

**IMPORTANT NOTICE**

***IN COMPLIANCE WITH SECTION 49 OF THE CONSUMER PROTECTION ACT (NO. 68 OF 2008) THE MEMBER'S ATTENTION IS DRAWN TO THE PROVISIONS OF:***

- CLAUSES 2.9, 3.1.3, 3.7, 8.1, 8.3, 10.2 AND 11 WHICH CONTAINS TERMS AND CONDITIONS THAT PURPORT TO LIMIT OR EXCLUDE THE COMPANY'S RISK AND/OR LIABILITY AND THE RISK AND/OR LIABILITY OF THE COMPANY'S REPRESENTATIVES;***
- CLAUSES 3.4, 4.3, 4.4, 7.1, 7.2, 10.1,13.2, 13.3, AND 13.4 WHICH CONTAIN ACKNOWLEDGEMENTS OF CERTAIN FACTS WHICH APPLY TO THE CUSTOMER;***
- CLAUSE 8.2 AND 13.1 WHICH IMPOSE AN OBLIGATION ON CUSTOMERS TO INDEMNIFY THE COMPANY;***
- CLAUSES 3.1.2, 3.6, AND 5.4 WHICH CONSTITUTE AN ASSUMPTION OF RISK OR LIABILITY BY THE CUSTOMER.***

**STANDARD TERMS AND CONDITIONS OF SUPPLY**

**1. DEFINITIONS**

1.1 In this agreement, unless the context requires otherwise, the words as defined below will have meanings assigned to them hereunder namely:

- 1.1.1 "the company" means Octopi Solutions Pty (Ltd) (Reg. No. 2020/222196/07);
- 1.1.2 "the customer" means the person, partnership, firm, association, close corporation or company buying from the company in terms of this agreement;
- 1.1.3 "the goods" means all equipment, parts and other movables sold by the company;
- 1.1.4 "the intellectual property" means all the rights to intellectual property including (without limitation) the rights in and to the trademarks, service marks, trade names, domain names, logos, get-up, marketing and sales know-how, designs, patents, provisional patents, inventions (whether patentable or not), know-how (including confidential industrial and commercial information and techniques in any form), utility models, registered and unregistered design rights, copyright, software, database rights, rights in respect of any new or existing compilation of any data or information not covered under any existing copyright, any structured analysis, rating or other reports, application and any resulting know-how, use or any other results originating or following from or as a consequence of data being made available in respect of any of the aforementioned or part thereof, and all similar proprietary rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations, as well as any confidential information and all other intellectual property used, from time to time, for purposes of supply and conducting the business of the company;
- 1.1.5 "the quotation" means the written proposal to the customer for the supply of goods and/or services to which these terms and conditions are attached;
- 1.1.6 "the services" means all services rendered by the company at the request of the customer in terms of this agreement.

- 1.2 These terms and conditions do not apply to supplies to the extent that they would otherwise be void or unenforceable by reason of the provisions of the Consumer Protection Act, 2008. The statutory rights of consumers that enjoy the protection of the Consumer Protection Act are preserved throughout.

