



# QUALITY MANUAL FORMS

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|------------------------|--------------------------------------|-----------------------|-------------------|
| <b>Document Title</b>  | <b>TERMS AND CONDITIONS OF SALES</b> |                       |                   |
| <b>Document Number</b> | Q.M.S I.T 014                        | <b>Access:</b>        | <b>Controlled</b> |
| <b>Revision Number</b> | 04                                   | <b>Revision Date:</b> | [ ] 2023          |
| <b>Date Compiled</b>   | .....                                | <b>Listing No:</b>    | .....             |

## TERMS AND CONDITIONS OF SALE

### 1. Definitions and Interpretation

1.1. The following terms shall have the meanings set out below unless the context requires otherwise:

- a) **“Business Day”** means any day which is not a Saturday, Sunday or official South African public holiday;
- b) **“Credit Terms”** means Hexagon’s standard terms and conditions of credit contained in Hexagon’s Application for Credit Facilities and Suretyship;
- c) **“Customer”** means the party who affixed its name and signature to a Purchase Order;
- d) **“Effective Date”** means, in respect of each Purchase Order, the effective date stipulated in each Purchase Order, in the absence of which it shall be the signature date of such Purchase Order;
- e) **“Goods”** means any and all products supplied or to be supplied by Hexagon to its customers from time to time;
- f) **“Hexagon”** means Hexagon Electrical Proprietary Limited (registration number 2006/025351/07);
- g) **“Invoice”** means a valid tax invoice to be issued by Hexagon to the Customer in respect of the Goods;
- h) **“Parties”** means Hexagon and the Customer, and “Party” shall refer to either one of them, as the context may require;
- i) **“Prime”** means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365-day year irrespective of whether or not the year is a leap year, from time to time published by Hexagon’s primary bankers as being its prime overdraft rate;
- j) **“Purchase Order”** means a purchase order, scope of works or similar document delivered to Hexagon for the supply of Goods;
- k) **“Purchase Price”** the price of the Goods as more fully set out in the Purchase Order and subject to clauses 2.2, 2.3, 2.4, 3.7, 4.2 and 4.10.
- l) **“Risk”** the risk of damage, loss or theft of the Goods or any other occurrence which can lead to a reduction in value of the Goods or destruction of the Goods.
- m) **“Quote”** means any written quotation provided by Hexagon to the Customer prior to the delivery of a Purchase Order.
- n) **“Sale Terms”** means these standard terms and conditions of sale;
- o) **“VAT”** means value-added tax payable in terms of the Value-Added Tax Act (No 89 of 1991);



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- p) **“Personal Information”** means information relating to an identifiable, living, natural person, including financial information related to a person, including information provided by the Customer, or information obtained from a Credit Bureau or from CIPC (the Companies and Intellectual Property Commission), any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person; and/or the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about that person;
- q) **“Data Subject”** means each director of the Customer and each shareholder of the Customer that is a natural person.

- 1.2. Whenever a provision is followed by the word “including” or “include” and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 1.3. References to persons shall include natural and juristic persons and references to either Party shall include such Party’s successors or permitted assigns.
- 1.4. Any references in these Sale Terms to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT.
- 1.5. The headings to the clause in these Sale Terms are for reference purposes only and shall not affect their interpretation.
- 1.6. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of these Sale Terms.
- 1.7. Unless otherwise provided, defined terms appearing in these Sale Terms in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.8. These Sale Terms apply to Goods acquired by the Customer from Hexagon from time to time pursuant to one or more Purchaser Orders delivered by the Customer to Hexagon. Each Purchase Order delivered by the Customer and accepted by Hexagon shall result in a separate agreement of sale coming into force, which agreement shall incorporate these Sale Terms.
- 1.9. Unless agreed otherwise by both Parties in terms of a separate agreement (including a Purchase Order) governing the subject matter hereto, these Sale Terms shall apply to the purchase of Goods by the Customer from Hexagon. They shall form part of every contract for the purchase of Goods from Hexagon.
- 1.10. The Customer agrees that these Sale Terms, as read with a Purchase Order and Sale and Service Terms of sale as contained in the Application for Credit Facilities and Suretyship (if applicable):
  - a) Represent the entire agreement between the Customer and Hexagon regarding the subject matter hereof and that no alterations or additions to them may be effected unless agreed to by both Parties, reduced to writing and signed by the Customer and a duly authorized representative of Hexagon;
  - b) Will, in the absence of any other agreement, govern all future contractual relationships between the Parties regarding the sale of Goods;
  - c) Are final and binding and are not subject to any suspensive or resolutive conditions;



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- d) Supersede all previous terms and conditions of sale; and
- e) Apply to all servants and subcontractors of Hexagon.

1.11. Where relevant, these Sale Terms are exempt from the provisions of the Consumer Protection Act (No 68 of 2008), by reason of the fact that the Customer is a juristic person whose asset value or annual turnover as at the Effective Date, equals or exceeds R2,000,000.00 and the Customer warrants that the representation made by it in this regard is true and correct.

## 2. Quotes

- 2.1. The Customer may from time to time request one or more Quotes from Hexagon reflecting the indicative Purchase Price/s for Goods to be supplied to the Customer by Hexagon, as well as indicative delivery times where relevant.
- 2.2. All Quotes will remain valid for a period of 30 days from the date of the Quote. All Quotes are subject to the availability of the Goods and subject to correction of *bona fide* errors by Hexagon, and the Purchase Prices quoted in any Quotes are subject to any increases in the cost price, including currency fluctuations, before of after delivery of the Purchase Order.
- 2.3. All Purchase Prices communicated and quoted are exclusive of Value Added Tax, delivery costs and ancillary charges unless otherwise stated in the quote.
- 2.4. Should Hexagon agree to deliver the Goods to the Customer, then, in addition to the Purchase Price payable for the Goods, the Customer shall pay Hexagon all costs of delivery of the Goods to the address stipulated in the Customer's Quote and/or Purchase Order, including, without limiting the generality of the foregoing, to cost of insurance and ancillary charges, if applicable.

