

## **STANDARD TERMS OF BUSINESS**

**1. PARTIES** These terms shall apply in respect to all business conducted between Indian Ocean Export Company (Proprietary) Limited (IOEC) and any party (the Customer) which acquires goods or services from IOEC (the Goods).

**2. ACCEPTANCE** These Standard Terms of Business shall apply automatically upon the conclusion of a contract to supply the Goods.

### **3. PAYMENT**

3.1. Where credit is extended, and in the absence of any written signed agreement to the contrary, payment shall be made by within THIRTY (30) days of the date of IOEC's invoice.

3.2. Should the Customer fail to make any payment when due then all outstanding amounts owing shall fall due for payment immediately.

3.3. All amounts remaining unpaid after the due date shall bear interest at FOUR PERCENTUM (4%) per annum above the prime rate of interest from time to time as charged by IOEC's bank calculated and compounded monthly on the last day of the month reckoned from the date of invoice to the date of payment.

3.4. All payments to be made in the invoiced currency, free of exchange and without deduction or set-off.

### **4. DEFAULT**

4.1. Should the Customer default in making any payment on its due date then IOEC shall have the right to cancel all contracts of sale in respect of any Goods purchased but not yet delivered subject always to IOEC's rights to hold the Customer liable in damages. IOEC shall also have the right to retain all moneys paid by the Customer pending determination of such damages and thereafter to set-off the amount so retained against the amount owing.

4.2. IOEC shall be entitled to summarily cancel any sale and recover all amounts then due together with interest and costs should the Customer at any time:

4.2.1. commit any act of insolvency, be or become insolvent, attempt to compromise with its creditors or be the subject of insolvency proceedings;

4.2.2. do or suffer to be done any act or thing which may prejudice the rights of IOEC;

4.2.3. breach or otherwise fail to observe any of the standard terms or any other terms governing the sale of the Goods by IOEC to the Customer;

4.2.4. make any misrepresentation or commit any acts of fraudulent or dishonest nature against IOEC or affecting IOEC's rights.

4.3. A certificate signed by any director or account manager of IOEC setting out the amount owing including interest and the rate of interest by the Customer at any time shall constitute evidence *prima facie* evidence of amounts owing to IOEC.

4.4. All Goods and documents relating to Goods including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge either for moneys due in respect of such Goods or for other moneys due to IOEC from the Customer. If any moneys due to IOEC are not paid within FOURTEEN (14) days after notice has been given they may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of IOEC and at the expense of the Customer and the net proceeds applied in or towards satisfaction of such indebtedness.

## **5. PRICES**

5.1. IOEC's prices are always subject to alteration without notice and prices quoted, unless expressly stated to be fixed are liable to change according to the prices of the Goods at the date the Goods were sourced by IOEC.

5.2. All prices are subject to increase by the amount of any increase in direct taxes and duties, wharfage, freight, railage or cartage insurance or any other tariff applicable to the Goods between the date of order and the date of delivery.

5.3. The prices of the Goods ordered but not paid for shall at IOEC's election be subject to variation to take account of foreign exchange fluctuations arising between the date of acceptance of the order, and the date of delivery.

5.4. The Customer shall be liable for any duties, taxes, imposts, levies or any outlays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place for or in connection with the Goods and whether at the time of entry and/or at any subsequent time.

## **6. AGENCY**

6.1. IOEC in procuring the carriage, storage, packaging or handling the Goods shall be entitled to act either as an agent for and on behalf of the Customer or as a principal, as it in its absolute discretion deems fit.

6.2. The Customer acknowledges that when IOEC acts as agent for and on behalf of the Customer concluding any contract with a third party, such agreement is concluded between the Customer and the third party.

6.3. IOEC, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions, including, but not limited to contracts for carriage of Goods by any route or means or person, the storage, packaging, transport, shipping, loading, unloading and/or handling of Goods by any person at any place whether on shore or afloat and for any length of time.

## **7. RISK AND OWNERSHIP**

7.1. Notwithstanding the delivery of any Goods to the Customer or its representative ownership shall not pass until IOEC shall have received full payment including interest of all amounts payable by the Customer to IOEC from whatever cause and notwithstanding that such Goods shall have been supplied on credit.

7.2. IOEC shall be entitled to give notice to third parties of its reserved ownership of the Goods as it may, in its full discretion, deem necessary.

7.3. The Customer shall immediately notify IOEC if any third party contests the ownership of the Goods or attempts to assert any proprietary right to any Goods in which ownership remains vested in IOEC.

7.4. All goods whether or not affixed to immovable property shall be deemed to be movable property and severable.

7.5. In the absence of specific agreement to the contrary the risk in all the Goods shall pass from IOEC to the Customer on dispatch of the Goods at the commencement of the delivery process.

## **8. DELIVERY**

8.1. The date of delivery of the Goods is not guaranteed and IOEC reserves its right to extend the time as may be reasonable if execution of the contract by IOEC is delayed by the Customer's instructions, or lack of instructions, or by any cause whatsoever beyond IOEC's reasonable control.

8.2. Should the Customer require the transportation of the Goods by alternative means to that which is ordinarily used by IOEC, then such alternative means of conveyance shall be for the Customer's account.

