



TOHF TRAILERS

TRAILER DESIGN & MANUFACTURE
www.tohf.net

Conditions of Sale and Repair

1 APPLICATION

These terms and conditions shall apply (to the exclusion of any others) to any contract for the sale of any goods or undertaking of any repairs by the company whether that arises out of –

any offer made by the company and accepted by the customer; or

any offer made by the customer and accepted by the company, including any such offer made by the customer in response to a quotation from the company.

The only basis upon which the company is prepared to do business with the customer is on the basis of these terms and conditions, notwithstanding anything to the contrary in the customer's enquiry, specification, acceptance and/or order.

No alteration or variation or consensual cancellation of these terms and conditions or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of these conditions shall apply, either at the time the contract is concluded or at any time afterwards, unless the alteration or variation or cancellation in question is expressly agreed to in writing and signed by an authorized representative of the company at the time in question.

No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or any other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against the company in respect of its rights under this agreement, nor shall it operate so as to preclude the company thereafter from exercising its rights strictly in accordance with this agreement.

2 QUOTATIONS

Any quotation given by the company constitutes an offer to the customer which shall be open for acceptance by the customer for the period specified in the quotation, failing which it shall automatically lapse. No acceptance of a quotation by the customer shall be valid unless an order is furnished by the customer.

A quotation may be revoked at any time by the company.

The quotation is submitted in respect of one indivisible transaction and any acceptance by the customer of a portion only of the quotation shall not be a valid acceptance of the quotation.

The quotation is based on rates of exchange, freight charges, insurance, railage, costs of labour and materials and other charges ruling at the date of quotation. Any variations occurring subsequent the date of quotation in any of the aforesaid rates or charges, as the case may be, shall entitle the company to vary the amount of the quotation accordingly.

The quotation is based on the designs, quantities, specifications and other information supplied to the company by or on behalf of the customer. If the customer requires any modification or addition to any of the foregoing at any time after the quotation is given, the company shall have the sole and absolute discretion to accept or reject such proposed modification or addition. Any proposed modification or addition by the customer must be furnished to the company in writing.

3 CONSIDERATION

The price of the goods will be –

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if no quotation has been given and accepted, the company's official list price ruling (where applicable) or if there is no list price for the goods in question, the fair and reasonable price charged by the company for them at the date on which they are delivered to the customer;

If a quotation has been given and accepted, the quoted price.

The consideration payable for any repairs undertaken by the company will be –

if no quotation has been given and accepted, the company's official list consideration ruling (where applicable) or if there is no list consideration, the fair and reasonable consideration, charged by the company for them at the date on which such repairs are undertaken;

If a quotation has been given and accepted, the quoted consideration.

Any expense incurred by the company at the instance of the customer in modifying or otherwise altering or making additions to the design, quantities or specifications agreed in terms hereof, and any expenses arising as a result of suspension of work by the company due to instructions given, or a failure to give instructions by the customer, shall be added to the contract price of consideration.

If work is carried out by the company other than during normal working hours, the company shall be entitled to charge overtime rates therefore and the contract price shall be adjusted accordingly.

Value Added Tax (VAT) will be charged unless the customer furnishes the company with its exemption certificate number at the time of ordering the goods or delivering the goods for repair.

4 PAYMENTS

The contract price or consideration shall be paid by the customer –

in South African currency free of bank and other charges at such address in the Republic of South Africa as the company may require;
without any deduction or set-off.

If delivery is to be made by installments, then each installment will be invoiced and paid for separately but otherwise in accordance with 4.1.

Any amount not paid by the customer on due date shall bear interest at the prime overdraft rate charged by First National Bank to its best grade customers on an unsecured basis plus 2%, from time to time, from the date it falls due until it is paid.

The company reserves the right, at any time, to cancel this agreement (without prejudice to its claim for damages, if any) should it not be able to obtain satisfactory guarantees which it may require in its sole discretion, for the due and prompt payment of all monies in terms hereof.

The purchase price or consideration shall be payable –

if a quotation has been given and accepted, as set out expressly in the quotation;

If a quotation has not been given and accepted or if although having been given and accepted, does not make specific provision for payment terms, within 30 days after the date of the relevant invoice.

If a customer does not have a valid credit rating with the company, the transaction will be on a strictly Cash on Delivery (COD) basis.

The contract price or consideration is strictly nett and not subject to any discounts unless otherwise agreed in writing.