## 3. Purchase Orders

- 3.1. The Customer may place Purchase Orders for Goods from time to time pursuant to Quotes provided to it by Hexagon.
- 3.2. All Purchase Orders by the Customer shall be in writing and transmissible by email. Each Purchase Order for Goods is subject to acceptance by Hexagon in writing, or by acceptance by Hexagon by means of the delivery of the Goods, or by means of verbal confirmation of the Purchase Order by Hexagon.
- 3.3. If the Customer places a verbal / telephonic Purchase Order, such order will be confirmed in writing by the Customer and transmissible by email prior to acceptance of Hexagon.
- 3.4. In the event of the Customer placing a verbal / telephonic Purchase Order and fails to confirm the Purchase Order in writing, Hexagon will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to place the Purchase Order in writing or to accurately record the Purchase Order in writing and these Sale Terms will still be applicable to the Purchase Order.



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- 3.5. The scope of supply and the quantity of the Goods shall be as stipulated in a Purchase Order.
- 3.6. The Purchase Order form shall include the following information:
  - a) The number and range of the Goods required;
  - b) The date by which the Goods should be delivered to the Customer;
  - c) Other relevant information / supporting documents; and
  - d) Such instructions from the Customer as, in the sole discretion of Hexagon, are necessary to enable Hexagon to supply the Goods.
- 3.7. Should the instructions not be timeously furnished or deficient in any respect, then Hexagon shall be entitled to increase the Purchase Price, delivery costs, insurance and ancillary charges set out in the Customer's Purchase Order by such an amount as may be necessary to cover the increase in costs occasioned by the delay in furnishing of the instructions.
- 3.8. Hexagon reserves the right at its sole discretion to provide alternative Goods to those Goods ordered by the Customer should the manufacturing of the said Goods be superseded, replaced, or terminated or if Hexagon is no longer able to source such Goods for reasons beyond the control of Hexagon. Hexagon will notify the Customer of its inability to supply the Goods and their ability to supply alternative Goods.
- 3.9. Notwithstanding the provisions of clause 1.10.a, all Purchase Orders or variations to Purchase Orders, whether verbal or in writing, shall be binding and irrevocable if agreed on by both Parties, and subject to these Sale Terms and may not be cancelled by the Customer (unless otherwise agreed to by Hexagon).
- 3.10. Purchase Orders placed by the Customer shall constitute irrevocable offers to purchase the Goods in question at the usual prices of Hexagon as on the date when the Customer places the order for the Goods, subject to clauses 2.2, 2.3, 2.4, 3.7, 4.2 and 4.10.
- 3.11. Hexagon shall not be obliged to accept or act upon any changes, modifications or additions to the original Purchase Order if such changes, modifications or alterations were given after Hexagon's acceptance of the Customer's Purchase Order.
- 3.12. Once the Customer's Purchase Order has been accepted by Hexagon, a binding contract on the Goods, subject to the conditions contained herein, will have been entered into by and between Hexagon and the Customer, which contract shall not without written consent of Hexagon be capable of variation or cancellation. Should the cancellation involve the return of Goods already delivered and / or ordered by Hexagon. the provisions of this clause shall apply mutatis mutandis. A certificate issued by Hexagon or one of its agents and signed on behalf of anyone purporting to be a duly authorised person, which authority need not be proven shall, ipso facto, be proof of the amount of ancillary charges incurred and shall be sufficient to discharge the burden of proof for the purposes of pleading, and no further evidence relating thereto need to be adduced at any trial or application for judgement or at which the document is rendered for evidence.

**4. Price and Payment Terms**

4.1. The Purchase Price of Goods shall be the price more fully set out in a Purchase Order, subject to



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clauses 2.2, 2.3, 2.4, 3.7, 4.2 and 4.10.

- 4.2. The Purchase Price shall be subject to any variations from time to time, in any third party costs such as rates of freight, insurance costs, customs duties, exchange rates, costs of materials, costs in manufacturing and other costs which are out of the control of Hexagon, irrespective of whether those variations occurred before or after the time of the Quote or Purchase Order.
- 4.3. Hexagon shall cause an Invoice to be delivered to the Customer against delivery of the Goods.
- 4.4. Payment of the Purchase Price shall be made against delivery of the Invoice, unless Hexagon has granted the Customer credit, in which event such payment shall be in accordance with the Sale and Service Terms as contained in the Application for Credit Facilities and Suretyship.
- 4.5. Hexagon will not make any exception to clause 4.4 in respect of Invoices in dispute or under query. The balance of payment due should be settled as per these terms and once the Invoice dispute have been resolved, the amount overpaid, if any, will be refunded or credited to the Customer's account.
- 4.6. Hexagon reserves the right to request advance payments for the Purchase Price, if the Customer:
  - a) Fails to make payment of the Purchase Price, delivery costs, insurance and ancillary charges of any Goods on the due date thereof;
  - b) Commits a material breach of any provision of these Sale Terms and fails to remedy such breach within 5 (five) Business Days after delivery of a written notice requiring the Customer to do so;
  - c) Commits and act of insolvency, as contemplated in the Insolvency Act 24 of 1936;
  - d) Takes steps to place itself, or is placed in liquidation or sequestration, whether voluntary or compulsory or commences business rescue proceedings;
  - e) Effects or attempts to effect a compromise or composition with its creditors generally or any class of its creditors;
  - f) Is subject to any resolution passed to enable it to be wound-up, dissolved or deregistered;
  - g) Default or threaten to default in the performance of its obligations generally, or cease to or threaten to cease to carry on business;
  - h) Attempts to sell, disposes of, encumbers or parts with possession of the Goods prior to payment of the Purchase Price in respect thereof in any way without Hexagon's written consent;
  - i) Commits an act of fraud or is found guilty of a crime involving financial dishonesty;
  - j) Any judgement is given against the Customer in any court of law, which is not appealed or remains unsatisfied for a period of 10 (ten) days;
  - k) Any of the events contemplated in clauses 4.6.a to 4.6.j occurs in relation to any agreement relating the Terms of Sale of, or any person providing, security or credit support for the obligations of the Customer; or
  - l) If Hexagon is of the opinion that there is a risk that they might not receive the Purchase Price, delivery costs, insurance and ancillary charges.



