

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

- 1.1. In this Agreement unless the context otherwise indicates –
- 1.1.1. "Accepted Order" means an order which has been accepted by the Seller;
 - 1.1.2. "the/this Agreement" means these terms and conditions of the sale read together with the Schedules;
 - 1.1.3. "the Agreement Confirmation Schedule" means the schedule containing, *inter alia*, relevant details of the credit advanced and/or a description of the Goods;
 - 1.1.4. "the Application Form" means the application for credit/cash sale form signed and attached hereto containing, *inter alia*, the details of the Customer and the Supplier;
 - 1.1.5. "Business Day" means a day which is not a Saturday, Sunday or official public holiday in South Africa;
 - 1.1.6. "Commencement Date" means the date on which the DSP Formal Sales Contract was signed by both parties.
 - 1.1.7. "Credit" means the deferral of the Customer's obligation to pay for Goods acquired;
 - 1.1.8. "Credit Limit" means the amount stipulated in the Agreement Confirmation Schedule being the maximum amount for which a Credit Customer shall be entitled to place Orders;
 - 1.1.9. "Credit Period" means the maximum period for which Credit is provided as stipulated in the Agreement Confirmation Schedule (or otherwise agreed between the Parties in writing);
 - 1.1.10. "Customer" means the party purchasing the Goods;
 - 1.1.11. "Goods" means the products to be sold to the Customer from time to time in terms of this Agreement, being roll steel and related products;
 - 1.1.12. "Invoice" means a written tax invoice for the Goods sold by the Supplier and issued to the Customer pursuant to an Accepted Order;
 - 1.1.13. "Order" means a written order form signed and dispatched to the Supplier containing the information set out in 3.3;
 - 1.1.14. "Outstanding Amount" means, at any relevant point in time, the amount outstanding by the Customer in respect of all Goods sold and delivered and other charges levied in terms of this Agreement by the Supplier;
 - 1.1.15. "Party/ies" means the Supplier and the Customer;
 - 1.1.16. "Prime Rate" means the prime interest rate charged by the Supplier's bankers on overdrawn current accounts from time to time calculated daily and compounded monthly in arrears as certified (in the case of a dispute as to the rate so payable) by any manager of any branch of the bank whose authority, designation and appointment it shall not be necessary to prove;
 - 1.1.17. "Schedules" means the schedules to these terms and conditions, being –
 - 1.1.17.1. the Application for Credit/Cash Sale Form; and
 - 1.1.17.2. the Agreement Confirmation Schedule (where relevant or applicable);
 - 1.1.18. "Statement" means a statement of account detailing Invoices outstanding and payments received for the period to which the statement in question relates;
 - 1.1.19. "Supplier" means Duferco Steel Processing (Proprietary) Limited, registration number 1997/001976/07;
 - 1.1.20. "VAT" means value-added tax in terms of the Value Added Tax Act No 89 of 1991, as amended.
- 1.2. Any reference to the singular includes the plural and vice versa.
- 1.3. Any law means the relevant law as at the Commencement Date and as judiciously interpreted, amended or re-enacted from time to time;
- 1.4. A Party shall include a reference to that Party's successors in title and assigns allowed in law.
- 1.5. The use of any expression which is relevant to a process available under South African law (including "liquidation", "winding-up", "insolvency" "business rescue" and "judicial management") shall, if any party to this Agreement is subject to the laws of any other jurisdiction, be interpreted as to include any equivalent or similar process under the law of that other jurisdiction.
- 1.6. Where the signature of a Party is required in terms of this Agreement, such signature must be a handwritten signature although an electronic representation of such handwritten signature may also be used.

2. COMMENCEMENT AND APPLICATION OF THIS AGREEMENT

- 2.1. This Agreement shall bind the Parties on the signature by the Supplier and transmission of the Agreement Confirmation Schedule to the Customer which will be express acceptance of the order. If the Customer accepts any Order for Goods from DSP the Customer will be deemed to have impliedly accepted DSP's terms set out in this Agreement.

- 2.2. Notwithstanding 2.1 this Agreement shall commence on the Commencement Date and endure until all the obligations of the Customer in terms hereof have been fully discharged unless otherwise terminated in terms hereof.
- 2.3. This Agreement and particularly these terms and conditions shall apply to all transactions between the Supplier and the Customer for –
 - 2.3.1. The sale and acquisition of Goods.
 - 2.3.2. The advance of Credit to the Customer.
 - 2.3.3. Sale of goods to cash customers.
- 2.4. Then these terms and conditions shall take precedence.
- 2.5. The withdrawal, cancellation or termination of any particular Order or Accepted Order shall not affect the provisions of this Agreement which will remain binding on the Parties unless otherwise agreed in writing between the Parties.