## 2. CONCLUSION OF CONTRACT

- 2.1 The customer must place an order for goods and/or services in writing with the company.
- 2.2 The company shall be entitled to accept the customers' order in whole or part.
- 2.3 The company shall not be obliged to accept any order unless it is reduced to writing. In the event of the customer supplying the company with a verbal order, then, and in that event only, the company shall e-mail the customer a written confirmation of the said verbal order, which written confirmation shall be deemed to be binding on the customer, unless the customer objects to the terms of the written confirmation within 3 days of date of dispatch of the written confirmation by the company.
- 2.4 Upon acceptance by the company of the customer's written order, or upon dispatch by the company of the written confirmation and acceptance of a verbal order to the customer, a contract of supply shall be deemed to have been concluded between the customer and the company on the terms and conditions set forth herein. All sales of goods by the company are subject to these conditions of sale and no other conditions shall be binding on the parties notwithstanding that such conditions may be annexed, continued in or incorporated by reference in, any documents exchanged between the company and the customer and purport regulate the terms of any purchase by the customer.
- 2.5 In the event of any terms contained in the company's quote being at variance with the terms contained in these conditions of sale, then, and only in that event, shall the terms in the company's quotation supersede these conditions of sale.
- 2.6 In the event of the customer requesting the company to perform additional work, it shall request such additional work in writing to the company and, if accepted by the company, such acceptance shall be communicated to the customer in writing, and such additional work shall then be undertaken by the Company at its normal rates (unless otherwise specified in writing) on the terms and conditions set forth herein.
- 2.7 A binding agreement shall also be concluded on receipt of the customer's signature on the company's written quotation.
- 2.8 When the company is required to manufacture or engineer or supply goods to the customer's specification and/or drawings or design, or carries out work according to the customer's instruction, or those of its nominees, the company accepts no responsibility for the efficiency, effectiveness or workability of goods so manufactured or work so carried out.
- 2.9 Orders, tender or quotations are based on information and measurements supplied by the customer or measurements taken on behalf of the customer and the company will accept no responsibility for incorrect measurements and/or incorrect description of materials, the correctness of which lies solely with the customer. It is accepted that the customer has checked and agreed to the measurements, description of goods and materials and conditions of sale as stated on the order form or quotation of the company.
- 2.10 Where specifications are to be supplied, the customer shall supply such specifications in a reasonable time to enable the company to complete delivery timeously.
- 2.11 Any alteration to the goods at the customer's request will be for the customer's account calculated at the company's prevailing rates in respect of material used, time and labour spent and transport costs.

## 3. DELIVERY

- 3.1 Notwithstanding any other provision to the contrary, the obligation to deliver goods and/or services shall in all cases be subject to the following provisions:
- 3.1.1 the availability to the company of the goods ordered or the materials or parts or labour needed to manufacture, engineer and/or supply the goods and/or services;
- 3.1.2 time shall not be of the essence of the contract and delivery dates shall be treated as approximate only based on the latest information available to the company. Under no circumstances shall the customer be entitled to withdraw from or cancel the contract on account of any delay in delivery or have any claim of any nature whatsoever against the company arising from late delivery;
- 3.1.3 the company shall be exempted from and shall not be liable under any circumstances whatsoever for any indirect or consequential damages of any nature whatsoever and whether in the contemplation of the parties or not which the customer may suffer as a result of any delay in delivery of the goods and/or services ordered.
- 3.2 The company however undertakes to use its best endeavours to adhere to the specified delivery dates.
- 3.3 Delivery shall be by the company ex works from the company's premises.

- 3.4 The company's delivery note signed or countersigned by the customer or employee of the customer shall for all purposes be deemed to be accurate in all respects and shall serve as *prima facie* proof of delivery of the goods ordered by the customer.
- 3.5 Unless otherwise agreed in writing, the company is entitled to make deliveries by instalments or partial deliveries. Each instalment shall be construed as constituting a separate contract to which all the provisions of these conditions shall (with the necessary changes) apply.
- 3.6 The customer shall take delivery of the goods promptly upon the delivery date or dates or at the intervals stated in the contract or as soon thereafter as it is notified by the company that the goods are available for delivery. If for any reason the customer fails to call off or give delivery instructions, or take delivery of the goods on the due date, or upon receipt of such notification, or otherwise causes or requests a delay in delivery, then, without prejudice to any other rights of the company hereunder, the company shall be entitled to store or arrange for the storage of the goods at the risk of the customer and it if does so:
  - 3.6.1 it shall so inform the customer in writing, and
  - 3.6.2 the customer shall pay or reimburse the reasonable cost (including insurance) of such storage from the due date, or the date of notification as aforesaid, until delivery to the customer.
- 3.7 In cases where the company carries or procures the carriage of the goods, the company shall not in any event be liable for loss of or damage to the goods in transit unless the following conditions are complied with:
  - 3.7.1 in the case of any loss from a consignment of goods or of damage to the goods the company must be notified in writing within 3 clear days of delivery to the customer;
  - 3.7.2 in the case of non-delivery of the whole consignment of the goods, the company must be notified within 14 clear days after the date of invoice.

