

RUTHERFORD TRADING (PROPRIETARY) LIMITED
with registration number 1984/005432/07

**STANDARD TERMS AND CONDITIONS OF SALE
INCORPORATING A PERSONAL SURETYSHIP**

1. DEFINITIONS

1.1 In this document, the following terms have the meanings assigned to them below, namely –

1.1.1	"Consumer Protection Act"	means the Consumer Protection Act 68 of 2008, as amended and any regulations promulgated in respect thereof;
1.1.2	"Dealer"	means the customer of Rutherford from time to time that has initialled these terms and conditions;
1.1.3	"goods"	means the goods sold by Rutherford to the Dealer from time to time;
1.1.4	"NCA"	National Credit Act, No. 34 of 2005 as amended and regulations promulgated in terms thereof;
1.1.5	"harm"	means harm, as described in section 61(5) of the Consumer Protection Act;
1.1.6	"product price list"	means a list prepared, issued or published by Rutherford setting out the latest applicable prices of goods which is amended from time to time;
1.1.7	"protected consumer"	means a consumer as defined in section 1 of the Consumer Protection Act and whose annual turnover or assets value falls below the threshold contemplated in section 5 of the Consumer Protection Act and to whom the Act applies; and
1.1.8	"Rutherford"	means Hudaco Trading (Proprietary) Limited, with registration number 1984/005432/07 trading as Rutherford, VI Instruments and the FTS Industries, or Rutherford Marine.

1.2 Unless a contrary intention clearly appears, the terms used in this document shall have the meanings assigned to them in section 1, section 53 or any other section, as the case may be, of the Consumer Protection Act.

2. TERMS

2.1 All goods or services are supplied subject to the terms and conditions set out hereunder.

2.2 I/We the undersigned, am/are duly authorised to represent the Dealer and to bind it to these terms and conditions.

2.3 I/We acknowledge having read and understood these terms and conditions and accept and agree that same will be binding on all transactions concluded between Rutherford and the Dealer.

2.4 Any purported deletion, alteration or amendment of the terms and conditions set out in this document by the Dealer shall be of no force and effect unless such deletion, alteration or amendment or consensual cancellation is agreed to in writing by a duly authorised manager or director of Rutherford.

2.5 The executive directors/members/partners/sole proprietor/trustees of the Dealer hereby authorise Rutherford to undertake and carry out such investigations as it may deem necessary in order to establish their credit worthiness, and disclose to a third party any information relating to the Dealer necessary to fulfill this purpose.

2.6 These standard terms and conditions only become final and binding on acceptance in writing by Rutherford and communicated to the Dealer.

3. QUOTES

3.1 All quotes will remain valid and bind on the Dealer. Rutherford reserves the right to change its quoted prices subject to a 30 day notice to the Dealer (the "new quote"). The new quote shall be binding on the Dealer from the expiry of the aforesaid 30 day notice period.

- 3.2 All quotes are subject to the availability of the goods or services and subject to correction of bona fide errors by Rutherford.
- 3.3 The prices quoted are subject to any increases in the cost price, including currency fluctuations, of Rutherford before dispatch of goods or commencement of services.
- 3.4 In the absence of manifest error, the amount of the increase shall be certified by any auditor and such certificate shall be final and binding on the Dealer.

4. **PAYMENT**

- 4.1 Payment shall be made in accordance with such terms as may be laid down by Rutherford from time to time, and in the event of –
 - 4.1.1 any failure by the Dealer to make any payment on due date; or
 - 4.1.2 a judgement being entered against the Dealer; or
 - 4.1.3 an application being made for the Dealer’s provisional liquidation/sequestration; or
 - 4.1.4 the Dealer attempting to compromise generally with any of its creditors; or
 - 4.1.5 any information furnished by the Dealer in terms hereof being found to be misleading, false, incomplete or inaccurate; or
 - 4.1.6 a breach, by the Dealer, of any of the other provisions hereof,

Rutherford shall be entitled, without prejudice to any of its other rights either in law or in terms hereof, to declare the entire amount outstanding by the Dealer at the time to be immediately due and payable, notwithstanding that the due date for such payment may not yet have arrived.