If any discount is agreed in writing it shall only be allowed if payment is received by the company by the due date and shall only be calculated on the nett price of the goods or services themselves.

5 DELIVERY

Unless otherwise expressly agreed in writing, delivery of goods sold or of goods repaired (if the repairs are undertaken at the company's premises) shall be made to the customer at the company's premises. The customer shall be responsible for procuring and arranging for the transportation of the goods from the company's premises to any destination required by the customer. Delivery shall be completed when the goods are handed to the customer or its agent at the company's premises and before loading commences.

After completion of the delivery the company shall not be responsible for the arrival of goods at their destination or for any loss or damage to the goods from any cause whatever.

Should the company, at the customer's request, agree to engage a carrier to transport the goods for the customer, then –

the company is authorized to engage a carrier on such terms and conditions as it deems fit;

the customer indemnifies the company against all demands and claims which may be made against it by the carrier so engaged and all liability which the company may incur to the carrier arising out of the transportation of the goods;

The goods shall be deemed to have been delivered immediately the company has handed the goods to the carrier in question.

The customer shall, as soon as reasonably possible after a request by the company, furnish the company with all information reasonably required in order to enable the company to effect delivery of the goods.

Time shall not be the essence of the contract. Any delivery date indicated by the company, whether in the quotation or otherwise, shall merely be regarded as the estimated date of delivery and shall not bind the company to effect delivery on or near such date.

The customer shall accept delivery whenever delivery is tendered and shall not be entitled to resile from the agreement nor to withhold or defer any payment on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent (including grossly negligent) act or omission on the part of the company, its servants, agents or any other persons for whom it is liable in law, or not.

If delivery of any particular order is to be effected in consignments, the company shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered has been paid.



The company shall have the right to deliver any portion of the goods sold without delivery, or making provision for the delivery of, all goods sold and to invoice the customer therefore.

If the customer fails to take delivery of the goods when tendered, then –

the risk shall immediately pass from the company to the customer;

The customer shall refund to the company on demand the reasonable costs (including storage and insurance) of keeping the goods during the period of that delay.

If delivery is to be made in installments then the provisions of this clause 5 shall apply to each installment.

The company shall not be liable under any circumstances whatsoever for any claim for any alleged shortage in the delivery of goods or any alleged failure of goods to comply with the contract unless written notice of the claim is received by the company within 7 days after receipt of the goods by the customer.

6 OWNERSHIP AND COPYRIGHT

Notwithstanding the delivery of any goods sold to the customer, ownership thereof shall not pass until the company has received payment of the full contract price.

Ownership of any goods supplied by the company in the course of undertaking any repair services to any goods of the customer, shall not pass to the customer until the contract price in respect of the entire services rendered has been paid in respect thereof. The provisions hereof shall apply notwithstanding the accession of such items to the customer's goods. The provisions hereof shall apply *mutatis mutandis* to any work other than repairs undertaken or goods attached by the company in respect of the chassis or other items supplied by the customer.

The company reserves the right to inform the owner/landlord of the premises in which the goods are or at any time maybe, of the provisions of this clause. The customer shall be obliged to advise the company of the name and address of the landlord of any such premises and shall promptly advise the company of any change in the name and/or address of such landlord.

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 copyright in all documentation supplied to the customer shall remain vested in the company.

7 RISK

Subject to 5.9.1., the risk shall pass to the customer on delivery to the customer or on delivery to the carrier as contemplated in clause 5.3., as the case may be.

8 EXCLUSIONS

All specification, illustrations, drawings, diagrams, price lists, dimensions, performance figures and other technical data furnished by the company in respect of the goods, and whether in writing or not, are furnished

only on the basis that they will not form part of the contract or be relied upon by the customer for any purpose, unless and to the extent that they are expressly warranted or guaranteed in writing by the company and are, as such, expressly stated by the company to form part of the contract.

If the goods or any part of them are to be supplied in accordance with any specification, measurements or other instructions furnished by the customer, the customer shall not have any claim of any nature whatever against the company –

for any loss or damages sustained by the customer as a result of any error, discrepancy or defect in those specifications, measurements or other instructions;

If the goods in question are not suitable for the purposes for which they are required, whether those purposes are known to the company or not.

In all cases where the goods are supplied to a specification, design or description of the customer, the customer indemnifies the company against all claims at any time for any patent rights, royalties, damages, costs, expenses or other losses due to an infringement of any patent or other rights by reason of the manufacture and/or supply of the goods or any part thereof in terms hereof by the company.

