

# **ZIG TRADING CC**

## **STANDARD TERMS AND CONDITIONS OF SALE**

### **Credit Application forms will not be considered unless all supporting documents are provided:**

#### **Supporting documents required:**

- Clear ID copies of all members/directors/owners must be supplied
- Copy of vat registration certificate
- Copy of Company/ Close Corp. registration certificate
- Proof of Banking facility (certificate not older than 3 months) or cancelled cheque
- Letter of Authority on the Applicants letter head – Applicant's authorised persons whose signatures may bind the applicant in any transaction with ZIG TRADING CC.

### **1. INTERPRETATION**

- 1.1. In this agreement:
- 1.2. Clause headings are for convenience and shall not be used in its interpretation;
- 1.3. Unless the context clearly indicates the contrary intention, an expression which denotes:
  - 1.3.1. Any gender includes the other genders;
  - 1.3.2. Any natural person includes any artificial person and vice versa;
  - 1.3.3. The singular includes the plural and vice versa;
- 1.4. The following expressions shall bear their meanings assigned to them below and cognate expressions bear the corresponding meanings;
  - 1.4.1. customer- shall mean the person whose name appears on the credit application form, or if no such application is annexed hereto, or no name appears thereon, or in any other circumstances, any person or persons at whose request or on whose behalf the supplier undertakes to supply any goods, do any business or provide any advice or service;
  - 1.4.2. Signatory- shall mean the individual who signs this agreement and the credit application form on behalf of the customer;
  - 1.4.3. Supplier- shall mean Zig Trading CC, with registration Number: 2007/097647/23
  - 1.4.4. Goods- shall mean any items or services of whatsoever nature that are supplied by the supplier to the customer in terms of this agreement
  - 1.4.5. For these purposes a "Data Message" means any information generated, sent received or stored by electronic means and includes, without limitation electronic mail and Records and a "Record" means any information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

### **2. APPLICATION OF THESE TERMS AND CONDITIONS**

- 2.1. The only basis upon which the supplier is prepared to do business with a customer is, notwithstanding anything contained in the customer's enquiry, specification, acceptance, order or other documentation or discussion to the contrary, the terms and conditions contained herein which shall constitute the sole terms of the agreement between the supplier and a customer. All and any business undertaking, including any advice, information or service provided whether gratuitously or not by the supplier shall be subject to the terms and conditions contained herein and shall be deemed to be incorporated in and to be a term and condition of any agreement between the supplier and a customer. In the event of this agreement appearing at the bottom of an invoice or any other documentation of the supplier and where there is not relevant dealer application form, the customer shall be deemed to be the person to whom the invoice or other document is addressed, and the signatory shall be deemed to be the person signing the invoice or other documentation. The terms and conditions of this agreement shall apply mutatis mutandis to such person and signatory.

### **3. NO VARIATIONS OR AMENDMENTS**

- 3.1. This agreement constitutes the whole agreement between the customer and the supplier relating to the subject matter hereof.
- 3.2. No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by an authorised representative of the supplier. Any such extension, waiver, relaxation or suspension which is so given or made shall be strictly construed as relating only to the matter in respect whereof it was made or given.

- 3.3. The customer acknowledges that it is not relying and will not rely on any representation, advice, information or technical assistance made or given by or on behalf of the supplier or any of its employees, servants or agents, except that which is contained in this agreement. The customer further acknowledges that no such advice or technical literature shall in any circumstances override the warnings, proportions and directions for use which may accompany the sale of any product, and in the event of any inconsistency, this will be referred to the supplier for clarification before the product is used by the customer.
- 3.4. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement, bill of exchange or other document issued in terms of this agreement, shall operate as an estoppel against the supplier in respect of its rights under this agreement, nor shall it operate to preclude the supplier thereafter from exercising its rights strictly in accordance with this agreement.
- 3.5. Any express or implied term, representation, warranty, promise, or the like not recorded herein, shall not be binding on the supplier whether it induced the contract between the supplier and the customer or not.