8.3. Delivery shall be deemed to have taken place against the sooner of signature of IOEC's delivery note by the Customer, or in the event that a carrier is used upon delivery to such carrier or upon delivery of the shipping documents to the Customer or its representative.

8.4. No liability shall attach to IOEC in respect of any direct, indirect or consequential losses arising from any delay in the completion of delivery of the Goods and failure of delivery of the Goods, irrespective of the cause of such delay or failure.

## **9. HAZARDOUS OR PERISHABLE SUBSTANCES**

9.1. IOEC shall be entitled to dispose of perishable or hazardous Goods if such Goods have begun to deteriorate or are likely to deteriorate before delivery to the Customer.

9.2. The Customer shall furnish IOEC with full details of any hazardous substance that forms part of the Goods and the Customer shall be liable for all of IOEC's costs in connection with the contractual obligations to the Customer concerning the hazardous Goods.

**10. WAREHOUSING** Pending forwarding and/or delivery by or on behalf of IOEC, the Goods may be warehoused or otherwise held at any place as determined by IOEC in its absolute discretion, at the Customer's expense.

**11. PACKAGING** The Customer shall be liable for the cost of containment, crating, boxing, bundling, packaging, stowage and stuffing.

**12. INDEMNITY** The Customer hereby indemnifies IOEC for any claims or losses howsoever incurred which arise out of or in connection with the Goods supplied or to be supplied by IOEC to the Customer.

## **13. GUARANTEE**

13.1. IOEC does not provide any guarantees or warranties in respect of the absence of defects whether latent or patent or in respect of the fitness for purpose of any Goods.

13.2. Any rights of recourse by IOEC to its Supplier may be exercised by the Customer and IOEC undertakes to co-operate with the Customer concerning the enforcement of such rights.

13.3. IOEC will make reasonable endeavours to ensure that Goods ordered will conform to the Customer's samples or specifications. All recourse in respect of non-conforming Goods will lie directly between the Customer and IOEC's Supplier.

13.4 It will be the responsibility of the Customer to attend to all import formalities and legal requirements prevailing in the country of destination, including those prevailing at the ports of transit. Without restricting the foregoing generality, it is the responsibility of the Customer to comply with all statutes, regulations, rulings, licences, customs and excise requirements, surveys, requirements affecting product shelf-life, food stuffs, additives, colourants, hazardous and prohibited content and the like, and to observe all laws relating to the control of drugs and narcotics, terrorism and money-laundering. The Customer will be liable to IOEC for any costs and/or charges incurred by IOEC which arise out of or in connection with the Customer's responsibilities in regard to the foregoing.

**14. LIMITATION OF LIABILITY** Under no circumstances shall IOEC be liable for any direct, indirect or consequential losses of any kind.

## **15. CLAIMS**

15.1. Claims for damaged Goods shall be made within THIRTY (30) days after delivery at the port of destination or at the Customer's premises, whichever is the sooner, failing which the Customer shall have no claim of whatsoever nature against IOEC.

15.2. No claim for damaged or perished Goods shall be entertained unless the allegedly damaged or perished Goods have been inspected by IOEC, or its authorised representative, whereafter the Goods shall be returned at the cost of the Customer to IOEC together with such additional information as IOEC may reasonably require in order to finally evaluate the Customer's claim.

15.3. Should the Goods be received in a damaged or perished condition then the carrier's receipt shall be endorsed accordingly and notification sent to IOEC for its information and records with a copy of the carrier's receipt within SEVEN (7) days of receipt of the Goods by the Customer. That notwithstanding, all carriage is effected at the risk of the Customer.

15.4. In the absence of a claim being notified timeously the Customer shall be deemed to have received and accepted the Goods in good order and in full compliance with the order placed.

**16. CANCELLATIONS** Orders may not be unilaterally cancelled by the Customer. Unexecuted orders may be cancelled with the consent of IOEC subject to the Customer's payment of IOEC's damages and cancellation charges.

**17. NO VARIATION** No variation of the Standard Terms shall be binding on IOEC unless reduced to writing and signed by a director of IOEC.

**18. DISPUTE RESOLUTION** Any dispute between the Parties shall at the election of IOEC be resolved by arbitration according to the Rules of the Arbitration Foundation of the Republic of South Africa . Such arbitration shall be held in Durban.

**19. LEGAL COSTS** The Customer shall be liable to pay IOEC's legal costs on the scale as between attorney and own client should it be necessary for IOEC to take any legal steps whatsoever between the Customer.

## **20. GENERAL**

20.1. No relaxation or indulgence which IOEC may grant to the Customer shall constitute a waiver of its rights to enforce strict compliance with the Standard Terms of Business.

20.2. Advice, recommendations or opinions by representatives of IOEC are given and expressed in good faith and shall not constitute representations of any description, and shall not give rise to any claim against IOEC.

20.3. Descriptions, illustrations and examples contained in any catalogue, brochure, website, advertisement or price list are published for general information and do not constitute representations and do not form part of any estimate or contract or part of these Standard Terms of Business.

20.4. If any provisions of these Standard Terms of Business are unenforceable then IOEC shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these Standard Terms of Business and the standard terms which shall not be effected shall remain in full force and effect.

**21. LAW GOVERNING CONTRACT** The Sale Contract to which the Standard Terms of Business apply shall be deemed to be concluded at Durban, Republic of South Africa except where specified to the contrary in writing.