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- 4.7. Payment of the Purchase Price, shall be made in Rands by electronic funds transfer directly into a bank account nominated by Hexagon in writing, from time to time, free from deductions, set-off and any bank charges or other such charges and taxes.
- 4.8. Should the Customer fail to settle the outstanding amount within the prescribed time, Hexagon shall, without prejudice to Hexagon's rights under these Sale Terms, be entitled to charge interest at the rate of Prime plus 4% *per annum*, nominal annual rate compounded monthly, on the overdue amount or to charge interest on overdue amounts as provided for at the relevant time in terms of the Prescribed Rate of Interest Act 55 of 1975, at Hexagon's sole discretion. Said interest shall accrue from due date for payment to date of payment receipt by Hexagon and shall be payable on demand.
- 4.9. Hexagon shall have the right to appropriate payments as it in its discretion deems fit.
- 4.10. Hexagon reserves its right to renew its pricing structure in accordance with the market, economic, and other relevant circumstances.
- 4.11. Where the Customer requires a customer order number or other pertinent information on the Invoice to be issued by Hexagon, the number or other pertinent information must be supplied by the Customer on placement of the Purchase Order. The Customer shall not be entitled to withhold any payment because of the Customer's failure to comply with the aforesaid provisions.
- 4.12. The Customer agrees that any amount due and payable to Hexagon may be determined and proven by a certificate issued by Hexagon or one of its agents and signed on behalf of anyone purporting to be a duly authorised person, which authority need not be proven. Such certificate shall be binding and prima facie proof of the indebtedness of the Customer.

## 5. Security and Credit Support

Hexagon shall not be obliged to supply any Goods pursuant to these Sale Terms, unless the Customer has provided the security and/or credit support required by Hexagon from time to time and in the form and substance acceptable to Hexagon. Such security and credit support may include, suretyships, guarantees, bank guarantees and cash deposits.

## 6. Delivery

- 6.1. The Goods will be delivered by Hexagon or an external carrier, by road or otherwise, as Hexagon may in its discretion decide. If the goods are delivered by road, then delivery shall be deemed to have been made when the goods are off-loaded at the Customer's nominated premises, provided that when the carrier has been nominated by the Customer, delivery shall be deemed to have taken place at the time that the Goods are handed to the nominated carrier.
- 6.2. Delivery of the Goods to the Customer shall take place as indicated in the applicable Purchase Order and the Customer will be obliged to accept delivery on the date specified in the applicable Purchase Order.



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- 6.3. Should the Customer fail to accept delivery on the date specified in clause 6.2, the Risk of loss or damage to the goods together with all and any expenses pursuant thereto, including but not limited to insurance, storage and further delivery charges shall be borne by the Customer and paid to Hexagon on request.
- 6.4. Should the Customer be unable to take delivery of the Goods in accordance with the Purchase Order the Customer must notify Hexagon in writing thereof and must indicate the space required for the Goods to be stored as well as the duration for which storage is required. Hexagon, shall, at its sole discretion, provide such storage as requested by the Customer and to the extent that Hexagon incurs any costs for such storage, the Customer shall be liable to pay all such storage costs and Hexagon shall invoice the Customer accordingly. The Customer shall bear all risk in respect of the stored Goods from the date on which the Goods were to be delivered in terms of the Purchase Order.
- 6.5. Hexagon shall be entitled to split the delivery of the Goods ordered in the quantities and on the dates it determines in its sole and unfettered discretion.
- 6.6. Hexagon shall be entitled to invoice each delivery made, separately, notwithstanding that such Goods were ordered in one or more Purchase Orders.
- 6.7. The onus shall be on the Customer to ensure that it inspects and tests for quality in respect of all Goods delivered. Accordingly, the Customer (or its representative) shall inspect the Goods on delivery and shall satisfy itself that the Goods comply with the requirements set out in the Purchase Order. The Customer shall accept delivery of the Goods as soon as same are confirmed in terms of this clause, provided that the Customer shall be entitled to reject any Goods that does not materially conform with the requirements set out in the Purchase Order.
- 6.8. Where there is a shortage of Goods so delivered or where Goods are delivered in a damaged condition, the Customer shall give written notice to Hexagon within 48 (forty-eight) hours of delivery. Should the Customer fail to give such notice, the Customer will have no claim in respect of any alleged shortages or damage and the Goods shall be deemed to have been delivered in a complete, undamaged and working state. When the Customer nominates the carrier to deliver the Goods, the Goods shall be deemed to have been delivered in a complete, undamaged and working state as soon as the Goods are handed over to the nominated carrier. The onus will rest upon the Customer to prove that the Goods were incomplete and / or damaged before the carrier collected the Goods and that the Goods were not stolen, lost or damaged by the carrier.
- 6.9. Any delivery notes or waybill (copy or original) signed by the Customer (or a third party engaged to transport the Goods and held by Hexagon) shall be conclusive proof that delivery of the relevant Goods was made to the Customer.
- 6.10. Hexagon shall endeavour to deliver the Goods at the earliest possible time but in no instance can Hexagon accept liability for any loss or damage arising from the late delivery of the Goods. No liability shall attach to Hexagon because of the failure to deliver if such failure is due to circumstances beyond Hexagon's control.
- 6.11. It is recorded that delivery dates, installation times and performance times shall be regarded as indicative only and merely estimates and whereas Hexagon will do everything possible to keep to such dates, Hexagon cannot be held responsible because of any failure to do so.