#### 4. **QUOTATIONS**

- 4.1. A quotation given by the supplier is not an offer by the supplier to sell the goods, but simply constitutes an invitation by the supplier to the customer to do business
- 4.2. Quotations unless retracted by the supplier will only be valid for 7 (seven) days from the date of the quotation.
- 4.3. The supplier may revoke, at any time, a quotation.
- 4.4. A contract shall only come into being between the supplier and the customer once the supplier confirms to the customer that such a contract has been concluded after receipt of the customer's order or acceptance of the quotation.
- 4.5. Any quotation (unless otherwise specified) is based on The Suppliers' list price and excludes delivery costs.

#### 5. **PLACING OF ORDERS**

- 5.1. A customer furnishing a telephonic order may be required by the supplier to confirm such order in writing, prior to acceptance by the supplier.
- 5.2. Orders placed by the Customer shall constitute irrevocable offers to purchase the Products in question at Company's list prices and shall be capable of acceptance by the Company in writing or by way of actual delivery.
- 5.3. In the event of any order being given to the supplier on an order form reflecting the customer's name as an entity from which the order emanates, such order shall be deemed to have emanated from the customer, notwithstanding the fact that such order may have been given or signed by a person not authorized by the customer and such order will be deemed to constitute valid delivery.
- 5.4. It is further sole responsibility of the Customer to determine that goods ordered are suitable for the purposes of the intended use.

#### 6. **PRICE AND PAYMENT**

- 6.1. The supplier accepts orders on the basis that the prices charged will be those ruling at the date of dispatch of the goods, unless otherwise expressly stated. Prices, unless otherwise expressly stated, are exclusive of value added tax, which shall be for the account of the customer.
- 6.2. In addition to the contract price the customer shall be obliged to pay to the supplier any amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment which came into force on a date after the date on which any price charged was determined. All additional costs of whatsoever nature arising due to factors beyond the control of the supplier shall also be for the account of the customer.
- 6.3. The Customer agrees that the list price indicated on The Supplier's standard price list is a collection price only and that delivery costs are not included in that standard list price.
- 6.4. The supplier shall be entitled to increase the purchase price in respect of any increases in cost arising as a result of any delay caused by the customer.
- 6.5. The purchase price shall be payable by the customer to the supplier at the supplier's head office or at such other address as the supplier may direct from time to time. Payment shall be in cash and in South African currency, EFT or approved credit card without deduction or set-off and free of any exchange. Where the Customer has an approved credit facility with the Supplier, payment shall be made to the supplier within 30 days from date of the statement.
- 6.6. The customer shall provide at its cost the necessary labour, equipment or facilities required for off-loading of the goods at its premises, which off-loading charges are not included in the purchase price.
- 6.7. The customer is not entitled to withhold payment for any reason whatsoever or to set off any amount due to the customer by the supplier against any debt owed by the customer to the supplier.
- 6.8. In the event of any payments being mislaid or lost in the post. The customer shall still be liable to the supplier for payment.
- 6.9. Altering of prices on an invoice is not considered a credit note and claims pertaining to incorrect pricing should be raised in writing within 2 (two) days of delivery.

6.10. Non-payment by the customer as hereinbefore mentioned shall give the supplier the right to cancel all deliveries still to be made under this agreement without notice having to be given to the customer and without prejudice to the supplier's rights to compensation from the customer.

**7. RISK AND DELIVERY**

7.1. The risk of any damage to or destruction of any goods shall pass to the customer on conclusion of the agreement of sale.

7.2. Any delivery or consignment dates given by the supplier shall merely be regarded as approximate dates and shall not bind the supplier to affect delivery on any such date. The supplier shall not be liable for any loss or damage arising out of any delay in delivery due to causes beyond the supplier's control.

7.3. A customer shall accept delivery whenever it is tendered and shall not be entitled to resile from the agreement nor to withhold or defer any payment nor to a reduction in price nor to any other right or remedy against the supplier, its servants, agents or any other persons for whom it is liable in law whether it be for losses, costs, damages, expenses, interest or otherwise occasioned by the delays in effecting delivery or partial delivery or non delivery, whether occasioned by negligence (including gross negligence), act or omission on the party of the supplier, its servants, agents or any other persons for whom it is liable in law, or not.

