



**MULTOTEC**

**Multotec (Pty) Ltd**

Postal: P.O. Box 224, Kempton Park, 1620, Republic of South Africa

Delivery: 28 Forge Road, Spartan, 1619

Tel: +27 (0) 11 923 6000 Fax: +27 (0) 11 394 8701, 394 5099

E-mail: multotec@multotec.com www.multotec.com

**MULTOTEC STANDARD TRADING CONDITIONS**

**1. INTERPRETATION**

1.1. In these conditions, save where the context otherwise requires, the following words and expressions shall have the following meaning :-

1.1.1. A reference to the company shall be a reference to each of the following companies, its successors-in-title and assigns:

<b>Company</b>	<b>Registration Number</b>	<b>VAT Number</b>
Multotec Manufacturing (Pty) Ltd	1982/003125/07	4070217916
Multotec (Pty) Ltd	1973/008175/07	4310145646
Multotec Process Equipment (Pty) Ltd	1981/010857/07	4480109489
Multotec Wear Linings (Pty) Ltd	1982/005193/07	4200145334
Mato Products (Pty) Ltd	1987/005748/07	4450111093
Multotec Services (Pty) Ltd	2020/101480/07	4300291558
Multotec Rubber (Pty) Ltd	1983/007546/07	4800210173

1.1.2. A reference to the customer shall be a reference to the natural or juristic person to whom or on whose behalf the company sells or manufactures any goods or provides any information, advice or service, or with whom the company does any business;

1.1.3. A reference to a trade term shall be a reference to the term as defined by Incoterms 2020;

1.2. Expressions which denote a natural person shall include a reference to bodies corporate and other juristic persons.

1.3. Expressions which denote the masculine shall include a reference to the feminine gender.

1.4. Expressions which denote the singular shall include a reference to the plural and vice versa.

1.5. Headings are for reference purposes only and shall not be considered in the interpretation of the conditions to which they relate.

**2. APPLICABILITY OF CONDITIONS**

2.1. These conditions shall apply to all business undertaken by the company including, without limitation, all goods sold or manufactured, and any information, advice or service rendered, whether gratuitous or not.

2.2. These conditions shall govern all existing contractual relationships between the parties and all future contractual relationships between the parties.



3. **ORDERS**

- 3.1. All orders are subject to :-
  - 3.1.1. The availability of necessary stock, equipment, production and design capacity, manpower and materials; and
  - 3.1.2. Acceptance by the company, which need not necessarily be in writing; and
  - 3.1.3. The approval by the customer, if applicable, of the proofs referred to in 3.6.2
- 3.2. Orders must be in writing although the company reserves the right, in its sole discretion, to accept oral orders.
- 3.3. Once accepted by the company, orders may not be cancelled, varied or withdrawn unless the company has agreed in writing thereto.
- 3.4. Where the company does so agree in writing to the cancellation or withdrawal of an order in respect of standard products, the customer shall be liable to pay to the company a cancellation fee calculated at 10% of the contract price, in addition to reimbursing the company for all its expenses and costs. In the event that this pertains to non-standard items, the cancellation fee shall be calculated at between 10% and 20%, in Multotec's discretion.
- 3.5. Unless otherwise agreed to by the company in writing, forward orders will be priced at the ruling price as at date of dispatch of the goods.
- 3.6. Where the customer places an order for custom-manufactured goods:
  - 3.6.1. It is the sole responsibility of the customer to provide the company with all of the necessary details, specifications, and dimensions in relation to such goods.
  - 3.6.2. The customer must approve any proofs, samples, specimens, sketches, renderings, technical drawings and the like materials produced by the company in relation to such goods.
  - 3.6.3. Such approval shall be binding upon the customer and the company shall not be held responsible for any errors contained in such materials which may manifest itself in the goods.
  - 3.6.4. The customer shall pay for all costs resulting from any amendments requested by the customer to such materials or to the goods themselves, save in the event that such amendments are necessitated to correct any manifest error made by the company in producing same.
  - 3.6.5. The customer shall pay for the cost of all materials produced by the company for it, even in the event that the customer declines to proceed with the manufacture thereof or unreasonably withholds its approval of such materials.
  - 3.6.6. Ownership in and of the materials referred to herein shall vest in the company.
- 3.7. Unless specifically quoted upon by the company in writing, the contract price does not include the cost of installation or commissioning or call outs, all of which services will be charged for separately.