3. QUOTES, ORDERS AND PRICE

- 3.1. Orders shall always be reduced to writing even if verbally arranged and transmitted to the Supplier to such physical address, fax or email as may be nominated by the Supplier from time to time. An Order number must be indicated on each Order.
- 3.2. The price indicated in the Order for the Goods in question shall be the amount indicated by the Supplier in any quotation provided by the Supplier to the Customer prior to the placement of an Order. Orders shall only be considered for prices as quoted or as per monthly price list. Quoted prices shall, unless otherwise specified, include costs, duties and levies in relation to transport and delivery (where relevant) of the Goods in question.
- 3.3. The Formal Sales Contract shall be signed by the Customer and the Supplier and shall set out at least the following information regarding the Goods ordered by the Customers –
 - 3.3.1. The purchase price of the Goods determined in accordance with 3.2;
 - 3.3.2. The payment terms;
 - 3.3.3. The quantity of Goods ordered;
 - 3.3.4. The type, specifications and grade of Goods ordered;
 - 3.3.5. The delivery terms; and
 - 3.3.6. The delivery destination for the Goods.
- 3.4. The Supplier reserves the right to –
 - 3.4.1. amend the quoted price or price indicated in the Order for Goods after the quotation was given or the Order was received; and
 - 3.4.2. Reduce the quantity of Goods ordered by the Customer, in its sole and unfettered discretion and communicate such change and/or variation to the Customer in the Order Confirmation, which shall notwithstanding the changes and/or variation to the Order and without derogating from the provisions of 3.2, constitute an Accepted Order unless the Customer rejects such Order Confirmation in writing within 24 (twenty four) hours of receipt of the relevant Order Confirmation
- 3.5. The price payable for the Goods shall be the price set out or contained in the Formal Sales Contract.
- 3.6. The Order Confirmation may be contained in the same document as the Order. All other charges relating to the insurance, packaging, transport, and delivery and offloading of the Goods, where relevant, shall, unless incorporated in the price, be specified or confirmed in the Formal Sales Contract. Subject to the pricing clause of Formal Sales Contract.
- 3.7. The Supplier shall issue an Invoice to the Customer for payment of the amount due by the Customer in respect of that Accepted Order, which Invoice shall include details of Goods ordered, the purchase price of the Goods, VAT and all other charges payable by the Customer.

4. PAYMENT

- 4.1. Any amount payable pursuant to this Agreement shall be due no later than 30 (thirty) days from the date of issue of a Statement by the Supplier or by no later than such shorter period as may expressly be provided for in the Agreement Confirmation Schedule.
- 4.2. Notwithstanding anything to the contrary herein contained and without prejudice to the Supplier's rights at law and in terms of this Agreement, the Supplier shall be entitled from time to time and in its discretion to withhold delivery of any Goods ordered should any amount due to the Supplier be in arrears for longer than 5 (five) Business Days after the due date for payment thereof.
- 4.3. All amounts due shall be paid in full, without any deduction or set-off and without the costs of transfer of funds either in cash at the premises of the Supplier or directly into the bank account of the Supplier as indicated in the Agreement Confirmation Schedule or such other bank account as the Supplier may notify the Customer of in writing from time to time.

- 4.4. The Supplier shall be entitled to charge interest on any amount not paid by the due date for payment referred to in 4.1 at the Prime Rate plus 5% (five percent) calculated from the due date for payment until the date of payment, both days inclusive.
- 4.5. In the event that payment is not made in terms of any Statement by the due date therefore, the entire Outstanding Amount due by the Customer to the Supplier shall immediately become due and payable.
- 4.6. All payments made by the Customer to the Supplier shall be allocated, to the extent relevant, first to interest, then to costs, including all default administration charges and legal costs, and finally towards the reduction of the capital amount outstanding.

5. OWNERSHIP AND RISK

- 5.1. Ownership in the Goods shall pass to the Customer when the total purchase price in respect of the Goods purchased has been paid in full and received by the Supplier. Accordingly, ownership in and to the Goods shall remain with the Supplier until fully paid for, irrespective of the form.
- 5.2. Risk in the Goods shall pass to the Customer on delivery as provided for in 7, being when the Goods are made available (tendered) to the Customer in terms of 7.1 or 7.2.

