

STANDARD TERMS AND CONDITIONS

1. The Customer agrees that
 - (a) this Agreement represents the entire Agreement between the Customer and DEUTZ DIESELPower a division of Hudaco Trading (PTY) Ltd (hereinafter called DEUTZ DIESELPower) and that no alterations or additions to this Agreement may be affected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of DEUTZ DIESELPower;
 - (b) this Agreement will govern the contractual relationships between the parties;
 - (c) this Agreement is applicable to all existing debts and future debts between the parties;
 - (d) this Agreement is final and binding and is not subject to any suspensive or resolutive terms or conditions;
 - (e) any conflicting conditions stipulated by the Customer are expressly excluded;
 - (f) these terms supersede all previous conditions of Agreement without prejudice to any securities or guarantees held by DEUTZ DIESELPower and
 - (g) these terms apply to all servants and subcontractors of DEUTZ DIESELPower.
- 2.1 This Agreement only becomes final and binding on receipt and acceptance of this offer by DEUTZ DIESELPower at its business address in Elandsfontein.
- 2.2 Any order only becomes final and binding on receipt and acceptance of such order by DEUTZ DIESELPower at its business address per clause 2.1.
3. The signatory hereby binds himself / herself in his / her personal capacity as Shareholder (in the case of a company), Member (in the case of a close corporation) or Owner or Partner as surety and co-principal debtor jointly and severally for the full amount due to DEUTZ DIESELPower and agrees that these Standard Conditions will apply in the exact same way to him / her.
4. The Customer acknowledges that it does not rely on any representations made by DEUTZ DIESELPower in regard to the goods and services or any of its qualities leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by DEUTZ DIESELPower in respect of the goods or services orally or in writing will not form part of the Agreement in any way unless agreed to in writing by DEUTZ DIESELPower.
- 5.1 The Customer agrees that neither DEUTZ DIESELPower nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer.
- 5.2 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use.
- 5.3 The Customer agrees to pay all additional costs resulting from any acts or omissions by the Customer including suspension of work, modification of requirements, failure or delay in giving particulars required to enable work to proceed on schedule or requirements that work be completed earlier than agreed.
- 5.4 DEUTZ DIESELPower reserves the right to provide alternative goods of the same quality and quantity at the prevailing prices to those ordered by the Customer should such goods be superseded, replaced or their manufacture terminated.
- 6.1 All quotations will remain valid for a period of 30 days from the date of the quotation or until the date of issue of a new Price List, whichever occurs first.
- 6.2 All quotations are subject to the availability of the goods or services and subject to correction of good faith errors by DEUTZ DIESELPower and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of DEUTZ DIESELPower before acceptance of the order.
- 6.3 If the Customer disputes the amount or variation, the amount of the variation will be certified by an independent auditor, appointed by DEUTZ DIESELPower, such certificate shall be final and binding on the parties.

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

6.5 All orders or agreed variations to orders, must be in writing and shall be binding and subject to these Standard Conditions of Agreement and may not be revoked by the Customer.

6.6 DEUTZ DIESELPOWER shall be entitled to split the delivery / performance of the goods or services ordered in the quantities and on the dates it decides.

6.7 DEUTZ DIESELPOWER shall be entitled to invoice each delivery / performance actually made separately.

6.8 Any delivery note, waybill or job card (copy or original) signed by the Customer or a third party engaged to transport the goods and held by DEUTZ DIESELPOWER shall be *prima facie* proof that delivery was made to the Customer.

6.9 The risk of damage to, destruction or theft of goods shall pass to the respective parties as follows:

6.9.1 In the event that Customer places an order for the goods, when DEUTZ DIESELPOWER delivers the goods to the customer (itself or appoints independent contractors), then DEUTZ DIESELPOWER bears the risk and must ensure that it has adequate insurance to cover eventualities of damage, destruction and theft of goods.

6.9.2 In the event that the Customer or a Third party on the Customer's behalf collects the goods from DEUTZ DIESELPOWER, then the Customer bears the risk and must ensure that it has adequate insurance to cover eventualities of damage, destruction and theft of goods.

6.10 Delivery, installation and performance times quoted are merely estimates and are not binding on DEUTZ DIESELPOWER.

6.11 If DEUTZ DIESELPOWER agrees to engage a third party to transport the goods, DEUTZ DIESELPOWER is hereby authorised to engage a third party on the Customer's behalf and on the terms deemed fit by DEUTZ DIESELPOWER.

6.12 Repair times and repair costs given are merely estimates and are not binding on DEUTZ DIESELPOWER

6.13 Any item handed in for repair may be sold by DEUTZ DIESELPOWER to defray the cost of such repairs if the item remains uncollected within 30days of the repairs being completed. DEUTZ DIESELPOWER shall afford the customer a period of 5 (five) days in which to pay for such item prior to such sale.