The customer –

shall have no claim of any nature whatsoever whether for damages (including consequential loss), a remission of the purchase price, cancellation or otherwise, against the company, its servants, agent or others on whose behalf the company would be liable in respect of any loss or damage sustained by the customer of any nature whatsoever or any damage caused to the assets of the customer or assets kept on its premises by any third parties or in regard to the customer's business or sustained by any of its customers;

indemnifies the company, its servants, agents or other on whose behalf the company would be liable against any loss or damage which they may sustain as a result of any claim by any third party for losses caused by any acts or omissions of the company, its servants, agents or others for whom it may be liable in law including the negligent (including grossly negligent) acts or omissions. This clause constitutes also a *stipulatio alteri* in favour of such servants and other persons the benefits of which may be accepted by them at any time.

9 PERMITS

If any permit or other consent of approval is required by the company under any law (including any statute, ordinance, by-law or regulation) for the supply of the goods under the contract, then the contract shall not take effect until the company obtains that permit, consent or approval.

10 SUSPENSION OF COMPANY'S OBLIGATIONS

If any amount owed by the customer to the company from any cause whatever, whether under the



contract or not, is not paid on due date then, without prejudice to any other right which it may have, the company may –

require that all amounts then owed to it by the customer, from any cause whatever (and whether under the contract or not) shall immediately become due and payable;

retain in its possession any goods of the customer until all these amounts have been paid;

until payment is made, suspend the carrying out of any of its then uncompleted obligations from any cause whatever and whether under the contract or not;

terminate any credit facilities granted to the customer, whether under this contract or not.

11 BREACH

If the customer breaches any of the terms or conditions hereof or any other agreement with the company or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice the company's rights hereunder or at all, or allows any judgment against it to remain unsatisfied for 7 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 company shall have the right, without prejudice to any other right which it may have against the customer, to –

treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the agreement 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 contract with the customer until the customer has remedied the breach;

cancel this agreement and retake possession of any of the goods sold.

12 CONDITIONS PRECEDENT

Notwithstanding any other provision in the contract to the contrary the company's obligations to deliver the goods shall in all cases be subject to the following conditions precedent –

The availability to the company of all material and supplies required for the manufacture or repair of the goods or their components, where the goods or components in question are being manufactured or repaired by the company;

The receipt of the company from its own suppliers of the goods or their components, where the goods or components in question are being purchased by the company;

The receipt by the company of any instructions (including all drawings and specifications) required by the company from the customer for the manufacture or purchase of the goods.

13 PROPER LAW

The validity of this agreement, its interpretation, the respective rights and obligations of the parties and all other matters arising in any way out of this

agreement or its expiration or early termination for any reason (including matters of prescription) shall be determined in accordance with the laws of the Republic of South Africa.

14 JURISDICTION

If the customer is a resident or carries on business in the Republic of South Africa then the company shall be entitled to institute any proceedings against the customer, arising out of the contract, in any Magistrate's Court having jurisdiction over the customer even if the cause of action in question exceeds the jurisdiction of the court.

If the customer is not a resident of and does not carry on business in the Republic of South Africa, then the customer consents and submits to the jurisdiction of the Durban Local Division of the Supreme Court of South Africa, and all courts of appeal therefrom, for all purposes arising out of the contract.

If the customer is a resident of or carries on business in Botswana, Swaziland or Lesotho, the company shall be entitled to institute legal proceedings against the customer, arising out of the contract, in any subordinate Court of the First Class of Botswana, Swaziland or Lesotho respectively, having jurisdiction over the customer, even if the cause of action in question exceeds the jurisdiction of the Court.

15 NEGOTIABLE INSTRUMENTS

Any promissory note, bill of exchange, or other negotiable instrument received by the company from the customer shall not be a novation of the debt for which it is given and the customer waives the presentment, notice of dishonour and protest where applicable.

16 NO CESSION

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.

17 SECURITY FOR OBLIGATION

The company reserves the right to require satisfactory security from the customer for the due performance of any of the customer's obligations hereunder including but not limited to the payment of the purchase price or consideration.

18 CLAIMS FOR THE CUSTOMER'S MATERIALS OR TOOLS

If the customer supplies materials and/or patterns and/or tools for use in connection with its order to the company, the company shall not be liable for any reason whatsoever for any loss or damage howsoever occurring to such materials and/or patterns and/or tools whilst on the company's premises or under its control, notwithstanding that such loss or damage may have been occasioned by any negligent (including grossly negligent) act or omission on the part of the company, its servants, agents or other persons for whom it may be liable in law. This constitutes also a *stipulatio alteri* in favour of the aforesaid persons the benefits of which may be accepted by them at any time.

