

TERMS AND CONDITIONS

I. Scope of application

1. The following conditions of sale shall apply to any and all contracts for the delivery of goods entered into between the Purchaser and Ver-Bolt (Pty) Ltd. They shall also apply to any and all future business relations, even if they are not expressly agreed upon again. Any conditional or different terms proposed by the Purchaser are objected to and will not be binding upon unless accepted in writing by Ver-Bolt (Pty) Ltd. The following conditions of sale shall also apply if we carry out the order of the Purchaser without reservation upon knowledge of any conflicting or deviating terms and conditions of the Purchaser.
2. Any and all agreements made between the Purchaser and Ver-Bolt (Pty) Ltd in the contracts with respect to the performance of the sales contracts shall be set down in writing.
3. If Ver-Bolt (Pty) Ltd and the Purchaser have entered into an outline agreement, these General Terms of Delivery and Payment shall apply to both such outline agreement and the particular delivery or sales contract.

II. Offer and conclusion of contracts

1. We may accept any orders by the Purchaser, which shall be deemed offers for the conclusion of a sales contract, within two weeks by either transmitting an order confirmation or performing the ordered deliveries or services without reservation at our discretion within the same period of time.
2. Our offers shall be subject to changes and not binding unless we expressly declared them to be binding. Any information on our goods (particularly technical data, dimensions, performance and consumption data and the descriptions in particular product information or advertising materials etc.) shall only be rough and approximate; they shall not constitute a guaranteed quality unless such guarantee has expressly been given in writing.
3. We hereby reserve our titles, copyrights and any other property rights in any and all figures, calculations, drawings and other documents. The Purchaser may only disclose them to third parties with our written consent, irrespective of whether or not we marked them as confidential.

III. Terms of Payment

1. Our prices shall apply ex works, excluding customs duties and insurances unless otherwise indicated in our order confirmation. The prices are exclusive of any applicable value added tax, which shall separately be specified in the invoice to its legal amount on the date of issue of the invoice.
2. Unless otherwise indicated in our order confirmation, invoices shall become payable within 30 days of the date of statement without deductions. With cash or cash-on-delivery payments and with payments by cheque or transfer before or on delivery, no payments shall be deemed effected before we can dispose of their amount. In the event of payments by cheque, such payments shall not be deemed effected before such cheque has been cashed or cleared by a bank.
3. If the Purchaser is in delay with any payment, the legal provisions shall apply. With deliveries in which no consumer is involved, the default interest shall amount to 2% above the base rate (Reserve Bank). However, we hereby reserve the assertion of any further claims.
4. The Purchaser shall only be entitled to any set-offs, even if notifications of defects or counter-claims are asserted, if such counter-claims are finally established by a court, accepted by us or indisputable. The Purchaser shall only be entitled to execute its right of retention if its counter-claim is based on the same contract.
5. If Ver-Bolt (Pty) Ltd has permitted the Purchaser to pay by instalments, the remaining amount shall entirely become payable if the Purchaser is in delay with the payment of any instalment by more than 8 days. The same shall apply in the event that the Purchaser's financial situation deteriorates after having entered into a contract in a way that the solvency of the Purchaser is uncertain.
6. Changes in prices shall be admissible provided that the period of time between the conclusion of the contract and the agreed delivery date exceeds 3 months. If subsequently until delivery the wages, costs of material, distribution costs for the deliveries or customs duties increase or customs duties are introduced or if changes in costs arise due to price increases with suppliers or fluctuations in exchange rates, Ver-Bolt (Pty) Ltd shall be entitled to reasonably increase the price according to such increase in costs.

