

General Terms and Conditions valid from 01.09.2019

General

1. These General Terms and Conditions apply to all transactions between Tridonic SA (Pty) Ltd Unit 7, Old Trafford Office Park, Leith Road, Bartlett, Boksburg 1459, South Africa (hereinafter "Seller") and its business partners and customers (hereinafter "Buyer"), for deliveries of goods and (as the case may be) for the provision of services (hereinafter "services"). All offers made by the Seller are based upon and incorporate these General Terms and Conditions.
2. Should any of the provisions in these General Terms and Conditions directly contradict any terms and conditions contained in the Seller's offer or order confirmation, the provisions of the Seller's offer and order confirmation shall apply. In this event only those provisions of these General Terms and Conditions, or parts thereof, that are not in direct conflict with the provisions of the Seller's offer and order confirmation shall remain valid and binding on the parties.
3. The Buyer expressly acknowledges that the Seller objects and does not agree to any and all provisions and/or terms which the Buyer may wish to or attempts to incorporate in the agreement between the Parties but which are not in strict compliance with the provisions contained in points 1 and 2 above, whether such terms arise from an order or other commercial documents of the Buyer. Unless explicitly agreed to by the Seller in writing, the Seller does not acknowledge or agree to be bound by differing General Terms and Conditions of the Buyer even where the Seller does not explicitly contradict those individual provisions.
4. These Terms and Conditions shall also apply – unless a newer version of the Seller's General Terms and Conditions are expressly applied to the transaction – as the framework agreement for all further transactions with the Buyer. Should any of these individual General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions.
5. The Seller provides products and services to commercial customers and public authorities only, not however to consumers.

Offer

6. Offers by the Seller are non-binding and therefore do not constitute an offer which the Buyer can accept and thereby create an enforceable agreement with the Seller.
7. Offer, implementation and project documentation may not be reproduced or made accessible to third parties without the Seller's consent. These may be reclaimed and are to be returned to the Seller should the order be placed elsewhere, or not result in a final agreement between the Parties.

Conclusion of agreement

8. An agreement is only considered concluded as soon as the Seller has sent a written order confirmation or has dispatched a delivery upon receipt of an order from the Buyer.
9. Information contained in catalogues, brochures and the like, as well as other written or verbal statements are only relevant if explicitly referred to in the order confirmation.
10. Subsequent amendments and additions to the agreement or additional agreements are valid only when confirmed by the Seller in writing. The Seller may at any time correct clerical mistakes and/or calculation errors in offers, order confirmations or invoices.
11. The Parties record that where the Consumer Protection Act, 68 of 2008 applies to any transactions between the Parties the following conditions will apply:
 - 11.1 no excluded transaction, meaning an accepted order to which the Consumer Protection Act does not apply by virtue of Section 5 of that Act or anything done in terms of Section 5 of that Act, may be cancelled except with the Seller's express written consent;

- 11.2 orders for special order goods, being goods that the Seller is expressly or implicitly required or expected to procure, create or alter specifically to satisfy the Buyer's requirement, that have been accepted by the Seller, may not be cancelled except with the Seller's express written consent in each and every specific instance; and
- 11.3 cancellation of any other order, where the Consumer Protection Act applies, after such order has been accepted by the Seller by way of an order confirmation, must be in writing and will be subject to a cancellation charge to be calculated by the Seller and payable on demand.

Prices

12. Unless otherwise noted and subject to the further provisions of these terms, prices apply FCA Seller's premises or dispatch warehouse including packaging and loading, however, excluding VAT, and are binding only up to the delivery date specified in the order confirmation. The Buyer is responsible for all fees, taxes, customs and excise duties or other charges arising from deliveries.
13. In the case of service and/or repair engagements (e.g. planning, commissioning and/or reviewing installations, training), services deemed appropriate by the Seller shall be performed and invoiced to the Buyer on the basis of expenses incurred plus any additional travel and transportation costs. This also applies to services and additional services the necessity of which becomes apparent only during performance of the engagement; these additional services do not require special notification to the Buyer. Unless otherwise agreed in writing, the Buyer shall be invoiced for the preparation of service and/or repair offers and/or assessments.