4. **DELIVERY**

- 4.1. Any delivery dates or performance times given or agreed to by the company, if any, are merely estimates and the company shall not be held responsible, and shall incur no liability to the customer, in the event of the company failing to deliver or to perform on the agreed date or within the agreed period.
- 4.2. Where goods are delivered by a third party, such third party shall be deemed to be the agent of the customer. It is the customer's responsibility to obtain proof of delivery from such third party.
- 4.3. The company shall be entitled, in its sole discretion, to split the delivery of goods ordered in the quantities and on the dates that it decides. However, the company shall notify the customer in writing should it be necessary or reasonable that this occur.
- 4.4. Any delivery note signed by the customer or by a third party engaged to transport the goods shall be prima facie proof of delivery to the customer.
- 4.5. The customer may not refuse delivery of the goods when tendered by the company and shall, in any event, accept delivery or arrange for collection thereof within 7(seven) days of notification thereof by the company.
- 4.6. Where the company has tendered the goods and the customer has not accepted delivery thereof or arranged for the collection thereof, the company may, without prejudice to its rights, store the goods on behalf of the customer, in terms of clause 4.7.
- 4.7. Where the company stores goods on its own premises, the company shall be entitled to charge a reasonable amount as would fairly be allowable in the ordinary course of business if the goods were stored by a third party warehouseman, after notifying the customer thereof, in writing. .
- 4.8. Should the storage of the goods by the company on its premises result in any increase in the insurance premiums payable by the company in respect thereof, the customer shall pay for such increase.

5. **WARRANTY**

- 5.1. The company warrants that the goods or services supplied by it will ordinarily conform to the specifications and requirements agreed to by it in writing for a period of 18 (eighteen) months from date of delivery or 12 (twelve) months from date of commissioning, whichever is the earlier, fair wear and tear excepted.
- 5.2. It is the responsibility of the customer to establish that the goods or services ordered by it are suitable for its purposes, save that the company may provide detailed drawings and designs, which may be relied upon.
- 5.3. Save to the extent set out in 5.1, the company provides no representations, warranties, guarantees or undertakings to the customer, whether express, tacit or implied.
- 5.4. The customer shall not be entitled to cancel any order as a result of a breach by the company of the warranty referred to in 5.1 or to claim any damages from the company as a result thereof, and the company's sole obligation shall be to repair the goods, or to



replacement goods, or to rectify the services within a reasonable period of time after having been notified in writing of the breach of the warranty in question.

- 5.5. Where the company is called out (or elects) to perform an on-site inspection as a result of an alleged breach of the warranty referred to in 5.1, the customer shall be responsible for the cost of that call out in the event of it being established that the warranty was not so breached.

6. **CLAIMS**

- 6.1. Any claim against the company must be notified to the company in writing within 7 (seven) days of the event giving rise to the claim, failing which it shall be deemed to have been extinguished for all purposes.
- 6.2. In the case of short or improper delivery, the event giving rise to the claim shall be the date of delivery and in the case of non-delivery, the event giving rise to the claim shall be 3 (three) days after the date of the applicable invoice.

7. **INVOICING**

- 7.1. The company will not, under any circumstances, be precluded from raising or correcting any debit (and from obtaining payment thereof) in relation to any amount due to it.
- 7.2. The company shall be entitled to invoice split deliveries separately.
- 7.3. Should the customer contend that any rate, charge or amount as reflected on any invoice or statement be incorrect, then the customer shall be obliged to notify the company in writing of its contention within 7 (seven) days of receipt of such invoice or statement, failing which the customer shall be precluded from denying the correctness of such rate, charge or amount.
- 7.4. The customer will pay for all costs or increases resulting from any act or omission of the customer including, without limitation, suspension of delivery, modification of requirements, failure or delay in giving particulars requisite to enable orders to proceed on schedule or requests that goods be delivered earlier or later than scheduled.

8. **PAYMENT**

- 8.1. Unless otherwise specifically agreed to by the company in writing :-
- 8.1.1. where the customer carries on business within the Republic of South Africa, accounts are payable on presentation thereof, in cash;
- 8.1.2. where the customer carries on business outside the Republic of South Africa, accounts are payable :-
- 8.1.2.1. on presentation thereof, in cash; or
- 8.1.2.2. by means of an irrevocable letter of credit in favour of the company, issued in the English language under the Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce, upon terms satisfactory to



the company, confirmed by the Standard Bank of South Africa Limited, valid for a period acceptable to the company.