7.4. Any carrier other than the suppliers, including Transnet, shall be deemed for all purposes to be the customer's agent, irrespective as to who pays or is to pay for the carriage.

7.5. Delivery to be effected in consignments, will entitle the supplier not to deliver any part of the order until the purchase price due in respect of the part of the order delivered having been paid.

7.6. The customer bears the duty to inspect all goods upon delivery and shall endorse the delivery note as to any missing or damaged goods. No claims for missing or damaged goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, and in addition the customer having notified the supplier in writing within 2 (two) working days of the delivery of the goods of the claim in question, furnishing full details in regard thereto. The customer shall bear the onus of proving that the order was in any way not complied with.

7.7. In the event of the supplier being unable to deliver goods timeously due to any act or omission on the part of the customer, the supplier shall be entitled to charge the customer for any storage of the goods.

7.8. In the event of the customer failing to furnish necessary information to enable delivery by the supplier of the goods or if the customer fails or refuses to supply such information, or if it fails or refuses to take delivery of the goods, the supplier shall, without prejudice, to the provisions of clause 7.6, be deemed to have been delivered to the customer upon notification by the supplier to the customer to that effect.

**8. IMPORTED GOODS**

8.1. Regarding imported goods this agreement is subject to the condition that the supplier's order is accepted and confirmed by the supplier's own suppliers, and that the delivery is made thereunder in due course.

**9. OWNERSHIP**

9.1. Ownership of goods shall not pass to the customer until the contract price (including interest, if any) in respect of the goods in question has been paid or the accession thereof to any of the customer's goods or that the goods may be incorporated into or form part of other goods or change the essential character.

9.2. The customer shall take all such steps as may be necessary to notify interested third parties that ownership of the relevant goods has not passed from the supplier to the customer. The customer shall inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The customer shall produce written proof of such notices to the supplier on demand.

**10. WARRANTIES AND GUARANTEES**

10.1. The goods shall be regarded as having been sold without warranty against latent defects therein except in terms of and in compliance with the Consumer Protection Act, 2008 (Act No.68 of 2008). No liability whatsoever shall arise furthermore on the part of the supplier for any representation or warranty made or alleged to have been made at any time in respect of the goods sold by the supplier to the customer.

10.2. The supplier and the customer hereby agree that the supplier shall have no liability in respect of any injury, loss or damage whether direct, indirect or consequential, arising out of the use of or inability to use the goods and whether occasioned by the supplier's negligence (gross or otherwise) or any act or omission on its part.

10.3. Without limiting the foregoing the supplier does not warrant that the goods will be fit for the purposes for which they are to be used by the customer, notwithstanding that the use to which the customer intends to put the goods is known to the supplier. Any reference to the supplier shall include its servants, agents or contractors or any other person for whose acts or omissions the supplier may be liable in law.

10.4. The customer acknowledges that the supplier is the manufacturer of blended products and not of raw materials. The customer accordingly indemnifies and holds the supplier harmless against any claim that may be brought against the

supplier in consequences of such raw materials defective and causing any damage whatsoever, whether through accident or negligence, gross negligence or any other cause.

11. **RETURN OF GOODS**

- 11.1. The supplier may levy a handling fee of 15% of the purchase price of the goods on their return to and accepted by the supplier. The supplier is not obliged to accept the return of any goods.
- 11.2. Credits will be issued by The Supplier Trading and will only be deducted once a credit note is issued.
- 11.3. Damages will only be authorised by The Supplier Trading management should there be a factory fault and on condition the client has taken care of the stock.
- 11.4. The Customer shall return any defective moveable products to the premises of The Supplier at the Customers cost and packed in the original or suitable packaging.
- 11.5. Claims under this agreement shall only be valid if the Customer has within 2 days of the alleged breach or defect occurring, given the Supplier 30 days written notice by email to rectify any defect or breach of Agreement.
- 11.6. To be valid, claims must be supported by the original Tax Invoice.

12. **ALTERNATE GOODS**

- 12.1. The supplier, in its sole discretion, may substitute for any goods specified in this agreement such other goods which the supplier may deem suitable substitutes.
- 12.2. The specifications pertaining to the goods may be altered as conditions warrant without notice by the supplier. Should for whatever reason any material or goods specified in this agreement become unavailable, the supplier may substitute same with any suitable alternates to enable it to perform its obligations.