Transfer of risk

14. Use and risk are transferred to the Buyer upon the goods leaving the works or warehouse of the Seller independent of the written pricing terms agreed to for the delivery. This also applies when the delivery forms part of an assembly or if the transportation is performed or organised and implemented by the Seller.
15. The place of performance for services is the location where the service is performed. The risks of a service or agreed to partial service are transferred to the Buyer upon performance.

Delivery / services

16. The Seller's delivery obligations are controlled solely by these terms and conditions and the Seller's written order confirmation.
17. A specified delivery date (e.g. as contained in the order confirmation) serves only as an indication or estimate for the Buyer and is not binding.
18. Accordingly such estimated delivery dates are not binding on the Seller, unless the Seller expressly agrees in writing that a particular delivery date or a series of particular delivery dates are binding upon it in relation to a particular supply transaction or a particular series of supplies or supply transactions. In all circumstances, failure by the Seller to adhere rigidly to any delivery date estimate does not give rise to any obligations on the part of the Supplier nor does it entitle the Buyer to cancel the transaction or to withhold or delay payments as and when they become due to the Seller.
19. Although the estimated and/or agreed delivery dates are given in good faith and are not binding and the Seller will take reasonable precautions to avoid or reduce delays, wherever reasonably and commercially possible, the Seller will in no circumstances be responsible for loss resulting from delays in delivery.
20. The Buyer shall obtain all necessary official third-party permits, including all export and/or import permits and authorisations. Should these permits not be obtained on time, the delivery period is extended accordingly, but this shall not extend the due date for payment to the Seller. The delivery period is also extended in the event of delayed scheduled payments due to the Seller.
21. The Seller is entitled to provide and invoice partial and/or advance deliveries. Should delivery on demand be agreed, the goods are considered delivered at most 1 year after placement of the order, irrespective of whether demand has been made and whether the goods have actually been delivered.
22. Insofar as no specific written arrangements have been made, the Seller shall choose the method and nature of shipment. In particular, there is no obligation to select the most cost effective mode of shipment or transport.

23. Deliveries are made only in full packaging units. If smaller units are ordered, the Seller reserves the right to charge a minimum quantity/volume surcharge. The packaging, also for partial and/or advance deliveries, conforms to standard commercial practice.
24. The nature and extent of the services to be provided by the Seller is described in the respective order confirmation. The Buyer shall facilitate the performance of the services and in all cases shall make available a competent person and all required equipment (e.g. ladders, scaffolds, work cage). The Buyer shall provide replacement parts (e.g. light sources, control units, lighting, lamps etc.) at its own expense; alternatively these may be provided and charged for by the Seller.
25. Services are performed on workdays between 08.00 and 17.00. Should the Buyer request and receive services from the Seller outside of these timeframes the following surcharges apply:
 - 50 % surcharge for services performed on Saturdays
 - 100 % surcharge for services performed on Sundays and public holidays.
26. The Buyer is obliged to immediately inform the Seller of all material circumstances regarding the plant and/or performance of services in question and, at the request of the Seller, the Buyer shall withdraw from operation either the whole or part of the plant for the duration of the service provision. The Buyer is obliged to immediately inform the Seller in writing of any safety precautions or compliance with any safety standards required in performing the service. Relevant training required by the Seller's personnel is undertaken at the Buyer's expense. The Seller is entitled to separately charge the Buyer for any resulting additional efforts.
27. Where unforeseeable circumstances arise or where the circumstances are outside of the control of the Parties, for example all cases of force majeure, that impede compliance with a delivery date agreed in writing, such delays shall extend the delivery date under exclusion of all legal claims the Buyer could otherwise assert for the duration of these circumstances; included herein are, for example, official interventions and prohibitions, transport and customs delays, transport damage, energy and raw materials shortages, labour disputes, and default on the part of essential or difficult to replace subcontractors. These aforementioned circumstances also entitle an extension of the delivery period if they affect the Seller's suppliers.