IV. Time of delivery and service

1. Dates or periods of delivery that have not expressly been agreed upon as binding shall exclusively be deemed non-binding information. They shall only apply approximately. Any deviating agreements on binding delivery times shall expressly be made in writing. The delivery time indicated by us shall not start before any and all technical issues have been clarified. If a down payment has been agreed upon or if any documents, approvals or releases still have to be obtained by the customer in order for us to render any services, the delivery time shall not start before any such requirements have been met. Likewise, the Purchaser shall fulfil any of its obligations properly and in time.
2. We shall not be deemed to be in delay before a reasonable grace period set by the customer has expired. Any unforeseeable events beyond our control such as lack of energy, delays in the supply of essential components and other materials, import difficulties, operational and traffic interruptions, strikes, lockouts, delays in delivery or delivery failures on behalf of our suppliers, interventions by authorities shall reasonably prolong the delivery time. If the delivery or service is delayed by more than one month, both we and the customer - under exclusion of any claims for damages - shall be entitled to withdraw from the contract with respect to the quantities affected by such delivery disturbances.
3. If any particular sales contract is deemed a transaction for delivery by a fixed date as defined by Republic of South Africa civil code or Republic of South Africa commercial code, we shall be liable in accordance with the legal provisions. The same shall apply if the Purchaser is entitled to assert the cessation of its interest in the continued performance of the contract due to a delay in delivery for which we can be held responsible. In such event, our liability shall be limited to the foreseeable, typically occurring damage unless the delay in delivery is caused by a wilful breach of contract for which we can be held responsible, with any faults of our representatives or vicarious agents being attributable to us. Likewise, we shall be liable towards the Purchaser in accordance with the legal provisions in the event of delays in delivery if such are caused by a wilful or grossly negligent breach of contract for which we can be held responsible, with any faults of our representatives or vicarious agents being attributable to us. Our liability shall be limited to the foreseeable, typically occurring damage unless the delay in delivery is caused by a wilful breach of contract for which we can be held responsible.
4. In the event that any delay in delivery for which we can be held responsible is caused by a culpable breach of an essential obligation of contract, with any faults of our representatives or vicarious agents being attributable to us, we shall be liable in accordance with the legal provisions on the condition that in such event our liability for damage claims shall be limited to the foreseeable, typically occurring damage.
5. Furthermore, the Purchaser may in the event of a delay in delivery for which we can be held responsible claim a lump-sum compensation to the amount of 0.5% of the value of goods to be delivered for any full week of delay, however up to a maximum of 5% of the value of goods to be delivered.
6. Any further liability for a delay in delivery for which we can be held responsible shall be excluded. Any further legal claims and rights of the Purchaser to which it is entitled in the event of any delay in delivery for which we can be held responsible in addition to the claim for damages shall remain unaffected.
7. We shall be entitled to make partial deliveries and render partial services provided that such are reasonable for the customer.
8. If the Purchaser fails to accept delivery, we shall be entitled to claim for compensation for the arising damage and any additional expenses. The same shall apply if the Purchaser culpably violates any obligations to cooperate. Upon occurrence of the failure to accept delivery or to cooperate, the risk of accidental deterioration or loss shall pass to the Purchaser.

V. Transfer of risk - Dispatch/packageing

1. Loading and dispatch shall be made without insurance at the risk of the Purchaser. The risk shall pass to the Purchaser as soon as the goods have left our works or the distribution centre, even if we assume any other services such as dispatch or delivery with prepaid freight or the like. If we have notified the Purchaser that the goods are ready for dispatch or collection, the risk shall pass to the Purchaser if it does not call or collect the goods although we set a reasonable period of time for doing so. We shall make effort to take into consideration the wishes and interests of the Purchaser with respect to the mode and way of dispatch; any related additional costs - even if delivery with prepaid freight has been agreed upon - shall be at the expense of the Purchaser.

2. We shall not take back transport and any other packaging in accordance with the packaging regulations, except for pallets. The Purchaser shall arrange for the disposal of any packaging at its own expense.
3. If the dispatch is delayed upon request or by fault of the Purchaser, we shall store the goods at the expense and risk of the Purchaser. In such event, the notification that the goods are ready for dispatch shall be equivalent with the dispatch.
4. Upon the request and at the expense of the Purchaser, we shall insure the delivery by means of transport insurance. This shall require the express written instruction of the Purchaser.

VI. Warranty/liability

1. Any claims of the Purchaser for defects shall only be deemed existing if the Purchaser has properly fulfilled its obligations of examination and notification of defects in accordance with the Republic of South Africa commercial code. Any obvious defects shall be notified to us in writing within one week of receipt of the goods. If this is not done, the goods shall be deemed approved. Any latent defects shall be notified to Ver-Bolt (Pty) Ltd in writing immediately after having been detected.
2. If any defect is found on the goods for which we can be held responsible, we shall - under exclusion of the right of the Purchaser to withdraw from the contract or reduce the purchase price - be obliged to subsequent performance unless we are entitled to refuse such subsequent performance based on the legal provisions. The Purchaser shall grant us a reasonable period of time for the subsequent performance. The subsequent performance may, at the discretion of the Purchaser, be fulfilled by rectification of the defect or delivery of new goods. In the event of rectification of defects, we shall assume any necessary expenses to the extent such do not increase due to the object under the contract being in another place than the place of delivery. If the subsequent performance fails, the Purchaser may at its discretion either request a reduction of the purchase price or declare its withdrawal from the contract. The subsequent performance shall be deemed failed upon the second fruitless attempt unless further attempts of subsequent performance are appropriate and reasonable for the Purchaser due to the object of the contract. The Purchaser may not assert any damage claims for such defects based on the following conditions before the subsequent performance has failed. The right of the Purchaser to assert any additional damage claims on the following conditions shall remain unaffected.
3. The warranty claims of the Purchaser shall become statute-barred one year after delivery of the goods to the Purchaser unless we fraudulently concealed the defect; in such event, the legal provisions shall apply.
4. Any claims of the Purchaser towards Ver-Bolt (Pty) Ltd under (recourse of the contractor) shall only be deemed existing to the extent the Purchaser has not entered into any agreements with its customer that exceed the legal claims for defects with respect to their regulatory contents (cf. paragraph 5). Any claims for defects of the Purchaser shall only be deemed existing if the Purchaser has properly fulfilled its obligations of examination and notification of defects.
5. The obligation shall be excluded if the defect is due to sales messages or other contractual agreements that have not been made by us or if the Purchaser has given a special warranty towards the final consumer. The obligation shall also be excluded if the Purchaser itself has not been obliged by the legal provisions to exercise the warranty rights towards the final consumer or has not made such notification of defect with respect to a claim raised towards it. The same shall apply if the Purchaser has made warranties towards the final consumer that exceed the legal provisions.
6. Any damage claims of the Purchaser for a defect shall become statute-barred one year after delivery of the goods. This shall not apply in the event of any damage to life, injury or damage to health caused by us, our legal representatives or vicarious agents or if we or our legal representatives act wilfully or grossly negligent or if our simple vicarious agents have acted wilfully.