13. **SELECTION OF GOODS**

- 13.1. The customer shall assume sole responsibility to ensure that the goods selected are suitable for its purposes and in accordance with its specifications.

14. **DOCUMENTATION EXCLUDED**

- 14.1. All specifications, descriptive matter, drawings and other documents furnished by the supplier do not form part of the contract and may not be relied upon, unless they are agreed in writing by the supplier to form part of this agreement. All descriptive matter, specifications, drawings and the like given by the supplier which form part of the agreement are approximate only and the supplier cannot be held responsible for loss due to discrepancies therein.

15. **INSURANCE**

- 15.1. The customer shall, at its own expense and prior to taking delivery of the goods, insure the goods and thereafter keep the goods insured until the goods have been paid for in full. The said insurance policy shall record the interest of both the supplier and the customer. If so required by the supplier, the customer shall cede to the supplier all its rights in terms of such insurance policy.

16. **OVERDUE ACCOUNTS**

- 16.1. The customer shall pay interest on all amounts owing by the customer to the supplier which have not been paid on the due date, at the maximum rate permitted by the National Credit Act, 2005 (Act No. 34 of 2005) from the due date until date of payment. Such interest shall be payable on demand.

17. **CONSEQUENTIAL LOSS**

- 17.1. Under no circumstances whatsoever and howsoever arising (including grossly negligent) acts or omissions by the supplier or its servants, agents or contractors or other persons for whom in law it may be liable, shall the supplier be liable for consequential loss suffered by the customer.

18. **INDEMNITY**

- 18.1 The Customer hereby indemnifies the Company against all and any claims of whatsoever nature that may be made by any person against the Company, its employees, or its directors, for any loss or damage (including special, indirect and consequential damages) of any nature arising out of the Goods or arising in respect of the Products. The aforesaid indemnity includes any legal costs which may be incurred by the Company in defending and/or opposing any such claim, calculated on the scale as between attorney and own client. The Company shall not be liable to the Customer for any loss or damage (including special or consequential damages) of any nature arising out of the use of the Products, the delivery or supply or failure to deliver or supply the Goods or arising in respect of the Products whilst same are at the risk of the Customer.

19. **COSTS**

19.1 The customer shall be liable to the supplier for all costs incurred by the supplier in the collection of any amounts or for the enforcement of any of its rights, including collection charges on an attorney and own client scale, whether incurred prior to or during the institution of legal proceedings.

**20. CUSTOMER'S BREACH**

20.1 In the event of the customer breaching any of the terms and conditions hereof or committing any act of insolvency or endeavors to compromise generally with its creditors or does or causes to be done anything which may prejudice the supplier's rights herein or allows any Judgement against it to remain unsatisfied for 7 (seven) business days or is placed into provisional or final liquidation or judicial management or under provisional or final sequestration or if his estate is voluntarily surrendered, the supplier shall have the right, without prejudice to any other right which it may have against the customer, to:

- a. treat as immediately due and payable all outstanding amounts otherwise due and payable in the future and to claim such amounts as well as any other amounts in arrear including interest and to cease performance of its obligations hereunder as well as under any other contract until the customer has remedied the breach;
  - i. Cancel this agreement and retake possession of any goods delivered.
- b. The customer agrees that the amount due and payable to the supplier shall be determined and proven by a certificate issued by the supplier and signed on its behalf by any person duly authorised by the supplier, which authority may not be proven. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the customer.
- c. For so long as the customer is indebted to the supplier in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to the supplier, the supplier shall not be obliged to comply with its obligations hereunder. Without limiting the generality of the foregoing, where delivery of any order is to take place in stages, the supplier shall not be obliged to deliver any part of the order outstanding until the purchase price in respect of the part already delivered has been paid.
- d. The supplier is indemnified by the customer against any and all damage of whatsoever nature, howsoever arising in relation to the removal of goods, and without derogating from the generality of the foregoing, the removal of repossessed goods from the customer wherever such goods may be situated.
- e. The signatory hereof and the Customer hereby undertake and warrant, that they shall advise the Supplier, in writing, within 5 (five) days of a relevant agreement being entered into of any change in the shareholding, members' interest, proprietorship, partnership, change of interest or ownership of, or in the Customer, and that they shall be liable to the Supplier for any damages or loses suffered by it as a result of a failure to do so.