- 4.2 The Dealer agrees that the amount contained in a tax invoice issued by Rutherford shall be due unconditionally
 - 4.2.1 and payable in cash or electronic funds transfer; or
 - 4.2.2 if the Dealer is approved to procure goods on credit, within 30 days from the end of the month in which a tax invoice has been issued by Rutherford.
- 4.3 The Dealer agrees to pay the amount on the tax invoice free from any deduction or set off at the offices of Rutherford or as directed by Rutherford from time to time.
- 4.4 The risk of payment by cheque through the post rests with the Dealer.
- 4.5 The Dealer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Dealer unless agreed to by Rutherford in writing and signed by the Dealer and a duly authorised representative of Rutherford.
- 4.6 The Dealer is not entitled to deduct or set off any amount due to the Dealer by Rutherford against its debt.
- 4.7 All discounts, if applicable, shall be forfeited if payment in full is not made on due date.
- 4.8 The Dealer agrees that the amount due and payable to Rutherford may be determined and proven by a certificate issued and signed by an auditor. Such certificate shall be binding and shall be *prima facie* proof of the indebtedness of the Dealer.
- 4.9 Notwithstanding the remedy contemplated in 4.1 above, the Dealer agrees that if an account is not settled in full on the due date, Rutherford is entitled to-
 - 4.9.1 immediately institute action against the Dealer at the sole expense of the Dealer; or
 - 4.9.2 cancel the agreement and take possession of any goods delivered to the Dealer and claim damages.

These remedies are without prejudice to any other right Rutherford maybe entitled to in terms of these terms and conditions or in law.
- 4.10 A Dealer approved to procure goods on credit will forthwith lose this approval should payment not be made on the due date.



4.11 Interest shall be levied on all overdue payments at the maximum legal rate prescribed by law calculated from the due date to date of payment.

5. DELIVERY

5.1 The Dealer hereby confirms that the goods or services on the tax invoice issued duly represent the goods or services ordered by the Dealer at the prices agreed to by the Dealer and, where delivery / performance has already taken place, that the goods or services were inspected and that the Dealer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.

5.2 All orders or variations to orders, whether oral or in writing, shall be binding and subject to these standard terms and conditions.

5.3 Rutherford shall be entitled in its sole discretion to split delivery / performance of the goods or services ordered in the quantities and on the dates it decides.

5.4 Rutherford shall be entitled to invoice each delivery / performance actually made separately.

5.5 Any delivery note or waybill (copy or original) signed by the Dealer or a third party engaged to transport the goods and held by Rutherford shall be *prima facie* proof that delivery was made to the Dealer.

5.6 The risk of damage to, or destruction or theft of goods shall pass to the Dealer on dispatch of goods and the Dealer undertakes to comprehensively insure the goods until paid for in full.

5.7 Delivery, installation and performance times given are merely estimates and are not binding on Rutherford .

5.8 Rutherford is hereby authorised to engage a third party to deliver the goods to the Dealer on terms and conditions deemed fit by Rutherford.

5.9 Delivery of the goods to the Dealer shall take place at the place of business of Rutherford or as agreed otherwise.

5.10 Rutherford shall not be liable to the Dealer, or any other party, for any inability to perform (in full or in part) and/or any delay in performing in terms of this agreement should such inability or delay arise from any cause beyond the reasonable control of Rutherford, which causes will include (without limitation) strikes, lockouts, labour disputes, accident, plant and/or machinery and/or equipment breakdowns, fire, explosion, theft, war (whether declared or not), invasion, acts of foreign enemies, hostilities, riots, flood, earthquake, lightning, acts of local and national government, martial law or failure or delay on the part of Rutherford's suppliers.

5.11 Notwithstanding anything to the contrary -

5.11.1 the obligation to deliver goods will in all cases be conditional upon the availability to Rutherford of the goods as ordered and, in addition, timeous receipt by Rutherford of the goods;

5.11.2 time will not be of the essence of any sale, and delivery dates will be treated only as estimates, based on the latest information available to Rutherford. Under no circumstances may the Dealer withdraw from or terminate this agreement and/or any sale on account of any delay in delivery or have any claim of any nature whatsoever against Rutherford arising from late delivery; and

5.11.3 Rutherford shall not under any circumstances whatsoever be liable for any damages of any nature whatsoever (including, without limitation, any indirect, consequential or special damages or loss of profit) which the Dealer may suffer as a result of any delay in the delivery and/or installation of the goods as ordered.

6. REPAIRS AND RETURNS

6.1 Any item handed in for repair may be sold by Rutherford to defray the cost of such repairs if the item remains uncollected after 30 days of the Dealer being notified of the completion of the repairs.

6.2 All goods taken on an evaluation basis, by the Dealer are deemed sold if not returned within 14 days of issue in a perfect condition, in the original packaging and with all accessories and manuals intact. The same shall apply to goods taken on approval (3 days), demonstration (7 days) or on a consignment basis (30 days).