- 8.2. Unless otherwise specifically agreed to between the parties, the company shall not be entitled to present its account prior to the manufacture, dispatch or delivery of the goods or prior to the rendering of the services in question.
- 8.3. Should credit facilities be specifically extended to the customer by the company in writing, accounts shall, unless otherwise specifically agreed to by the company in writing, be payable 30 days net from date of invoice or, where statements are sent, 30 days net from date of statement, whichever is the later.
- 8.4. All accounts are payable by the customer to the company in full without deduction or set-off and the customer shall not be entitled to withhold or to defer payment because of any claim or counterclaim which it might allege or for any other reason whatsoever.
- 8.5. Should any account not be paid on due date, all other monies owing by the customer to the company shall immediately become due and payable.
- 8.6. The company shall be entitled, without prejudice to its rights, to levy and to recover from the customer, interest on all outstanding accounts at a rate of 3% above the prime lending rate of the Standard Bank of South Africa Limited from time to time, compounded monthly in advance.
- 8.7. Notwithstanding any prior dealings between the parties, should the customer elect to make payment through any intermediary or service provider, the customer does so at its risk and the responsibility of ensuring that the company actually receives the payment is that of the customer.
- 8.8. Unless specifically agreed to by the company in writing, the company provides no discounts to the customer including, without limitation, any early settlement discount. Should the company agree to a discount in writing, such discount will be forfeited should payment not be made in full on due date.

9. **RETENTION**

- 9.1. Unless specifically agreed to by the company in writing, the customer shall not be entitled to withhold the payment of any portion of the contract price from the company by way of a “retention amount” or equivalent.
- 9.2. Where the company has agreed in writing to a retention amount:
  - 9.2.1. The company shall be entitled to require that the customer pay the retention amount against the tender by the company to the customer of an appropriate bank guarantee in lieu thereof.
  - 9.2.2. Such retention amount shall in any event be released to the company upon the date of delivery of the goods or, where the company has agreed to commission the goods, upon the expiry of a period of 6 (six) months from date of delivery of the goods.



10. **CREDIT FACILITIES**

- 10.1. The company is under no obligation to extend credit facilities to the customer and no such facilities shall be extended unless done so specifically by the company, in writing.
- 10.2. The nature and extent of such facilities shall at all times be in the company's sole discretion and the company reserves the right to amend, vary, suspend or withdraw such facilities at any time.

11. **OWNERSHIP AND RISK**

- 11.1. Ownership in and of any goods supplied by the company shall remain vested in the company until such time as they have been paid for in full.
- 11.2. Risk in and to the goods shall pass to the customer upon delivery thereof to the customer or its agent or, where the parties have contracted upon a particular trade term, in accordance with the provisions of that trade term.

12. **CREDIT INFORMATION**

- 12.1. The customer agrees that the information provided by it to the company may be utilised by the company to assess its credit worthiness and verify correctness of customer details.
- 12.2. The company has the customer's consent to contact and to request from any third party including, without limitation, any credit bureau, information pertaining to the credit worthiness of the customer.
- 12.3. The company has the customer's consent to furnish information concerning the customer's purchasing and payment record with the company, to any third party including, without limitation, any credit bureau.

13. **INSPECTIONS**

- 13.1. Unless otherwise agreed to by the company in writing, the company shall be under no obligation to arrange for any pre- or post-shipment inspection of the goods by any third party including, without limitation, any inspection agency.
- 13.2. Unless otherwise agreed to by the company in writing, any such pre- or post-shipment inspection shall be for the customer's account.

14. **INSURANCE**

- 14.1. Where the company agrees in writing to obtain insurance for the goods, the company's obligation, unless otherwise agreed to in writing, is to obtain cargo insurance :-
  - 14.1.1. for the price of the goods or at the maximum insurance procurable in the circumstances, whichever is the lesser;
  - 14.1.2. in accordance with the minimum cover of the Institute Cargo Clauses, excluding war, strikes, riots and civil commotion risk insurances.
- 14.2. Unless otherwise agreed to by the company in writing, the company has no obligation to insure the goods.



14.3. For the avoidance of doubt, the company will not insure "free-issue" goods.

15. **PACKAGING**

The customer warrants that it will provide the company with all information relevant to the transportation of the goods and to the packaging thereof.

16. **LIABILITY**

16.1. The company will not, under any circumstances, be liable for any indirect or consequential loss arising from a failure to perform any of its obligations, whether arising in contract or delict and whether resulting from any negligent act, omission or statement or otherwise.

16.2. In those circumstances where the company is nevertheless liable to the customer arising from a failure by the company to perform any of its obligations, the maximum liability of the company shall not, in any event, exceed 100% of the amount payable by the customer to the company for the provision of the goods or services in question.

17. **ARBITRATION**

At the option of the company, all disputes arising out of or in connection with any contractual relationship or other business dealings between the parties shall be referred for arbitration in Johannesburg under the Rules of the Arbitration Foundation of South Africa or under the Rules of Arbitration of the International Chamber of Commerce, as the company may elect, by one or more arbitrators appointed in accordance with the said rules, whose award shall be binding upon the parties.