6.14 All goods taken on an approval, demonstration or consignment basis by the Customer are deemed sold if not returned within 90 days of issue in the original condition, in the original packaging and with all accessories and manuals intact.

6.15 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and that each infringement attempt shall immediately render the full prevailing price payable to DEUTZ DIESELPOWER.

6.16 The Customer shall indemnify DEUTZ DIESELPOWER against any claims, costs and expenses arising out of the infringement of copyright, patent, trademark or design supplied by the Customer.

7.1 New goods are guaranteed according to the Manufacturer's product specific warranties only and all other guarantees including common law guarantees are hereby specifically excluded. Services carry no guarantee and parts are guaranteed according to the Manufacturer's product specific warranties.

7.2 Liability under clause 7.1 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of DEUTZ DIESELPOWER.

7.3 No claim under this agreement shall arise unless the Customer has, within 7(seven) days of an alleged breach of contract and/ or defect occurring, giving DEUTZ DIESELPOWER written notice by prepaid registered post or email of such breach or defect, and has afforded DEUTZ DIESELPOWER at least 30 (thirty) days to rectify such defect or breach.

7.4 To be valid, claims must be supported by the original Tax Invoice.

7.5 The Customer shall return any defective moveable goods to the premises of DEUTZ DIESELPOWER at the Customer's own cost and packed in the original or suitable packaging and all risks for the duration of repair remain with the Customer.

7.6 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 DEUTZ DIESELPOWER or should the goods be used or stored outside the Manufacturer's specifications.

7.7 Any item delivered to DEUTZ DIESELPOWER shall serve as pledge in favour of DEUTZ DIESELPOWER for present and past debts and DEUTZ DIESELPOWER shall be entitled to retain or realise such pledges as it deems expedient at the value as determined in clause 15.1. The sworn or realised value of pledged goods will be offset against the Customer's debts any excess balance will be paid to the Customer.

8.1 Under no circumstances shall DEUTZ DIESELPOWER be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever whether caused negligently or innocently.

8.2 Under no circumstances shall DEUTZ DIESELPOWER be liable for any damage arising from any misuse, abuse or neglect of the goods or services.

9. Delivery of the goods or services to the Customer shall take place at the place of business of DEUTZ DIESELPOWER.

10.1 The Customer agrees that the amount contained in a Tax Invoice issued by DEUTZ DIESELPOWER shall be due and payable unconditionally (a) cash on order; or (b) if the Customer is a Credit Approved Customer, within 30 days from the end of the month in which a Tax Invoice has been issued by DEUTZ DIESELPOWER.

10.2 The Customer agrees to pay the amount on the Tax Invoice at the offices of DEUTZ DIESELPOWER.

11.1 The Customer 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 Customer and any such extension will not be applicable or enforceable unless agreed to by DEUTZ DIESELPOWER, reduced to writing and signed by the Customer and a duly authorised representative of DEUTZ DIESELPOWER.

11.2 The Customer is not entitled to set off any amount due to the Customer by DEUTZ DIESELPOWER against this debt.

11.3 All discounts shall be forfeited if payment in full is not made on the due date.

12.1 The Customer agrees that the amount due and payable to DEUTZ DIESELPOWER may be determined and proven by a certificate issued and signed by any director or manager of DEUTZ DIESELPOWER, whose authority need not be proven or by any independent auditor. Such certificate shall be binding and shall be *prima facie* proof of the indebtedness of the Customer.

12.2 Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Electronic Communications and Transactions Act 25 of 2002 have not been met.

13.1 The Customer agrees that interest shall be payable at the maximum legal interest rate prescribed by the National Credit Act 34 of 2005 and as Gazzetted by the Minister from time to time at double the repo-rate as declared by the Reserve Bank from time to time.

13.2 The Customer expressly agrees that no debt owed to DEUTZ DIESELPOWER by the Customer shall become prescribed before the passing of a period of 3 (three) years and a period of 5(five) years for negotiable instruments in terms of the Prescription Act.

14.1 The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 10.1 above in the case of a Credit Approved Customer; DEUTZ DIESELPOWER is: (i) entitled to immediately institute action against the Customer at the sole expense of the Customer; or (ii) to cancel the Agreement and take possession of any goods delivered to the Customer and claim damages. These remedies are without prejudice to any other right DEUTZ DIESELPOWER may be entitled to in terms of this Agreement or in law. DEUTZ DIESELPOWER reserves its right to stop supply immediately on cancellation or on non-payment.

14.2 A Credit Approved Customer will forthwith lose this approval when payment is not made according to the conditions of clause 10.1(b) and all amounts then outstanding shall immediately become due and payable.

14.3 DEUTZ DIESELPOWER shall be entitled to withdraw credit facilities after providing the Customer with 7 (seven) days' notice of its intention to do so.

15.1 All goods supplied by DEUTZ DIESELPOWER remain the property of DEUTZ DIESELPOWER until such goods have been fully paid for whether such goods are attached to other property or not.