6.3 The Dealer shall return any defective goods to the premises of Rutherford at the Dealer's own cost and packed in the original packaging of the goods and all risks for the duration or repair remain with the Dealer.

7. CREDIT FACILITIES

- 7.1 Rutherford reserves the right to –
 - 7.1.1 withdraw any credit facilities, if any, on written notice to that effect to the Dealer;
 - 7.1.2 determine the nature and extent of such facilities from time to time in its sole discretion;
 - 7.1.3 amend the terms and conditions of any credit facilities extended to the Dealer.
- 7.2 The credit facilities are extended by Rutherford to the Dealer on condition that its executive directors, members, owners or partners interpose themselves as sureties for and co-principal debtors *in solidum* with the Dealer in terms of the deed of suretyship hereunder and its executive directors, members, owners or partners agree that these Standard Conditions apply mutatis mutandis to him/her.

8. COPYRIGHTS

- 8.1 The Dealer acknowledges all copyrights and shall not duplicate any copyrighted material.
- 8.2 The Dealer shall indemnify Rutherford against any claims, costs and expenses arising out of the infringement of copyright, patent, trademark or design by the Dealer or any of the employees of the Dealer.
- 8.3 All sales are suspensive on the condition that the necessary permits are obtained by the Dealer.

9. LEGAL PROCEEDINGS

- 9.1 The Dealer and surety, referred to at 7.2 above and 11 below, consent to the jurisdiction of any Magistrates Court which has jurisdiction by virtue of s28 of the Magistrate’s Court Act No. 32 of 1944, for the determination of any claim arising out of these terms and conditions which would otherwise be beyond the jurisdiction of the Magistrates Court by the virtue of the amount of the claim. Notwithstanding the foregoing, Rutherford shall be entitled, in its discretion, to institute any legal proceedings in any other court of competent jurisdiction.
- 9.2 The Dealer shall pay all legal costs, including attorney and own client costs, tracing agent’s fees and collection charges which Rutherford may incur in instituting any action arising out of any breach of these terms and conditions by the Dealer.
- 9.3 A certificate signed by the accountant of Rutherford reflecting the amount owing by the Dealer to Rutherford at any relevant time shall be *prima facie* proof of the amount so owing for the purpose of any legal proceedings (whether by way of provisional sentence, summary judgment or otherwise).
- 9.4 The Dealer agrees that interest shall be payable on any monies due to Rutherford at the maximum legal rate prescribed in terms of law, from the date it falls due. In the case of late payment interest shall be calculated from the date of tax invoice.
- 9.5 The Dealer agrees that Rutherford will not be required to furnish security for litigation purposes.

10. WARRANTIES AND GUARANTEES

- 10.1 The Dealer warrants that it is not a protected consumer.
- 10.2 The Dealer warrants that all the information furnished by it to Rutherford is complete, not misleading and accurate in all respects.
- 10.3 The Dealer further warrants that neither it nor any of its directors, partners, members, or trustees have been insolvent or associated with any business failure in the last ten years.
- 10.4 Rutherford warrants that its goods are in good condition, free of defects, failure, hazards and are not unsafe and, as such, will fulfil the purposes for which they were sold.
- 10.5 Save where otherwise stated, all sales of goods by Rutherford to the Dealer shall be effected on a *voetstoots* basis.
- 10.6 All guarantees are immediately null and void should any goods be tampered with or should the seals on goods be broken by anyone other than Rutherford or should the goods be operated or stored outside the manufacturer’s specifications.

11. DEED OF SURETYSHIP

- 11.1 Each person who signs these terms and conditions on behalf of the Dealer simultaneously interposes and binds himself (by way of each signature or initial) as surety for and co-principal debtor *in solidum* with the Dealer for the due and timeous performance by the Dealer of all of its obligations under and arising out of these terms and conditions and all sales effected pursuant thereto.
- 11.2 Should the principal debtor fail to discharge any of the obligations on due date the creditor shall be entitled notwithstanding any contrary arrangement with the principal debtor, to demand from me/us immediate performance of all the obligations then due and owing by the principal debtor to the creditor.
- 11.3 I/We hereby renounce the benefits of the legal exceptions "excussio", "division", "de duobus vel pluribus reis debendi", "no value received", "cessio of action" and "revision of accounts", with the meaning and effect of all of which I/we declare myself/ourselves to be fully acquainted. If the NCA does not apply to this suretyship, I/we also renounce the benefits of "non causa debiti", "errore calculi" and " non numeratae pecuniae", with the meaning and effect of all of which I/we declare myself/ourselves to be fully acquainted.
- 11.4 Subject to the provisions of the NCA if applicable to this suretyship, I/we hereby agree and consent that the creditor shall, at its option, be entitled to institute any legal proceedings which may arise out of or in connection with this deed of suretyship at the election of the creditor, in -
 - 11.4.1 any magistrate's court having jurisdiction, notwithstanding the fact that the claim or value of the matter in dispute might exceed the jurisdiction of such magistrate's court; or
 - 11.4.2 the South Gauteng High Court of South Africa, Johannesburg,
 to which jurisdiction I/we hereby consent.