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- 6.12. Notwithstanding anything to the contrary in these Sale Terms, if Hexagon cannot deliver, cannot deliver timeously, some or all of the Goods for any reason beyond its control, including but not limited to lack of instruction from the Customer, stock shortage, industrial dispute or break-down, production delays, government action, state of war, riot or civil disturbance, natural pandemics, disasters or acts of God, Hexagon shall notify the Customer and may, in its discretion, cancel the whole or any part of the sale forthwith. In the event of such cancellation Hexagon shall not be liable for any loss whatsoever, including any consequential loss of profits, special damages, or any direct or indirect loss, thereby caused.
- 6.13. Any liability in respect of any failure by it to deliver the Goods or deliver the Goods timeously, shall be limited to an amount equal to the amount of the Purchase Price of such Goods, excluding delivery costs and insurance and any other ancillary charges.
- 6.14. The risk of damage to, destruction or theft of Goods shall pass to the Customer on delivery of any order placed in terms of these Sale Terms.
- 6.15. All Goods taken on an evaluation or consignment basis by the Customer are deemed sold if not returned within 30 (thirty) days of issue in the original condition, in the original packaging, and with all accessories and documents intact.
- 6.16. Hexagon reserves the right to suspend, delay or cancel the delivery of some or all of the Goods if the Customer:
- a) Fails to make payment of the Purchase Price, delivery costs, insurance and ancillary charges of any Goods on the due date thereof;
  - b) Commits a material breach of any provision of these Sale Terms and fails to remedy such breach within 5 (five) Business Days after delivery of a written notice requiring the Customer to do so;
  - c) Commits and act of insolvency, as contemplated in the Insolvency Act 24 of 1936;
  - d) Takes steps to place itself, or is placed in liquidation or sequestration, whether voluntary or compulsory or commences business rescue proceedings;
  - e) Effects or attempts to effect a compromise or composition with its creditors generally or any class of its creditors;
  - f) Is subject to any resolution passed to enable it to be wound-up, dissolved or deregistered;
  - g) Default or threaten to default in the performance of its obligations generally, or cease to or threaten to cease to carry on business;
  - h) Attempts to sell, disposes of, encumbers or parts with possession of the Goods prior to payment of the Purchase Price in respect thereof in any way without Hexagon's written consent;
  - i) Commits an act of fraud or is found guilty of a crime involving financial dishonesty;
  - j) Any judgement is given against the Customer in any court of law, which is not appealed or remains unsatisfied for a period of 10 (ten) days;
  - k) Any of the events contemplated in clauses 6.16.a to 6.16.j occurs in relation to any agreement relating the Terms of Sale of, or any person providing, security or credit support for the obligations of the Customer;



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6.17. Any suspension, delay or cancellation of delivery as a result of any of the foregoing events shall not affect any other right which Hexagon may have against the Customer based on these Sale Terms or otherwise.

## 7. Return of Goods

- 7.1. The Customer's claims for incorrect delivery of Goods must comply with the following:
- a) The delivery note in respect of the relevant Goods is so endorsed with the details of non-compliance; and
  - b) Written notice is given to Hexagon within 48 (forty-eight) hours of delivery of the relevant Goods.
- 7.2. Hexagon has a no return policy on delivered goods unless the product itself is defective in which case the Customer must report the defect to Hexagon within 48 (forty-eight) hours of the delivery in writing stating the details of such defect.
- 7.3. The Customer shall notify Hexagon of any complaints relating to defective packaging in writing within 48 (forty-eight) hours from the date delivery of the goods in question.
- 7.4. The Customer shall return any defective portable Goods to the premises of Hexagon within 10 (ten) days of receipt of Goods at the Customer's own cost and packed in the original packaging of the Goods and all risks for the duration of repair remain with the Customer. The Customer shall be responsible for payment of all repairs to defective Goods, unless repairs are done under any product warranties. Repair times and repair costs given are merely estimates and are not binding on Hexagon. Unless repairs are done under any product warranties, any repairs shall be in accordance with Hexagon's standard terms of service and at the cost of the Customer.
- 7.5. Notwithstanding the above, Hexagon shall not be required to accept the return of any Goods if the Goods have been:
- a) Tampered with, physically damaged, abused, misused, neglected, not maintained, or has been serviced, repaired, installed by persons not possessing the necessary qualifications required to do so;
  - b) Partially or entirely disassembled;
  - c) Physically altered;
  - d) Permanently installed, affixed or attached;
  - e) Joined or added to or blended or combined or embedded within other goods or property; or
  - f) Operated or stored outside the manufacturer's specification.
- 7.6. The Customer agrees it shall only use reputable carriers capable of providing proof of delivery and insurance for the entire value of the shipment. All costs arising from shipping and insurance required for the return of the Goods to Hexagon shall be borne and paid by the Customer. Hexagon will not refund shipping charges, unless an error in delivery was made by Hexagon.