#### 4. PRICE AND PRICE INCREASES

- 4.1 The price of the goods and/or services shall be that stated in the quotation at the time of the conclusion of the contract and shall exclude VAT and where no price has been quoted, the price shall be the company's standard price current at the date of acceptance of the order.
- 4.2 All prices quoted are valid for the period stated on the quotation or if no period is stated for 30 days.
- 4.3 The company reserves the right by giving notice to the customer at any time before delivery to increase the price of the goods to reflect any increase in the cost to the company which is due to any factor beyond the control of the company (such as without limitation, foreign exchange rate fluctuations, alteration of import duties) any change in delivery dates, quantities or specifications for the goods which are requested by the customer or any delay caused by any instructions of the customer or failure of the customer to give adequate information or instructions, or pay the required deposit.
- 4.4 Any tender or quotation made by the company may be withdrawn at any time before acceptance. If not accepted within 30 days from the date thereof the tender or quotation shall be deemed to have been withdrawn.

#### 5. PAYMENT

- 5.1 Payment of the contract price shall be made in the following manner, unless otherwise stipulated in the company's quote:
  - 5.1.1 A deposit of 50% of the contract price shall be paid to the company upon acceptance by the company of the customer's order, or upon receipt by the customer of the company's e-mailed confirmation of a verbal order placed by the customer or upon the customer's acceptance of the company's written quotation.
  - 5.1.2 The balance of the contract price shall be paid by the customer upon the date of delivery but prior to the goods being dispatched for or made available for delivery.
- 5.2 Payment of the contract price:
  - 5.2.1 Shall be made by the customer into the company's bank account with First National Bank (FNB), Account no 62860489931, Branch (branch code: 250655) or such other bank account of the company as it may advise the customer from time to time; or
  - 5.2.2 Shall be affected in cash to the company's address reflected on the company's invoice; or
  - 5.2.3 Shall be affected by way of electronic funds transfer in favour of the company prior to dispatch/delivery of the goods ordered to the customer.
- 5.3 Payment shall be deemed to have been made only when the amount owing in respect of the contract price is correctly reflected as a credit in the bank account of the company, and provided that the amount is in fact paid.

- 5.4 The company does not appoint the post office or any courier as its agent for payment by post. In the event of any payment/s being mislaid or lost in the post, the customer shall be liable to the company for payment of the amount owing.
- 5.5 The customer accepts that manufacturing/engineering (if applicable) shall not commence until the deposit has been paid in full.
- 5.6 A certificate signed by any manager or director of the company stating the customer's indebtedness, as at the given date shall be *prime facie* proof of the amount due and owing for the purpose of all legal proceedings instituted by the company against the customer.
- 5.7 The customer shall not be entitled to withhold payment or to do a set-off for whatever reason.
- 5.8 All payments shall be made to the company in South African currency.
- 5.9 No retention monies may be deducted from any amount due by the customer to the company.
- 5.10 If payment for the goods supplied under this or any other contract is overdue in whole or in part, the company (without prejudice to any of its other rights) may suspend its performance until such payment is received and/or after having obtained a court order to that effect or with the consent of the customer retake possession of and/or resell any goods, the title to which it has by these conditions retained and the customer shall, upon the request of the company, allow the company's agents to enter its premises during normal working hours for the purpose of recovering possession of such goods.
- 5.11 Notwithstanding any other agreement as to the terms of payment, the total invoice price shall immediately become due and payable and the company shall have the right (but shall not be obliged) forthwith to terminate this contract (without prejudice to any other of its rights) upon the occurrence of any of the following events:
  - 5.11.1 if the customer commits any act of insolvency or if an application for its liquidation/sequestration is made against the customer;
  - 5.11.2 if the customer ceases or threatens to cease carrying on its business;
  - 5.11.3 if the customer shall enter into any negotiations for an arrangement or composition with its creditors or any of them;
  - 5.11.4 in the event of the customer being a limited company, if an application is presented for business rescue or a resolution is proposed/passed to wind up the customer or if a receiver of its assets or undertaking or part thereof, is appointed;
  - 5.11.5 if any execution is levied on the customer.
- 5.12 Upon any such termination the company shall have such rights of repossession and resale as are set out in condition 5.10 above.