12. INDEMNITY

- 12.1 The parties acknowledge that in terms of section 61 of Consumer Protection Act, the producer, importer, distributor, retailer, and/or supplier, may be jointly and severally liable for any harm caused wholly or partly as a consequence of –
 - 12.1.1 supplying unsafe goods;
 - 12.1.2 a products failure, defect or hazard in any goods; or
 - 12.1.3 inadequate instructions or warning provided to the consumer pertaining to any hazard arising from or associated with the use of any goods,
 irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor, retailer or supplier, as the case may be.
- 12.2 In respect of 12.1 above, each party ("indemnifying party") hereby indemnifies and holds harmless the other party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other party as a result of or arising out of any harm alleged or proven by a consumer himself or herself, or other person contemplated in section 4(1) of the Consumer Protection Act, to the extent that such harm is attributable to the conduct of the indemnifying party or any contravention by the indemnifying party of any applicable law.
- 12.3 The parties acknowledge that in terms of section 55 of Consumer Protection Act, the producer or importer, the distributor and the retailer each warrant that the goods are –
 - 12.3.1 reasonably suitable for the purpose for which they are generally intended;
 - 12.3.2 of good quality, in good working order and free of any defects;
 - 12.3.3 will be usable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
 - 12.3.4 comply with any applicable standards set under the Standards Act, 1993 (Act 29 of 1993) ("Standards Act"), or any other public regulation.
- 12.4 In respect of 12.3 above, each party hereby indemnifies and holds harmless the other party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other party as a result of or arising out of any repairs, replacements of the failed, unsafe or defective goods or refunds to the consumer of the price paid by the consumer for the goods attributable to conduct of the indemnifying party or any contravention by the indemnifying party of any applicable law, provided that the liability of Rutherford shall at all times be limited in total to the actual amount paid by the Dealer to Rutherford for the

goods supplied by Rutherford irrespective of the amount paid or refunded by the Dealer to a protected consumer or purchaser of such goods.

12.5 It is recorded that signature of this document by the Dealer is without prejudice to any rights or defences which Rutherford may have under and in terms of the Consumer Protection Act or at law in respect of any claims made or brought against it by the Dealer and/or any protected consumer or purchaser of any goods supplied by Rutherford.

13. **PROTECTED CONSUMERS**

- 13.1 To the extent that the Dealer is a protected consumer –
 - 13.1.1 clause 4.1 and 4.9 shall be read in conjunction with the provisions of the Consumer Protections Act;
 - 13.1.2 clauses 5.1 and 5.7, shall not apply;
 - 13.1.3 clause **Error! Reference source not found.** shall not apply insofar as the goods supplied are in excess of the quantity ordered by the Dealer;
 - 13.1.4 clause 6.1 shall not apply if the repairs referred thereto are done pursuant to section 55 of the Consumer Protection Act.
 - 13.1.5 clause 6.2 shall not apply to the extent that it contravenes section 31 of the Consumer Protection Act;
 - 13.1.6 clause 6.3 shall not apply to the extent that it contravenes section 55 and 57 of the Consumer Protection Act;
 - 13.1.7 clause 7.1 shall not apply to the extent that it contravenes section 48 of the Consumer Protection Act;
 - 13.1.8 clause 10.5 shall apply as is, provided that the goods supplied by Rutherford are usable and durable for a reasonable period of time, and does not conflict, where applicable, with the Standards Act as contemplated in section 55(c) and (d) of the Consumer Protection Act.

14. **GENERAL**

- 14.1 Should any of the clauses, or part thereof, of these terms and condition be unenforceable, such clauses, or part thereof, shall be severed and the rest of the clauses shall remain in force.
- 14.2 Save where otherwise stated, these terms and conditions shall govern all future sales of goods, or provision of services by Rutherford to the Dealer.
- 14.3 No relaxation or indulgence which Rutherford may give at any time in regard to the carrying out of the Dealer obligations under these terms and conditions shall in any way prejudice or be deemed to be a waiver of any of Rutherford's rights in terms hereof.
- 14.4 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this document.