Payment

28. Unless other written payment conditions have been specifically agreed in writing for any particular order, each delivery and/or service is payable upon receipt of invoice. In the event of partial invoices the partial payment is also due upon receipt of invoice.
29. Payments are to be made without deductions or set off of whatsoever nature in the agreed currency. Any acceptance of cheques or bank transfers is possible only on account of payment. All resulting interest and charges are borne by the Buyer.
30. The Buyer is not entitled to withhold or offset payments as a result of warranty claims or any other claims.
31. If the Buyer is in arrears regarding an agreed payment or for other goods or services, the Seller may, without prejudicing other rights:
 - a) Delay fulfilment of its own obligations until payment has been effected,
 - b) Demand payment of all outstanding receivables and demand interest arrears in the amount of 12% per annum plus VAT from the due date, provided that the Seller cannot prove costs in excess of these amounts. In the event of default all granted discounts and bonuses are forfeited. The Seller is entitled to invoice pre-trial costs, in particular reminder fees and legal expenses and recover these from the Buyer.
32. The Seller retains ownership in all goods delivered by it until full payment of invoice amounts plus interest and expenses. In order to secure the purchase price claim, the Buyer herewith assigns all its claims from the resale of goods where ownership remains reserved in the Seller even where these have been processed, transformed or combined, to the Seller *in securitatem debiti* (as security for the debt) and agrees to make the corresponding entries in its accounts or invoices. The Seller accepts this assignment. Upon request, the Buyer shall inform the Seller of the assigned claims and the debtors, and make available all required information and material for collection of the debt as well as notifying third-party debtors of the assignment. In the event of seizure or other claims the Buyer is obliged to point out the Seller's property rights and to inform the Seller immediately.
33. In the event of the Seller receiving information indicating a lack of credit worthiness or risk of credit unworthiness on the part of the Buyer, the Seller is entitled to withhold delivery and/or performance and to demand payment or securities before delivery or performance is undertaken.

34. A processing fee will be charged for orders which fall below the Seller's stated minimum net order value (excluding taxes, fees and charges). Upon request, the Buyer shall be informed as to the amount of the applicable surcharge, minimum net order value and the processing fee.
35. In the event of late payment, the Buyer is liable for any currency losses incurred between the original due date and the actual date of payment.
36. The Seller is obliged to release securities only to the extent that their realisable value exceeds the claims due to the Seller by more than 10% and the Seller then reserves the right to determine which goods or claims are released.
37. If retention of title pursuant to the law in the location of the goods is not valid, a security corresponding to retention of title is deemed agreed. If the cooperation of the Buyer is required, upon the request of the Seller it is obliged to undertake all reasonable measures at its own expense to establish and preserve such rights.

Warranty

38. In accordance with the following provisions, the Seller is obliged to rectify any defect impairing functionality that exists at the time of delivery or performance based on faults in construction, materials or workmanship.
39. The warranty period for defects undetectable at time of delivery is 24 months and these must be reported without delay upon discovery. Defects detectable upon delivery must be reported in writing within a period of 8 days, otherwise they shall be considered forfeited. The warranty period for latent defects also begins at the time of delivery (transfer of risk) and is neither extended nor interrupted by remedial activities. This warranty period also applies to partial deliveries. Defects are to be reported without delay in writing otherwise warranty or other claims are excluded, however, this does not entitle the withholding of invoice amounts or parts thereof. The Buyer shall provide proof that the defect existed in the good at the time of delivery.
40. **In the event of a defect subject to a warranty obligation in accordance with this "warranty" section, the Seller may, at its discretion, repair the defective good or part at the place of performance or have it sent for repair or to replace (exchange) it or to award the Buyer a price reduction. Invoices for repairs by third parties shall not be payable or reimbursed by the Seller.**
41. All ancillary expenses incurred in connection with rectifying defects (such as assembly and disassembly, transport, disposal, travel and travel time expenses) are borne by the Buyer. For warranty work carried out at the Buyer's premises, the necessary assistance, hoisting gear, scaffolding and sundry materials etc. are to be supplied free of charge by the Buyer.
42. If the Seller produces goods for the Buyer on the basis of design specifications, drawings or other information provided by the Buyer or the Buyer's nominated representative, the Seller's liability is limited to the implementation of these instructions. All claims of the Buyer are to be judicially asserted within 24 months from the transfer of risk, otherwise the claim will be forfeited.
43. The Seller shall accept returns only after giving its prior written consent in each and every specific instance.
44. The provisions in points 38 to 42 also apply analogously for each defect arising from other legal grounds, including, but not limited to, claims for damages.
45. The assignment of warranty claims and/or damages claims and similar matters by the Buyer is not permitted.