## 6. PASSING OF OWNERSHIP AND RISK

- 6.1 Ownership in the goods supplied by the company shall remain vested in the company until payment has been made by the customer in full of all amounts owing to the company (whether under this contract or otherwise), but risk in and to the goods shall pass to the customer on delivery.
- 6.2 Notwithstanding such retention of title, the company shall be entitled to institute an action for the price as soon as payment falls due.
- 6.3 The customer acknowledges that it is in possession of the goods solely as bailee and in a fiduciary capacity for the company until such time as the price and all other sums due from the customer to the company, whether under this contract or otherwise, have been paid in full. Until such time the customer will store the goods on its premises separately from others' goods (including its own) and in a manner which makes them readily identifiable as belonging to the company and shall not alter, modify or add to any such goods or any marking or identification on them and shall maintain them in good condition.

## 7. CLAIMS AGAINST THE COMPANY

- 7.1 It is a condition of each sale that goods are sold voetstoots and unless stated in writing otherwise, without any warranties whatsoever. In addition the customer shall be precluded from raising any complaints or disputing liability to the company in any way unless it shall have notified the company of its complaints or grounds of dispute in writing within 7 (seven) days of receipt of the goods in question. Notwithstanding the timeous raising of a complaint or dispute of liability by the customer, the customer shall under no circumstances be entitled to withhold payment in respect of the goods from the company pending the resolution of such dispute or complaint. Subject to the foregoing, the company shall in its discretion be entitled to either remedy any failure by adjusting, repairing or replacing the goods in question or refunding the whole or part (as the case may be) of the contract price paid to it by the customer in respect of such goods.

- 7.2 All items of equipment and supply which have neither been designed nor manufactured by the company will have the standard manufacturers/suppliers warranties and guarantees against defects.

## 8. LIMITATION OF LIABILITY

- 8.1 The customer shall have no right of action (notwithstanding the termination or lapse of this contract) against the company, its agents, servants, employees or independent contractors and the company shall not be liable for any loss (including pure economic loss), damage or injury whether direct, indirect or consequential suffered by the customer as a result of a breach of this contract or the commission of a delict by the company.
- 8.2 The customer hereby indemnifies and holds the company harmless against all liability for any loss (including pure economic loss), damage or injury whether direct, indirect or consequential suffered by the customer as a result of a breach of this contract or the commission of a delict by the company.
- 8.3 In the event of the company incurring any liability of whatever nature in terms hereof or any delictual liability, then such liability shall be limited to the purchase price of the goods and/or services (excluding VAT).

## 9. BREACH

- 9.1 In the event of the customer failing to make payment to the company on due date or committing a breach of any other terms of these Terms and Conditions and failing to remedy such breach within 7 (seven) days after delivery of written demand, the company shall be entitled (but not obliged) to terminate this contract forthwith.
- 9.2 Should the customer fail to pay the amount due on due date, or should any cheque, promissory note or other bill of exchange given to the company in respect of any indebtedness of the customer under this contract be dishonoured by non payment, or should the customer be sequestered/liquidated or placed under business rescue (whether finally or provisionally) or should the customer commit any act of insolvency in terms of Section 8 of the Insolvency Act or enter into any compromise with its creditors, or fail to satisfy any default judgment granted against him, or apply for his rescission thereof within 10 (ten) days after date of judgment, this contract may, at any time thereafter, without prejudice to any other rights or remedies available to it at law, be terminated at the company's discretion.