6. DELIVERY

- 6.1. Delivery and passing of the risk in the goods shall be deemed to have taken place when the goods are collected by the customer from the Suppliers' premises, alternatively when the goods are delivered to the Customer's premises.
- 6.2. Unless the Customer arranges its own delivery, the Supplier shall deliver the Goods to the Customer at the place stipulated on the relevant Order or, if no such address is indicated on the Order, at the premises of the Customer as indicated in the Application Form or the Agreement Confirmation Schedule and the Customer shall be obliged to take delivery of the Goods when tendered.
- 6.3. In the event that the Customer wishes to arrange for its own delivery it must notify the Supplier accordingly in writing and indicate in such written notification the details of the carrier or delivery agent. The Supplier will make the Goods available to such carrier or delivery agent at the premises of the Supplier and such carrier or delivery agent shall be obliged to take delivery of the Goods when tendered for and on behalf of the Customer. Additional loading costs may be levied in the event that the notification for own delivery is not relayed timeously.
- 6.4. Delivery of Goods is deemed to have taken place when they are provided to the Customer. When Goods are delivered by the Supplier or its agents delivery is deemed to be effected upon delivery. Evidence of delivery shall be a delivery slip signed at the delivery point by a person who is apparently responsible for the acceptance of those products. The Customer agrees that the signature of any employee or agent on the company's delivery note or invoice or on the delivery note or invoice of a carrier will constitute proof of proper delivery of the goods purchased.
- 6.5. Where the Goods are delivered by the Supplier or its Agents and there is no person available or no person willing or authorized to receive the Goods, then evidence of delivery of the Goods will be a declaration of the Supplier or its Agents employee.
- 6.6. In the event that the Customer fails for whatsoever reason to accept delivery and sign the delivery slip, the Supplier shall not accept any claims that ought to have been identified at the point of delivery.
- 6.7. The Supplier shall have the right to suspend deliveries if any amount due by the customer is unpaid.
- 6.8. Unless otherwise stipulated, the Supplier will at all times endeavor to make the Goods available or to dispatch the Goods for delivery to the Customer as soon as practicably possible after an Order has been accepted. The Customer shall not be entitled to rely on any indication given to the Customer, whether indicated on the Order or indicated prior to or at the time of placing or acceptance of the Order or thereafter, of the time at which the Goods are to be made available or delivery is to take place, which shall merely be an estimate, and Supplier and its agents shall not be liable or accountable to the Customer for any claims, loss or damages suffered in relation thereto.

7. WARRANTIES AND UNDERTAKINGS

- 7.1. Save for any specific written warranties, guarantees or undertakings given by the Supplier from time to time to the Customer in respect of Goods classified or graded as prime products or materials, the Supplier gives no warranties or undertakings of any nature whatsoever in relation to the Goods, it being agreed that the Goods are sold and supplied "voetstoots".
- 7.2. Notwithstanding anything to the contrary herein contained, the Supplier does not warrant that the Goods are or will be fit for any purpose or are or will be merchantable.

8. FORCE MAJEURE

- 8.1. Notwithstanding anything to the contrary herein contained, the Supplier shall not be liable to the Customer in respect of the nonperformance of any of the provisions of this Agreement in the event and to the extent that such non-performance is as a result

of or has been caused by force majeure, which shall mean any event beyond the reasonable control of the Supplier or which could not reasonably have been foreseen by it, and shall include, but not be limited to, –

- 8.1.1. inability to secure or procure labor and/or Goods (including due to a breach by any supplier of Goods for an Order
- 8.1.2. Therefore, if applicable, despite the Supplier having taken all reasonable steps to procure same; or
- 8.1.3. any act of God, war, strike, lockout or other labor dispute, fire, flood, drought, rain, storm, wind or any existing or new legislation, planned electricity supply interruption (load-shedding) or an interruption of electricity services (blackouts) by any supplier of electricity, breakdown of telecommunication networks or computers, political intervention, imposition of sanctions, riot, insurrection embargoes, quarantine or any governmental barring directive or order.