18. **FORCE MAJEURE**

No failure by the company to perform any of its obligations shall constitute a breach of such obligations nor give rise to any claim or remedy by the customer in the event that such failure arose as a result of force majeure, including acts of God, war, revolution, riot, civil unrest, strikes or other labour action, sanctions, natural disasters, changes in law, regulations, ordinances or the like or as a result of any other circumstance wholly beyond its control. However, if the delay pertains to a material obligation of the party affected by such event of Force majeure and such delay shall exceed 6 months, either party shall be entitled to terminate any agreement between them by written notice to the other.

19. **ADDRESS**

19.1. In the event that these conditions are annexed or attached to, or incorporated by reference in, a document in which the customer's physical address or addresses are reflected, then the customer agrees to accept delivery of any notice or service of any court process or other documentation at such address or any of such addresses.

19.2. Any notice will be deemed to have been duly delivered to the customer :-

19.2.1. within 30 (thirty) days of postage by prepaid registered mail to any postal address of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference;



- 19.2.2. if delivered by e-mail, when the e-mail message is available on the recipients network for reading;
- 19.2.3. upon being delivered by hand to any physical address of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference.

20. **LITIGATION**

- 20.1. A certificate under the hand of any director or manager of the company in respect of any indebtedness of the customer to the company or in respect of any other fact, matter or thing, including, without limitation, that goods were delivered or services rendered, shall be prima facie evidence of the customer's indebtedness to the company and prima facie evidence of the delivery of such goods or rendering of such services.
- 20.2. In the event of the company taking legal action against the customer because of a breach by the customer of its obligations to the company including, without limitation, its failure to pay any account, the customer shall pay for all legal costs incurred by the company on the scale as between attorney and client including, without limitation, collection fees, tracing agents fees and fees of counsel as on brief.

21. **CONSENT TO JURISDICTION**

The company shall, at its election, be entitled to institute action out of any Magistrates Court exercising jurisdiction over the customer's person, notwithstanding that the amount of its claim or the nature of the relief sought would otherwise have exceeded the jurisdiction of that court.

22. **NON VARIATION**

- 22.1. No amendment, alteration, variation, deletion, addition or termination to or of these conditions or the contract to which these conditions are annexed, attached or incorporated, whether consensual or unilateral, shall be of any effect unless reduced to writing and signed by both parties.
- 22.2. These conditions supercede, and will apply in the future to the exclusion of, any provision contained in any purchase order, enquiry, remittance, trading conditions, purchase conditions or other documents of the customer.

23. **NON WAIVER**

No latitude, indulgence or extension of time granted by the company to the customer shall in any way prejudice the rights of the company nor be construed as a waiver of the company's rights.

24. **SEVERABILITY**

Each of these conditions shall be considered to be a separate provision, distinct from the others. In the event of any of these conditions being found to be illegal, invalid, prohibited or unenforceable, such



conditions shall be ineffective only to the extent of that illegality, invalidity, prohibition or unenforceability and the remaining conditions shall remain of full force and effect.

25. **APPLICABLE LAW**

These conditions and any contract to which these conditions are annexed or attached or incorporated by reference, shall be governed by, and interpreted in accordance with, the laws of the Republic of South Africa, notwithstanding the place of conclusion hereof or the residence or domicilium of the parties.

26. **VALUE ADDED TAX**

26.1. Unless the contrary is stated by the company in writing, all prices quoted by the company to the customer are exclusive of Value Added Tax, which tax is payable by the customer in addition to the said price.

26.2.

26.2.1. The customer acknowledges that the question of whether the prices quoted by the company will be subject to Value Added Tax at the standard rate or at a rate of zero percent will depend upon the provisions of the Value Added Tax Act 89 of 1991 as amended or substituted, irrespective of the place of business or domicile of the customer.

26.2.2. Without limitation, it is recorded that orders subject to an Incoterm 2020 EXW will, and Incoterm 2020 FCA, FAS and FOB may, in certain circumstances, attract Value Added Tax at the standard rate.

27. **INCOTERMS**

A reference to a trade term in any document to which these conditions are annexed or attached or incorporated by reference shall be deemed to constitute a reference to that term as defined by Incoterms 2020.

28. **CISG**

The parties hereby expressly exclude the application of the United Nations Convention on Contracts for the International sale of Goods to their business dealings.

29. **DUTY TO INFORM**

The customer shall be obliged to timeously notify the company in writing whenever there is a change to the customer's physical address(es), delivery address(es), postal address(es), e-mail address(es), bank account(s) and the like and before all or any part of its business or its major assets are disposed of to a third party.