**21. MAGISTRATE'S COURT**

21.1 The customer hereby agrees that the supplier shall not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Court.

21.2 The supplier shall have the right, at its sole discretion, to institute action in either the Magistrate's Court or the High Court.

**22. DOMICILIUM CITANDI ET EXECUTANDI**

22.1 The supplier and the customer choose their domicilium citandi et executandi ("domicilium"), for the purposes of the giving or receiving of any notice, the payment of any sum, the serving of any process arising out of this agreement at the physical address or "main place of business as recorded in the application form completed by the customer.

22.2 Both the supplier and customer are entitled from time to time, in writing, to vary their domicilium to any other address which is not a post office box or poste restante, and which is within the borders of the Republic of South Africa. Variations must be communicated to the other party within 21 days.

22.3 Any notice given to the addressee at its physical address will be sent by pre-paid registered post or delivered by hand or sent by email.

22.4 A notice will be presumed, unless the contrary is proved, to have been given:

- a. if posted by pre-paid registered post, 5 (FIVE) days after the date of posting thereof;
- b. if hand-delivered during business hours on a business day, on the date of delivery;
- c. if sent by email, on the first business day following the date of sending of such email.

**23. NO CESSION**

23.1 The customer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this agreement to any third party.

**24. AUTHORITY**

24.1 The signatory warrants that he is duly authorised to represent and bind the customer to this agreement, and that he has read and understood each term and condition of this agreement and accepts them as binding on him and the customer. The customer hereby warrants that it regards the terms and conditions of this agreement as binding upon it.

24.2 The signatory and the customer hereby warrant that the signatory to any tax invoice, delivery note, or other documentation of the supplier made out in the name of or to the customer, is duly authorised to bind the customer in respect of the relevant transaction.

**25. PERFORMANCE LEVELS**

25.1 Any performance figures given by the supplier are given without attracting any liability of whatsoever nature for damages arising out of the failure to attain such figures unless it has specifically guaranteed performance figures subject to the recognized industry tolerances applicable to such figures. The customer shall afford the supplier any reasonable time to afford the supplier the opportunity of rectifying the performance of such product. The supplier shall, at its sole discretion and in accordance with the Consumer Protection Act, 2008 (Act No. 68 of 2008) be entitled to replace such products of defective parts thereof

**26. APPLICABLE LAW**

26.1 The validity, construction and interpretation of this agreement and the rights and duties of the customer and supplier shall be governed by the laws of the Republic of South Africa. In the event of any discrepancy between the Afrikaans and English versions of these conditions, the English version shall prevail.

**27. ADMISSIBILITY OF DATA MESSAGES**

Principle: The parties agree that they may conclude binding agreements by means of Data Messages. The parties hereby agree that: -

27.1 A requirement in these Terms that a notice, Order or document be in writing shall be satisfied if the document or information is –

27.1.1. in the form of a Data Message, and

27.1.2 accessible in a manner usable for subsequent reference (including without limitation, a hard copy printout of the information concerned).

27.2 Data or Data Messages shall not be denied legal effect, validity or enforceability solely claiming same are wholly and partly in electronic form;

27.3 Data shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the Data Message purporting to give rise to such legal effect, but is merely referred to in such Data Message;

27.4 No data shall be deemed to be incorporated into a Data Message unless such data is:

27.4.1 referred to in a way in which a reasonable person would have noticed the reference and incorporation of such data; and

27.4.2 such data is made accessible to the other party in a form in which it may be read, stored and retrieved by the other party on request.

**The Undersigned, for and on behalf of The Customer, hereby warrants that:**

**It has been signed out of my own free will and with the full knowledge and understanding of the contents hereof and that I am duly authorised in doing so.**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Full Name: \_\_\_\_\_

ID Number: \_\_\_\_\_

Signature: \_\_\_\_\_