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- 7.7. If any component of the returned Goods is missing, Hexagon may refuse to accept the return or may impose additional charges against the Customer for the replacement of the missing component.
- 7.8. Hexagon may impose a reasonable fee should it be necessary to restore the Goods in order to render it suitably fit for re-stocking.
- 7.9. Hexagon shall at any time be entitled on written notice to the Customer to recall any Goods and in such event the Customer will cease use of any such Goods in its possession and at the election of Hexagon return or destroy all such unused Goods in exchange for a full refund of the amount paid for such Goods.
- 7.10. Despite the provisions of clause 7.2, and at the sole discretion of Hexagon, who's consent must be obtained in writing, Goods may be returned to Hexagon if the necessary arrangements has been made with Hexagon. The Customer acknowledges that should the correct Goods be supplied and delivered and should these be returned at the Customer's request due to no fault accruing to Hexagon, the Goods may be released subject to a 5% handling and administration charge which shall immediately become due and payable by the Customer. The Customer shall also deliver the goods to be returned to Hexagon at its own cost. All payments and return of Goods to representatives or agents of Hexagon are entirely at the risk of the Customer. Goods should be returned directly to Hexagon's place of business from where the Goods were ordered in the exact same condition and packaging as when delivered. It will fall within Hexagon's sole discretion whether or not the accept returned goods.

## **8. Ownership, Risk and Retention of Title**

- 8.1. Ownership of all goods delivered or supplied by Hexagon will remain vested in Hexagon until the Purchase Price, delivery costs, insurance and ancillary charges thereof has been paid in full, whether such Goods are attached to other property or not.
- 8.2. The Risk of damage to the Goods, loss, theft or any other Risk shall lie with the Customer while the Goods are in possession of the Customer, if the Goods are damaged, lost or stolen whilst in possession of the Customer, the Customer shall be liable to pay the repair costs of the goods as well as the replacement costs in the event that the Goods are damaged beyond repair, lost or stolen or if the repair costs will be uneconomical.
- 8.3. Hexagon shall, in its sole discretion, without notice to the Customer, be entitled to take possession of any such Goods which have not been paid for and in respect of which payment is overdue, in which event, irrespective of whether the title to the Goods remains vested in Hexagon, Risk in the goods shall remain with the Customer even if Hexagon has taken possession of the Goods.
- 8.4. The Risk shall pass to the Customer when the Goods are collected from Hexagon's premises or if delivery is to be made by Hexagon, then on delivery to the Customer.
- 8.5. If the Goods are returned to Hexagon's premises, in terms of clause 7.10, then the risk shall pass to Hexagon. If the Goods are returned to Hexagon's premises for any other reason, for example, repairs, the risk shall remain with the Customer.



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8.6. It is the Customer's responsibility to adequately insure all Goods against any Risk including theft, loss and damage, until such time that all the Goods have been paid for and ownership has transferred to the Customer. Any such Goods damaged, lost or stolen while in the possession of the Customer, alternatively when Risk has passed in terms of clause 8.4, shall be for the Customer's account, and the Customer shall have no claim against Hexagon whatsoever.

## 9. Warranties, Guarantees and Declarations

- 9.1. It is a condition of each sale that the Goods are sold voetstoots and without any warranties or representations whatsoever.
- 9.2. Hexagon shall not be liable to the Customer for any damages including, but not limited to, special, indirect, consequential loss and/or damages or loss of profits arising from the performance or non-performance, delict, breach of warranty, negligence or otherwise by Hexagon of its obligations in terms of these Terms of Sale. The exclusion of liability shall relate to any claim for breach of contract as well as for alleged negligence on the part of Hexagon.
- 9.3. The Customer agrees that that Hexagon shall not incur any liability under the Occupational Health and Safety Act No. 85 of 1993 (specifically Section 10 of the Act).
- 9.4. The Customer acknowledges that it does not rely on any representations made by Hexagon regarding the Goods of any of its qualities other than those contained in these Sale Terms. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Hexagon in respect of the Goods, verbally or in writing, will not form part of these Sale Terms in any way unless agreed to in writing by Hexagon.
- 9.5. The Customer agrees that neither Hexagon nor any of its employees will be liable for any innocent misrepresentations made to the Customer.
- 9.6. It is the sole responsibility of the Customer to determine that the Goods ordered are suitable for the purposes of intended use.
- 9.7. The Customer hereby confirms that the Goods on the Invoice issued to the Customer duly describes the Goods ordered by means of the Purchase Order by the Customer at the Purchase Price agreed to by the Customer in a Purchase Order and, where delivery/performance has already taken place, that the Goods were inspected and that the Customer is satisfied that the Goods conform in all respects to the quality and quantity ordered and are free from any defects.
- 9.8. Goods are guaranteed according to the manufacturer's product-specific warranties or agreed-on specifications only and all other guarantees and warranties (either expressed or implied), including common law guarantees, are hereby specifically excluded, including any warranty that the Goods are fit for a particular purpose. Any parts are guaranteed according to the manufacturer's product-specific warranties.
- 9.9. No claim under these Sale Terms shall arise unless the Customer has, within 48 (forty-eight) hours of the alleged breach given Hexagon 30 (thirty) days' written notice by prepaid registered post or email to rectify any defect or breach of these Sale Terms. To be valid, claims must be supported



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by the original delivery note or tax invoice.