15.2 The Customer is not entitled to sell or dispose of any goods unpaid for without the prior written consent of DEUTZ DIESELPOWER. The Customer shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of DEUTZ DIESELPOWER in the goods.

15.3 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (*confusio* or *commixtio*) the Customer shall be obliged on notice of cancellation of the Agreement to retransfer the same quantity of goods in ownership to DEUTZ DIESELPOWER.

16.1 The Customer shall be liable to DEUTZ DIESELPOWER for all legal expenses on the attorney-and-own-client scale incurred by DEUTZ DIESELPOWER in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this Agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, for any form of security that DEUTZ DIESELPOWER may demand.

16.2 The Customer agrees that DEUTZ DIESELPOWER will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.

17. The Customer agrees that no indulgence whatsoever by DEUTZ DIESELPOWER will affect the terms of this Agreement or any of the rights of DEUTZ DIESELPOWER and such indulgence shall not constitute a waiver by DEUTZ DIESELPOWER in respect of any of its rights herein. Under no

circumstances will DEUTZ DIESELPOWER be estopped from exercising any of its rights in terms of this Agreement.

18. The Customer hereby consents that either party shall have the right to institute any legal action in either the Magistrate's Court or the High Court within jurisdiction at its sole discretion. These South African courts shall have exclusive jurisdiction in any litigation between the parties arising from whatsoever source.

19.1 Any document shall be deemed duly presented to and accepted by the Customer

- i. within 5 days of prepaid registered mail to any of the Customer's business or postal addresses or to the
- ii. personal address of any director, member or owner of the Customer; or
- iii. within 24 hours of being faxed to any of the Customer's fax numbers or any director, member's or
- iv. owner's fax numbers; or
- v. on being delivered by hand to the Customer or any director, member or owner of the Customer; or
- vi. within 48 hours if sent by overnight courier or
- vii. within 7 days of being sent by surface mail; or
- viii. within 24 hours of being e-mailed to any e-mail address provided by the Customer.

19.2 The Customer chooses its address for any notification or service of legal documents or processes as the business address or the physical addresses (domicilium citandi et executandi) of any Director (in the case of a company), Member (in the case of a close corporation) or of the Owner(s) or Partner(s).

19.3 The Customer undertakes to inform DEUTZ DIESELPOWER in writing within 30 days of any change of Director, Member, Shareholder, Owner or Partner or address or 14 days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, DEUTZ DIESELPOWER reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.

19.4 The Customer hereby consents to the storage and use by DEUTZ DIESELPOWER of the personal information that it has provided to DEUTZ DIESELPOWER for establishing its credit rating and to DEUTZ DIESELPOWER disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that DEUTZ DIESELPOWER will not be held liable for the good faith disclosure of any of this information to such third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.

19.5 The Customer hereby agrees that the credit facility is a variable credit facility and that DEUTZ DIESELPOWER shall be entitled to increase its credit limit from time to time.

20. The Customer agrees to the Standard Rates of DEUTZ DIESELPOWER for any goods or services rendered, which rates may be obtained on request.

21. Each provision of this Agreement is severable from the other provisions. Should any provision be found to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall nevertheless remain binding and continue with full force and effect.

22. Any order is subject to cancellation by DEUTZ DIESELPOWER due to acts of God or any circumstance beyond the control of DEUTZ DIESELPOWER, including (without restricting this clause to these instances): inability to secure, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout, fire, flood, drought or legislation.

23. Any order is subject to cancellation by DEUTZ DIESELPOWER if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgement is recorded against the Customer or any of its principals.

24. The Customer agrees that DEUTZ DIESELPOWER will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 22 or 23 occur.

25. The Customer does hereby irrevocably cede, pledge, assign, transfer and make over unto and in favour of the DEUTZ DIESELPOWER all of its right, title, interest, claim and demand in and to all book debts of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever ('the Customer's debtors') without exception as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter be or become owing by the Customer to the DEUTZ DIESELPOWER.

26.1 Should it transpire that the Customer at any time entered into prior deeds of cession or otherwise disposed of any of its right, title and interest in and to any of the debts The Customer does hereby irrevocably cede, pledge, assign, transfer and make over unto and in favour of the DEUTZ DIESELPOWER all of its right, title, interest, claim and demand in and to all book debts of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever ('the Customer's debtors') without exception

as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter be or become owing by the Customer to the DEUTZ DIESELPower.

26.2 Should it transpire that the Customer at any time entered into prior deeds of cession or otherwise disposed of any of its right, title and interest in and to any of the debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customer's reversionary rights. Notwithstanding the terms of the a foregoing cession, the Customer shall be entitled to institute action against any of its debtors provided that all sums of money which the Customer collects from its debtors shall be collected on the DEUTZ DIESELPower behalf and provided further that the DEUTZ DIESELPower shall at any time be entitled to terminate the Customer's right to collect such monies/debts.

27. This Agreement and its interpretation are subject to South African law.