorney and own client scale and collection commission.
- [8.7] If the Purchaser breaches these Terms and Conditions and the Seller elects not to cancel the agreement of sale, the Seller shall be entitled to suspend performance of any of its obligations until the Purchaser has complied with its obligations.

[9] Site Requirements

- [9.1] The Seller shall not be responsible for ensuring the site is suitable to receive the Goods.
- [9.2] The Purchaser shall ensure that the site where the Goods are to be delivered:
 - [9.2.1] is level and compacted;
 - [9.2.2] has a slope not more than 200mm over the length and 100mm over the width of the unit;
 - [9.2.3] is accessible for an abnormally large load;
 - [9.2.4] is free from trees or obstacles;
 - [9.2.5] has an entrance of not less than 4 (four) meters wide.
- [9.3] In the event that delivery takes longer than 1 ½ hours (one and a half hours), a standing charge of R300.00 per hour will be charged to the Purchaser.
- [9.4] In the event that the site requirements are not met and the truck is unable to offload the Goods, the Purchaser shall be liable for any further costs associated with delivery, including but not limited to:

- [9.4.1] Returning the Goods to the Purchaser for storage;
- [9.4.2] Standing time;
- [9.4.3] Re-delivery of the Goods once the site requirements are met.

[9.5] The Seller shall not be liable for:

- [9.5.1] Civil works to level site to manufacturers specifications;
- [9.5.2] Supply of and connection to units of main services i.e. water, electricity, sewerage and gas;
- [9.5.3] Fitting of air conditioners on site;
- [9.5.4] Monthly cleaning of indoor air-conditioners Filter; or
- [9.5.5] Compliance certificates of whatever nature
- [9.5.6] Any other work

unless specifically included on the Invoice.

[10] Limitation of Liability

[10.1] The Seller shall not be liable for any loss or damage suffered by the Purchaser or any third party as a result of any cause whatsoever, including, without limitation, as a result of the Goods not being suitable for the Purchaser's purpose.

[11] Force Majeure

[11.1] If any Party is prevented, hindered or delayed from performing any of its obligations in terms of this Agreement as a result of any event beyond its control including war, riots, earthquakes, hurricanes, an "act of God", "act of State", "disease or illness", "epidemic or pandemic" or other similar event beyond the control of the Party, that Party shall not be liable for any failure to perform its obligations while such event persists and either Party shall have the right to terminate the Agreement if the event persists for a period in excess of 30 days.

[11.2] The Party whose performance is prevented, hindered or delayed by a Force Majeure event shall promptly notify the other Party of the occurrence of the event and describe in reasonable detail the nature thereof.

[12] Miscellaneous

[12.1] The Parties hereby consent to the non-exclusive jurisdiction of the South Gauteng High Court, in respect of all disputes, matters and causes arising in any manner whatsoever out of or in connection with these Terms and Conditions.

[12.2] This Agreement shall be governed according to the Law of South Africa.

[12.3] Any latitude, extension of time, or other indulgence which may be given or allowed by the Seller in respect of the performance of any obligation hereunder, and any delay or forbearance in the enforcement by the Seller of any right hereunder, shall not in any circumstance be construed to be an implied consent or election and shall not operate as a waiver or a novation of or otherwise adversely affect any of the Sellers rights under this Agreement, or estop or preclude the Seller from enforcing at any time and without notice, strict and punctual compliance with each and every provision hereof.

[12.4] Any addition to or variation, consensual cancellation, or novation of this Agreement shall only be valid, binding, and of any force or effect if reduced to writing and duly signed by the Parties.

[12.5] A waiver of any right arising from this Agreement or its breach or termination shall be only be valid, binding, and of any force or effect if reduced to writing and duly signed by the Party making the waiver.

[12.6] These Terms and Conditions, read with the Invoice, constitutes the whole agreement between the Parties as to the subject matter hereof, and no agreement, representation, or warranty between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

[13] Addresses

[13.1] The Parties select as their *domicilia citandi et executandi* for all purposes in connection with this Agreement, the following addresses:

[13.1.1] The Seller:

9B Ridge Road
Laser Park
Honeydew
2154
South Africa

[13.1.2] The Purchaser:

The physical and email addresses stated on the Invoice

[13.2] Either Party shall be entitled to change its *domicilium* on 5 days' prior written notice by either Party to the other.

[13.3] Any communication despatched by either Party to the other shall, if sent by email, be deemed to be received on the date despatched.