Damages and liability limitations

46. **The Seller is liable to the Buyer for damages incurred during the performance of the transaction – insofar as this is legally permissible – only to an amount of no more than one half of the value of the specific order and only in the event of intent or gross negligence on the part of the Seller. Liability in the event of slight negligence – insofar as is legally permissible – is precluded except in cases of personal injury. The Buyer will have the onus to prove gross negligence on the part of the Seller. This also applies to instances of slight negligence with regard to personal injury.**
47. **Compensation for purely financial losses, lost profit, interest losses, losses from claims by third parties – whether direct or indirect damages – consequential damages or (criminal) damages is – insofar as is legally permissible precluded and the Seller will have no liability in this regard.**

48. Claims for damages expire – insofar as is legally permissible – within 6 months of knowledge of the damage and of the damaging party. The Buyer shall notify the Seller of any damage in writing within a reasonable period of time, however, not exceeding 7 calendar days. In addition, the Buyer must provide detailed proof that the damage has occurred as well as the extent of the damage.
49. Should the Buyer be held liable under the Consumer Protection Act or any such equivalent foreign law, it waives any recourse against the Seller. Should the Buyer bring goods supplied by the Seller outside of the Republic of South Africa, it is obliged to exclude the indemnification obligation under the Consumer Protection Act or equivalent foreign law, insofar as this is possible according to the law applicable to the Buyer and its customer or according to the law agreed to between them. In this event, or by omission of this mandatory exclusion, the Buyer is obliged to indemnify the Seller from third party claims regarding product liability.
50. The Buyer agrees to and does hereby indemnify, defend and hold the Seller harmless from and against any and all liability, claims, costs, expenses (including legal fees), judgements, settlements and/or liability of any kind, including but not limited to, liability for injury, death or property damage, which arises out of, results from or is in any way connected with the Buyer or end customers use and/or operation of the goods and/or services, whether or not said liability arises as a result of any individual or concurrent acts or omissions of the Buyer and/or end customer, its sub-contractors or employees, or any other person, but not as a result of the gross negligence of the Seller.

Withdrawal from agreement

51. The Seller may on written notice to the Buyer withdraw from this agreement if, (i) performance of delivery and/or service is delayed by the Buyer or (ii) the Seller has reasonable concerns regarding the Buyer's solvency.

Industrial property rights and copyrights

52. The Buyer shall indemnify the Seller for all infringements of property rights where goods have been manufactured by the Seller of the basis of design specifications, drawings, models or other specifications provided by the Buyer or its representatives.
53. Production documents, such as plans, drawings and other technical documents as well as samples, catalogues, brochures, illustrations and the like remain the property of the Seller and are subject to the relevant copyright and statutory law provisions governing reproduction, imitation, competition etc.

Compliance with export control regulations

54. In the event of transfer of goods supplied by the Seller (e.g. hard and/or software and/or technology including related documentation, independent of the manner of provision) or of services provided by the Seller (including all technical support) to third parties at home and abroad, the Buyer shall comply with all applicable national and international (re)export control regulations. In all cases it must observe the (re)export control regulations of the European Union and of the United States of America.
55. To the extent required for export control checks, the Buyer shall supply the Seller immediately upon request with all information pertaining to the final recipient, destination and intended use of the goods or services provided by the Seller as well as any export control restrictions. The Buyer shall fully indemnify the Seller against all claims by public authorities or other third parties for non-observance of the above export control regulations and is obliged to indemnify the Seller for all expenses and damages incurred in this regard, unless the Buyer is not responsible for the breach of duty. This does not constitute a reversal of the burden of proof.
56. Performance of the agreement on the part of the Seller is subject to the proviso that no obstacles based on national or international foreign trade regulations, as well as embargos and/or other sanctions prevent performance.

Applicable law and legal venue

57. This agreement is subject to South African substantive law under exclusion of conflict of law principles of international private law and exclusion of the UN Convention on the International Sale of Goods.
58. All disputes between the Parties arising out of this Agreement shall be exclusively determined by the relevant court having jurisdiction in the Republic of South Africa, provided that the Seller shall, at its discretion, be entitled to proceed against the Buyer in the courts of such countries and/or areas as may have jurisdiction over the matter.
59. A certificate signed by the director of the Seller, whose appointment as such shall require no proof, showing the amount due, owing and payable by the Buyer to the Seller at any given time shall be sufficient *prima facie* proof of the facts therein stated for the purposes of all legal proceedings against the Buyer for recovery of any amounts outstanding due, owing and payable, unless proof to the contrary by the Buyer.