VII. Retention of title

1. We shall retain title to the goods delivered by us until any and all claims from the specific order have been settled. Towards companies and any other persons we shall reserve title until any and all claims to which we are entitled on any legal grounds under the business relationship with the Purchaser have been settled. In the event of any breach of contract by the Purchaser, we shall be entitled after having set a reasonable period of time to take back the reserved goods. If we take back the reserved goods, this shall constitute a withdrawal from the contract. If we detain the reserved goods, this shall constitute a withdrawal from the contract. We shall be entitled to exploit the reserved goods after having taken them back. Having deducted a reasonable amount for the exploitation costs, the proceeds of the exploitation shall be set off against the amounts owed to us by the Purchaser.
2. The Purchaser shall handle the reserved goods carefully and sufficiently insure them at their replacement value against damage by fire, water and theft at its own expense. Any maintenance and inspections works that become necessary shall be carried out by the Purchaser in time at its own expense. Furthermore, the Purchaser shall be obliged at the request of Ver-Bolt (Pty) Ltd to inform us at any time on the condition and the place of storage of the goods.
3. The Purchaser shall be entitled to properly sell and/or use the reserved goods unless it is in default of payment. Any pledging or transfer by way of security shall be inadmissible. The Purchaser shall hereby assign to us to their full extent any claims resulting from the resale or on any other legal grounds (insurance, tortious acts) with respect to the reserved goods (including any balance claims from current accounts) by way of security; we shall hereby accept such assignment. We revocable authorise the Purchaser to debit the claims assigned to us for its own account and on its own behalf. This direct debit authorisation may be revoked at any time if the Purchaser fails to properly fulfil its obligations of payment. The Purchaser shall not be entitled to assign this claim, not even for the purpose of the collection of debts by means of factoring, unless at the same time the obligation of the factor to effect the consideration to the amount of the claims directly to us for as long as we still have any claims towards the Purchaser is established. Furthermore, the Purchaser shall be obliged to immediately inform us of any Pledging or other impairment by third parties.
4. Any processing or transformation of the reserved goods by the Purchaser shall at any case be deemed made for us. If the reserved goods are processed together with other objects not owned by us, we shall acquire co-ownership in the new object in proportion of the value of the reserved goods (final amount invoiced including value-added tax) to the other processed objects at the point of time of processing. With any objects newly created by such processing, the same shall apply as to the reserved goods. In the event the reserved goods are inseparably mixed with other objects not owned by us, we shall acquire co-ownership in the new object in proportion of the value of the reserved goods (final amount invoiced including value added tax) to the other mixed objects at the point of time of such mixing. If the object of the Purchaser is considered the main thing as a consequence of such mixing, the Purchaser and we shall agree on the Purchaser assigning to us the proportional co-ownership in such thing; we shall hereby accept such assignment. Our sole or co-ownership thus created in any object shall be kept in custody for us by the Purchaser.
5. In the event of any seizures of the reserved goods by third parties, particularly any pledging, the Purchaser shall inform them about our title and immediately notify us in order to enable us to enforce our property rights. To the extent such third party is not able to reimburse us for any judicial or extrajudicial costs arising in this connection; the Purchaser shall be liable for such.
6. We shall be obliged to release the collateral to which we are entitled to the extent the realisable value of our collateral exceeds the value of the claims being secured by more than 10%, the selection of the collateral to be released being at our discretion.

VIII. Place of performance, place of jurisdiction, applicable law

1. The place of performance and jurisdiction for any deliveries and payments (including actions on cheques and bills of exchange) and any disputes arising between us and the Purchaser from the sales contracts entered into between us and the Purchaser shall be Vereeniging. However, we shall also be entitled to bring a claim before a court at the Purchaser's principal place of business or at our discretion before any other court being competent according to any national or international law.
2. The legal relationship between us and our customers or us and any third parties shall exclusively be governed by the laws of the Republic of South Africa. The application on Contracts for the International Sale of Goods shall be excluded unless the parties expressly agree on their applicability.

IX. Others

1. If these provisions are or become partially ineffective or incomplete or are excluded by a special agreement, this shall not affect the effectiveness of the remaining provisions.
2. We hereby inform that we store data of our customers in the course of our mutual business relations in accordance with the South African Data Protection Act.