9. DEFAULT EVENTS

- 9.1. The Customer shall be in default of its obligations in terms of this Agreement if it –
 - 9.1.1. fails to pay punctually any amount due and payable to the Supplier and fails to remedy the non-payment within a period of 5 (five) Business Days from the date of written notification to that effect from the Supplier; or
 - 9.1.2. commits any other breach of any of the terms of the Agreement and fails to remedy same within a period of 10 (ten) Business Days from the date of written notification to that effect from the Supplier; or
 - 9.1.3. allows any judgments against it to remain unsatisfied for a period of 5 (five) Business Days; or
 - 9.1.4. compromise or attempts to compromise any debt with any of its creditors; or
 - 9.1.5. is provisionally or finally sequestrated, liquidated, wound-up or placed under judicial management or curatorship; or
 - 9.1.6. permits any lien, hypothec, notarial bond, pledge, other security, or interest to be created over the Goods, or abandons the Goods or relinquishes possession of the Goods before it has paid the supplier therefor, or allows the Goods to be seized under any legal process issued against the Customer prior to the discharging all of its obligations arising from this Agreement.
- 9.2. In the event that this Agreement is accompanied by a surety ship or other security, the Customer shall be deemed to be in default if the surety or security provider under surety ship or other security arrangement commits a default as contemplated above as if being acknowledged particularly that in the case of a surety ship, the surety is also a co-principal debtor of the Customer in favor of the Supplier.

10. BREACH

- 10.1. Upon the Customer being in default, or should the Supplier be otherwise entitled in law, the Supplier shall, without prejudice to any other rights that it may have at law or in terms of this Agreement be entitled to –
 - 10.1.1. suspend or terminate the credit facility or the provision of Goods to the Customer;
 - 10.1.2. cancel this Agreement or any particular Accepted Order on written notice to the Customer or to claim specific performance in terms of this Agreement for that/those Accepted Orders and for any obligation owed by the Customer to the Supplier in terms of this agreement; and
 - 10.1.3. Claim damages from the Customer.
- 10.2. If the Supplier cancels or purports to cancel this Agreement or any Accepted Offer then, notwithstanding anything to the contrary herein, the Outstanding Amount shall immediately be due and payable by the Customer to the Supplier.

11. CERTIFICATE OF INDEBTEDNESS

- 11.1. A certificate signed by any director or manager (whose appointment, authority or qualification need not be proved) for the time being of the Supplier shall be –
 - 11.1.1. *prima facie* proof of the quantum of the Outstanding Amount; and
 - 11.1.2. valid, together herewith, for any purpose and as a liquid document (alternatively as proof of a liquidated amount) in any Court or forum of competent jurisdiction for the purpose of obtaining provisional sentence, summary judgement or any other judgement against the Customer, and the Customer acknowledges its indebtedness in respect of any amount so certified.

12. JURISDICTION

- 12.1. The Parties submit to the jurisdiction of the Courts of South Africa in respect of any dispute between them in relation to or arising from this Agreement.

13. CANCELLATION

13.1. Notwithstanding anything to the contrary herein contained, and without prejudice to any of the Supplier's rights in terms hereof or at law, in the event of the Customer cancelling or purporting to cancel any DSP Formal Sales Contract (save where such cancellation is solely attributable to a breach by the Supplier of the provisions of this Agreement), or repudiates any of its obligations in terms of this Agreement, the Seller shall be entitled to recover the price for the Goods as if the DSP Formal Sales Contract has not been cancelled as well as to claim any and all cancellation fees and/or penalties which the Seller may have to pay to its suppliers as a result of the aforesaid cancellation or repudiation together with the cost of all insurance, duties and levies and all other costs relating to the manufacture or procurement of the Goods as well as losses and damages incurred on disposal of the Goods.

14. GENERAL

14.1. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

14.2. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

14.3. If any definition contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement, notwithstanding that it is only in the interpretation clause.

14.4. If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be next succeeding Business Day.

14.5. This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

14.6. The Customer acknowledges that at the time of signing the Application for Credit Form, the said form was completed fully and the particulars set forth therein are true and correct.

14.7. If any provisions of this Agreement are found to be unlawful, unenforceable or invalid, it shall be deemed to be separate and severable from the remaining provisions of this Agreement and to the extent that same is unlawful, unenforceable or invalid, be deemed to be *pro non scripto*.

14.8. No extension of time or other indulgences granted by the Supplier to the Customer in respect of its obligations will constitute a waiver or novation of or otherwise affect any of credit provider's rights to enforce strict compliance with the terms of this Agreement.

14.9. The Customer shall not be entitled to cede, assign or delegate any of its rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the Supplier first being had and obtained. The Supplier shall be entitled to cede its rights and/or delegate its obligations in terms of this Agreement without the prior consent of the Customer.

14.10. No alteration, consensual cancellation, novation or variation of, or addition to this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representatives.

14.11. This Agreement constitutes the whole agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties and promises or the like not recorded herein.