## 10. LEGAL CHARGES

- 10.1 In the event of the company instructing its attorneys to recover money or goods from the customer, the customer shall be liable for and pay all legal costs incurred by the company on the attorney and own client scale.
- 10.2 In the event of the customer instructing its attorneys to take action against the customer, the company shall be liable for and pay all legal costs incurred by the customer on the attorney and own client scale.

## 11. FORCE MAJEURE

- 11.1 The company shall not be considered in default of its obligations in terms of the agreement if the company is prevented from performing by acts of God, war, riots, civil insurrection, acts of foreign enemies, strikes or lockouts, acts of civil or military authority, fires, floods, earthquakes, tempests and/or legislation or directives of government ("force majeure").
- 11.2 Either Party shall have the right to terminate this agreement upon 30 days' written notice to the other Party, in the event that the force majeure event continues for a period of 182 days.
- 11.3 In the event that the agreement is terminated by either Party as aforesaid, the company shall be paid the price of work done and materials/goods delivered up to date of termination plus any costs incurred.

## 12. DOMICILIA

- 12.1.1 The Parties hereto choose *domicilia citandi et executandi* for all purposes of, and in connection with, the agreement, the physical and email addresses as detailed in the quotation.
- 12.1.2 The parties shall be entitled to change the address as referred in 12.1.1 from time provided that any address selected by either of them shall be situated in the Republic of South Africa and any such change shall only become effective upon receipt of notice in writing by the other party of such a change.

### 13. CUSTOMER'S SPECIFICATIONS AND DESIGNS

- 13.1 When goods or parts of goods are supplied to the customer's specifications or designs, the customer shall indemnify the company fully in respect of loss, damages, costs and expenses awarded against or incurred by the company in connection with or paid or agreed to be paid by the company in settlement of any claim made or proceedings brought against the company by any party claiming infringement of patent rights, copyright design, trade mark or other industrial or intellectual property rights which results from the company's use of the customer's specification or design.
- 13.2 The customer warrants that any design or specification furnished or given to the company shall not be such as will cause the company to infringe any patent, copyright design, trademark or other industrial or intellectual property right in the execution of the customer's order.
- 13.3 The customer warrants that any design or specification furnished or given to the company shall be complete in every respect (including without limitation all necessary technical information) sufficient to enable the company to manufacture the goods to comply with all applicable performance, durability, health, safety, conformity and labelling requirements whether the customer or the customer's customer or howsoever arising at law and the customer shall indemnify the company fully in respect of loss, damage, costs and expenses incurred by the company which results from any incompleteness in the customer's specification or design.
- 13.4 The customer acknowledges that any and all of the intellectual property of the company used in connection with the supply made in terms of this agreement is and will remain the exclusive property of the Company, or any successor-in-title.
- 13.5 The customer shall not question or dispute the ownership of such rights to intellectual property at any time during the subsistence of this agreement or thereafter.

### 14. GENERAL

- 14.1 The company shall not be bound by any oral statement, recommendations, figures, advises, formulae, specifications, prices quoted, acceptances, or representation unless they are in writing and signed on behalf of the company by its duly authorized representative.
- 14.2 No variation of any contract shall be binding upon the company unless in writing and signed by duly authorised representative of the company.
- 14.3 Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and *vice versa* and words relating to natural persons shall include associations of persons having corporate status by statute or common law.
- 14.4 No relaxation or indulgence granted to the customer by the company at any time shall be deemed to be a waiver of any of the company's rights in terms hereof and such relaxation or indulgence shall not be deemed a novation of any of the terms and conditions set out herein or create any estoppel against the creditor.
- 14.5 No verbal guarantee, warranty, representation or any promise of whatever nature made by the company's officials, employees or agents are binding upon the company unless expressly mentioned herein or confirmed in writing.
- 14.6 This contract will be interpreted according to the laws of the Republic of South Africa.
- 14.7 The customer consents to the jurisdiction of the High Court of South Africa in any action or application arising out of any contract.