9.10. All warranties are immediately null and void if the Goods have been:

- a) Tampered with, physically damaged, abused, misused, neglected, not maintained, or has been serviced, repaired, installed by persons not possessing the necessary qualifications required to do so;
- b) Partially or entirely disassembled;
- c) Physically altered;
- d) Permanently installed, affixed or attached;
- e) Joined or added to or blended or combined or embedded within other goods or property; or
- f) Operated or stored outside the manufacturer's specifications.

9.11. Any item delivered to Hexagon shall serve as a pledge in favour of Hexagon for present and past debt and Hexagon shall be entitled to retain or realize such pledges as it deems necessary for appraisers sworn or realized value which will be offset against the Customer's debt.

9.12. Hexagon's liability for anything in relation to the Goods and its use, including damage or economic loss, is limited to:

- a) granting of credit to the Customer;
- b) the replacement or cost of replacement of the relevant Goods with the same or equivalent Goods; or
- c) the repair or cost of repair of the relevant Goods.

9.13. Under no circumstances shall Hexagon be liable for any consequential damages or indirect liability of any nature whatsoever, and under no circumstances shall Hexagon be liable for any damage arising from any misuse or abuse of the Goods.

9.14. Neither Hexagon nor any of its employees, officers, agents or sub-contractors shall be liable for any loss or damage, whether direct, indirect, consequential or otherwise suffered by the Customer or its employees, officers, agents or sub-contractors, arising from any cause in connection with the delivery or use of the Goods (including any act, omission, neglect or default on the part of Hexagon or any of its employees, officers, agents or sub-contractors) whether such loss or damage results from breach of contract, delict, negligence or any other cause whatsoever.

9.15. Hexagon shall further not be liable to the Customer for any damage, loss, liability or injury of whatsoever nature and howsoever arising that may result from any *vis maior* (i.e. irresistible, overpowering act of God that causes damage or disruption) or *casus fortuitous* (i.e. an accident against which due prudence could not have provided), including unforeseeable interruptions in electricity, strikes, acts of war, interruption of transport, flood, storm or fire.

9.16. The Customer hereby indemnifies Hexagon against any claims made by a third party against Hexagon howsoever arising, including but not limited to, any claims in connection with the installation and commissioning of the Goods, claims against Hexagon as the titleholder of such Goods arising out of or in connection with the Customer's use and/or possession of the Goods, and any loss, expense and/or damages including consequential damages, loss of revenue and profits, legal costs on the scale as between attorney and his own client and any other costs arising out of or in connection with or which may be sustained or incurred by the Customer as a direct or indirect consequence of its purchase and use of the Goods.



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## 10. Breach of Contract and Dispute Resolution

- 10.1. Any dispute arising from or in connection with these Sale Terms shall, if it cannot first be settled through bona fide negotiations between the Parties, at the sole discretion of Hexagon, be referred and finally settled by arbitration in accordance with the arbitration rules of the Arbitration Foundation of Southern Africa.
- 10.2. The arbitration shall be held at Johannesburg, South Africa and shall be conducted in the English language.
- 10.3. The decision of the arbitrator shall be final and binding on the Parties and may be made an order of a court of competent jurisdiction.
- 10.4. Nothing herein contained shall preclude either Party from obtaining interim relief from a court of competent jurisdiction on an urgent basis.
- 10.5. Regardless of the provision of clause 10.1 – 10.4, Hexagon shall, at its discretion, be entitled to institute formal legal action in any competent court for any breach committed by the Customer of any these Sale Terms without first referring the matter for arbitration.
- 10.6. In the event of the Customer committing any breach of any of the Sale Terms including, but not limited to, the failure to make payment of the invoiced price on the due date, Hexagon shall be entitled to forthwith claim repossession of the goods, for which purpose the Customer hereby irrevocably authorises Hexagon, through its duly authorised representative/s, to enter upon the premises where the Goods are kept, to take repossession of the Goods. The exercise of this right shall not preclude Hexagon from its right to claim damages from the Customer occasioned by its breach. Hexagon shall, in the alternative, be entitled to enforce the provision of these Sale Terms and claim payment of the full amount due by the Customer, any instalments of the price falling due in the future to become due and payable immediately.
- 10.7. In such an event Hexagon shall at its discretion, be entitled to charge interest on overdue amounts as provided in clause 4.8 above or as provided for at the relevant time in terms of the Prescribed Rate of Interest Act 55 of 1975.
- 10.8. Should Hexagon take legal action against the Customer in the event of the Customer's breach, the Customer shall be liable for all legal fees incurred by Hexagon in the recovery of any amounts owing, including costs on the attorney and own client scale, collection commission and tracing costs.
- 10.9. In the event of Hexagon or its agents instructing attorneys to collect from the Customer an amount owing to Hexagon, the Customer agrees to pay all costs on the scale between attorney and own client, including that of an attorney and counsel, incurred by Hexagon in the event of any default by the Customer, any litigation regarding the validity and enforcement of these Sale Terms. The Customer will also be liable for any tracing, collection or valuation fees incurred as well for any costs, for any form of security that Hexagon may demand.
- 10.10. In the event of Hexagon or its agents instructing a Debt Collector to collect from the Customer and amount owing to Hexagon, the Customer agrees to pay collection commission in accordance with the terms of the Debt Collector's Act, 114 of 1998.