60. The Buyer chooses its address as stated in its order or the confirmation of order as the address to which or at which all correspondence, notices and legal process may be sent or delivered to the Buyer, and the Seller chooses the Seller's address stated in these terms and conditions as the address to which or at which all correspondence, notices and legal process may be sent or delivered to the Seller.
61. The Seller is entitled to make whatever enquiries it deems necessary to determine the credit worthiness of the Buyer, is thereafter entitled to register details about the conduct of the Buyer's account at all credit bureaus.
62. No relaxation or indulgence which the Seller may allow the Buyer in relation to that specific past incident or specific incidents of non-compliance with, or breach by, the Buyer of these terms and conditions and/or those of any transaction to which these terms and conditions apply, shall constitute a waiver of the Seller's rights to enforce strict future compliance with all of these terms and conditions and those of any such transaction and any further transaction between the Seller and the Buyer.

Prohibition of Cession and Assignment

63. No party hereto shall be entitled to cede or assign any of its rights, or delegate any of its obligations hereunder without the prior written consent of the others first being obtained.

No Variation

64. No variation of, or addition to or agreed cancellation of this agreement shall be of any force or effect unless it is reduced to writing and signed by or on behalf of the parties.

No Waiver

65. No waiver or indulgence of whatsoever nature shall be of any force of effect, including a waiver or indulgence in respect of this clause, unless it is reduced to writing and signed by and on behalf of the parties

Severability

66. If any particular provision and/or term of this agreement is found to be defective or unenforceable or is cancelled for any reason (whether by any competent Court or otherwise) then the remaining provisions and/or terms shall continue to be of full force and effect. Each provision and/or term of this agreement shall accordingly be construed as entirely separate and separately enforceable in the widest sense from the other provisions and/or terms hereof.

Additional conditions for agreements concluded on the internet

67. The Buyer obtains access to the Seller's eCommerce Portal (portal.tridonic.com) when it enters a legitimate username and password (hereinafter "login data") supplied by the Seller. The Buyer is obliged to change the password immediately upon receipt, as well as periodically thereafter and to protect it from unauthorised access. The Seller shall assign, within reasonable limits, each person authorised by the Buyer with individual login data. Login data assigned to the Buyer by the Seller may not be disclosed under any circumstances and the Buyer is obliged to immediately notify the Seller of any significant changes regarding access permission for authorised persons. The Buyer is responsible for the consequences of non-observance of this provision by it or by its organs, employees, assistants and agents.
68. Whoever legitimises himself with the login data of the Buyer is considered by the Seller to be authorised to carry out all possible eCommerce transactions on behalf of the Buyer irrespective of whether this person is actually the Buyer or its representative. The Buyer accepts that all transactions made in the Seller's eCommerce Portal using its login data are binding.
69. Processing of all agreements concluded in the eCommerce Portal as well as all related information is carried out in part by automated email. The Buyer is responsible for ensuring its registered email address is valid and the receipt of emails is assured.
70. The Seller assumes no responsibility for error free operation of its eCommerce Portal and explicitly excludes liability for damages resulting from its use and from the related use of the internet. Responsibility and liability for access failures such as limited or no availability of the eCommerce Portal, faulty transmission of information and instructions on the use of the eCommerce Portal is also precluded. By its use of the eCommerce Portal the Buyer confirms that it is sufficiently informed as to the risks associated with the internet.
71. The Buyer acknowledges that use of the eCommerce Portal abroad may infringe upon foreign laws, for example, by use of the eCommerce Portal encryption process. The Seller assumes no responsibility or liability in this regard.

72. Representations of the Seller's goods in the eCommerce Portal are non-binding and do not represent a binding offer for the conclusion of an agreement. Orders placed in the eCommerce Portal are a binding offer of the Buyer to the Seller. The Seller's automatically generated order confirmation is intended for information purposes only and does not result in the conclusion of an agreement. Receipt of the Buyer's purchase offer is confirmed separately in writing by the Seller (e.g. by email) upon execution of the order (order confirmation) or by dispatch of the goods (dispatch confirmation).

The Buyer acknowledges having read the conditions of sale prior to entering into or finalising any order. The Buyer further acknowledges hereby having been advised by the Seller to have the Buyer's own attorney explain the contents and obligations of these conditions of sale to the Buyer and it confirms having done this or decided against doing this of their own accord prior to entering into an agreement with the Seller.

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