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- 10.11. The Customer agrees that the amount due and payable to Hexagon may be determined and proved by a certificate issued by Hexagon or one of its agents and signed on its behalf by anyone purporting to be a duly authorised person, which authority need not be proven. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
- 10.12. If the Customer breaches these Sale Terms and Hexagon elects not to cancel the Purchase Order / agreement of sale, Hexagon shall be entitled to suspend performance of its obligations until the Customer has complied with its obligations.
- 10.13. Any relaxation, leniency or indulgence which Hexagon may extend to the Customer shall not in any way constitute a waiver of Hexagon's rights in terms hereof.
- 10.14. The Customer consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrates Court Act 32 of 1944 as amended, having jurisdiction under Section 28 of the said Act, notwithstanding that the claim amount may exceed the normal jurisdiction of the Magistrate Court.
- 10.15. The provisions of this clause shall survive the termination or expiration of a Purchase Order and shall remain of full force and effect until mutually terminated by the Parties in writing.

## **11. Immediate Termination**

11.1. If the Customer:

- a) Fails to make payment of the Purchase Price, delivery costs, insurance and ancillary charges of any Goods on the due date thereof;
- b) Commits a material breach of any provision of these sale terms and fails to remedy such breach within 5 (five) Business Days after delivery of a written notice requiring the Customer to do so;
- c) Commits and act of insolvency, as contemplated in the Insolvency Act 24 of 1936;
- d) Takes steps to place itself, or is placed in liquidation or sequestration, whether voluntary or compulsory or commences business rescue proceedings;
- e) Effects or attempts to effect a compromise or composition with its creditors generally or any class of its creditors;
- f) Is subject to any resolution passed to enable it to be wound-up, dissolved or deregistered;
- g) Default or threaten to default in the performance of its obligations generally, or cease to or threaten to cease to carry on business;
- h) Attempts to sell, disposes of, encumbers or parts with possession of the Goods prior to payment of the Purchase Price in respect thereof in any way without Hexagon's written consent;
- i) Commits an act of fraud or is found guilty of a crime involving financial dishonesty;



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- j) Any judgement is given against the Customer in any court of law, which is not appealed or remains unsatisfied for a period of 10 (ten) days; or
- k) Any of the events contemplated in clauses 11.1.a to 11.1.j occurs in relation to any agreement regulating the Sale Terms of, or any person providing, security or credit support for the obligations of the Customer,

Hexagon shall be entitled, at its sole discretion if it deems fit, without prejudice to, and without constituting a release or waiver of, any other rights or remedies which it may have under these Sale Terms or in law, either to immediately terminate these Sale Terms or the relevant Purchase Order to which the breach relates forthwith or to claim immediate specific performance of all of the Customer's obligations, whether or not due for performance.

11.2. The effect of terminating these Sale Terms shall be to terminate the ability of either Party to enter into any subsequent Purchaser Order that incorporates the terms of these Sale Terms. Termination of these Sale Terms shall not, by itself, result in the termination of any Purchase Order previously entered into (or extensions of the same) that incorporates the terms of these Sale Terms. The terms of these Sale Terms shall continue in effect for the purposes of such Purchase Order unless and until each such Purchase Order itself is terminated or expires.

11.3. The expiry or termination of any Purchase Order or these Sale Terms shall not affect the enforceability of the terms which are intended to operate after expiry or termination.

11.4. In the event of cancellation, the Customer shall be liable to pay:

- a) The difference between the selling price and the value of the Goods at the time of repossession
- b) All other costs incurred in the repossession of the Goods;
- c) Any other loss or damages suffered by Hexagon.

11.5. The value of repossessed or retained pledged Goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the Goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.

11.6. The Customer irrevocably indemnifies Hexagon completely against any damage whatsoever relating to the removal of repossessed Goods and any Goods which is the property of Hexagon which is installed at the Customer's site shall not be removed without Hexagon's prior written consent.

11.7. In the event of cancellation Hexagon is entitled not to deliver any undelivered balance of a Purchase Order and to recover any loss sustained from the Customer.

11.8. The Customer is not entitled to sell or dispose of any unpaid Goods without the prior written consent of Hexagon. 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 Hexagon in the Goods.

11.9. If any Goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law the Customer shall be obliged on notice of cancellation of these Sale Terms to transfer the same quantity of Goods in ownership to Hexagon.



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11.10. Any damage to or loss of Hexagon's Goods will be for the Customer's account at the ruling repair or replacement rate, fair wear and tear excepted.

## 12. Further Undertakings

- 12.1. Hexagon may periodically audit its assets held by the Customer.
- 12.2. The Customer warrants that the information completed by it and/or provided to Hexagon is truthful, complete and accurate in all respects, and is supplied voluntarily for the purpose of concluding these Sale Terms and, if applicable, obtaining credit from Hexagon in connection with the supply of Goods.
- 12.3. Hexagon shall be entitled to rely upon all and/or any of the information supplied herein as being complete, true and accurate.

## 13. Governing Law

These Sale Terms are subject to the laws of the Republic of South Africa. Should the Customer be domiciled outside the Republic of South Africa, this agreement, all contracts of sale and Purchase Orders between the Customer and the Hexagon shall be governed and interpreted in accordance with the laws of the Republic of South Africa and the South African Courts shall have jurisdiction in respect hereof.

## 14. Notices

- 14.1. Any notice sent by Hexagon to the Customer pursuant to these Sale Terms shall be deemed duly received by the Customer:
  - a) Within 3 (three) days of mailing by prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member, partner or owner of the Customer; or
  - b) Within 24 (twenty-four) hours of being emailed to any of the Customer's email or any director's, members, partners or owner's email addresses; or
  - c) On being delivered by hand to the Customer or any director, member, shareholder, partner or owner of the Customer; or
  - d) Within 48 (forty-eight) hours if sent by overnight courier.
- 14.2. The Customer undertakes to inform Hexagon in writing within 7 (seven) days of any change of director, member, shareholder, owner, or partner or address or 14 (fourteen) days prior to disposal



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of the Customer’s business and failure to do so will constitute a material breach of these Sale Terms.

## 15. Data Protection

15.1. Hexagon is committed to compliance with the Protection of Personal Information Act. No. 4 of 2013 (“POPIA”).

15.2. The Customer consents to Hexagon:

- a) The Customer consents to the collection, processing and storage of Personal Information by Hexagon related to Data Subjects, for the purposes of both the opening and ongoing management of a Customer account;
- b) Performing a credit search on the Customer’s record, as well as the record of Data Subjects, with one or more of the registered Credit Bureaus when assessing the Customer’s Application for Credit (and at any other time in discretion);
- c) Recording the existence of the Customer’s account with any Credit Bureau;
- d) Transmitting any information pertaining to the Customer and to any Data Subject to any third party that provides credit vetting services, credit guarantee insurance providers and brokers, collection service providers and entities that provides financing to Hexagon, (hereinafter referred to as “Approved Third Parties”), and to any such Approved Third Party in turn conducting its own Credit Bureaus and other credit vetting and debt collection processes;
- e) Recording and transmitting details of how the Customer has performed and how the account is conducted by the Customer in meeting its obligations on the account, including to a Credit Bureau and Hexagon credit insurers.

15.3. The Customer acknowledges and agrees that any information regarding its credit worthiness, defaults in payment to Hexagon, and details of how its account with Hexagon is conducted may be disclosed to any other creditor of the Customer, to Approved Third Parties, and, to any registered Credit Bureau after 21 (twenty-one) days’ notice have been given to the Customer.

15.4. The Customer warrants and represents that:

- a) It has concluded a contract with each Data Subject and that in terms of such contract, the Customer has obtained the consent from such person to the processing of Personal Information by suppliers and Approved Third Parties, in the credit vetting process;
- b) The processing of Personal Information by Hexagon is necessary for the legitimate interests of Hexagon inter alia in Hexagon credit vetting, credit management and funding processes;

c) The Customer warrants that all Personal Information supplied to Hexagon is accurate, up to



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date, is not misleading and that it is complete in all respects; and

- d) The Customer undertakes to immediately advise Hexagon of any changes to the relevant Personal Information of a Data Subject, but not limited to, a change of ownership or control in the Customer.

## 16. General

16.1. Neither Party will make or issue any formal or informal announcement or statement to the press in connection with these Sale Terms, without the prior written consent of the other Party.

16.2. Hexagon may:

- a) cede, assign or transfer any of its rights or obligations under these Sale Terms to an affiliate of Hexagon or any third party contractor to carry out any of its rights or obligations under these Sale Terms without the Customer's consent, provided that Hexagon shall remain liable for performance of such third party contractors. Hexagon shall not be required to disclose the terms (including payment terms) of any sub-contract entered into with respect to Hexagon's obligations under these Sale Terms; and
- b) cede as a cessionary or assignee, all claims which the Hexagon may have against the Customer under these Sale Terms or a Purchase Order and/or ownership of the Goods to a third party, pursuant to a funding or discounting arrangement or similar transaction, and to the extent that any such cession or assignment results in a splitting of claims, the Customer hereby consents to such splitting of claims.

16.3. The Customer shall not be entitled to cede, assign or transfer any of its rights or obligations under these Sale Terms without the prior written consent of Hexagon.

16.4. Hexagon may, at its sole discretion, levy charges in respect of copy documentation requested by the customer.

16.5. The invalidity of any part of these Sale Terms shall not affect the validity of any other part.

16.6. Any Purchase Order or supply of Goods is subject to cancellation by Hexagon due to *force majeure* events, including but not limited to inability to secure labour, power, materials, or supplies, or by reason of an act of God, war, civil disturbance, pandemic, epidemic, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

16.7. The Customer agrees that no indulgence whatsoever by Hexagon will affect the provisions of these Sale Terms or any of the rights of Hexagon thereunder, and such indulgence shall not constitute a waiver by Hexagon in respect of any of its rights herein. Under no circumstances will Hexagon be stopped from exercising any of its rights in terms of these Sale Terms.

## 17. Business Rescue and Liquidation Proceedings

The Customer warrants that, as at date of placing the Purchase Order as described in clause 3, it is duly

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registered, in business and not in business rescue in terms of Chapter 6 of the Companies Act 2008 and has not made application to be placed under business rescue or in liquidation. Furthermore, the Customer warrants that it does not have any intention of making application for business rescue and is not aware of any current or pending circumstances relating to the business that could give rise to an application for business rescue or liquidation. The Customer agrees that in the event that the Customer is placed under business rescue and the conclusion of any compromise of the debt under such approved business rescue plan will not reduce the liability of any person or entity that has signed surety for the debts due by the Customer to Hexagon and such surety shall remain liable for the full amount of the debt that was due before such compromise, notwithstanding that it is acknowledged, agreed and understood by the Customer that the Surety may be entitled to have recourse against the Customer for amount paid by the surety to Hexagon pursuant to such suretyship.