19 COSTS

The customer shall be liable for all costs incurred by the company in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney/client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

20 LIABILITES OF PARTNERS/SIGNATORIES

If the customer is a partnership, then each individual partner of the customer shall be bound both as a partnership and jointly and severally as an individual for all the customer's obligations, notwithstanding that only one partner may have signed on behalf of the customer.

The person signing on behalf of the customer warrants that he/she is duly authorised to represent and bind the customer to this agreement.

21 INSURANCE

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 such time as the goods have been paid for in full. The insurance policy shall record the interest of both the company and the customer. The customer shall, if so required by the company, cede to the company all its rights in terms of such insurance policy.

22 SUBSTITUTE GOODS OR PARTS

The company shall be entitled to substitute for any goods specified in this agreement such other goods which the company in its sole discretion may regard as suitable substitutes therefore.

The company reserves the right to alter specifications as conditions warrant without notice. Should conditions render unavailable any materials or products specified herein or otherwise required in order to fulfill this agreement, a substitution deemed by the company to be suitable for the performance of its obligations will be supplied.

23 DESIGN AND MANUFACTURE

The company shall be entitled to claim the usual tolerances customary in the trade on all dimensions.

If no detailed drawings or specifications are provided by the customer, the company shall be entitled in its sole discretion to interpret the requirements of the customer and its decision shall be final and binding on the customer.

The company reserves the right to make any reasonable changes to the design or form of any goods provided that the state of performance and quality and specifications remain materially unaffected.

24 HANDLING FEE ON RETURN OF GOODS

The company reserves the right to levy a handling fee on goods returned to and accepted by the company. This clause shall not be used to imply that

the company shall be obliged to accept the return of any goods.

25 FORCE MAJEURE

If *vis major* or *force majeure* or *casus fortuitus* ("the interrupting circumstances") cause delays in or failure or partial failure of performance by the company of all or any of its obligations hereunder, this agreement, or as the case may be, the affected portion thereof shall be suspended for the period during which the interrupting circumstances specifying the nature and date of commencement thereof shall be dispatched by the company (on whom the onus shall rest) to the customer as soon as reasonably possible after the commencement thereof. Written notice of the cessation of interrupting circumstances shall be given by the company within 7 days after such cessation. No party shall subsequently be obliged to comply with the obligations suspended during such period.

26 PAYMENT FOR WASTED COSTS

If for any reason whatsoever, the company incurs any wasted costs in respect of work undertaken or goods purchased in this contract, the customer shall be obliged to reimburse such wasted costs even if the contract has been cancelled.

27 WARRANTIES

The company hereby expressly warrants to the customer as the first purchaser thereof that new goods manufactured by it ("the products") supplied under this contract will be free from defects arising from faulty material and workmanship for a period of 3 years (unless expressly stated to the contrary in any quotation) from the date of invoice or from the date of delivery to the customer whichever occurs first (this period being called in this warranty "the warranty period").

The above warranty is subject to the following conditions –

That the products are manufactured by the company and are new;

That the products have been correctly operated and used under conditions which are normal for such products;

That the customer has maintained and serviced the products during the warranty period in accordance with the owners' service and warranty manual dealing with adjustments and inspections.

In the case of parts the company's warranty is specifically limited to replacing free of cost any products or parts or parts thereof which are in the company's opinion defective and which shall be returned to the company for replacement within the warranty period with transportation charges for delivery and return prepaid by the customer.

The company's total liability is limited to (at the option of the company) –

The replacement of the products; or

The supply of equivalent products; or

The payment of the cost of replacing the products;

or

The payment of the cost acquiring equivalent products; or



The payment of the cost of having the products repaired.

The above warranty shall not apply to –

Any products which have been repaired, altered or modified in any way whatsoever by persons other than the company or its authorized service representatives; or

Component parts or goods acquired by the company from third parties. In this latter even the company will where possible make available to the customer upon request a copy of the terms of any warranty given by the manufacturer of such component parts or goods.

The company undertakes no liability for defects arising directly or indirectly from

Fair wear and tear

Incorrect, faulty or negligent operation or maintenance by the customer;

Misuse or damage caused by accident;

Misuse or damage caused by the customer continuing to use the product after discovery of any defect or deficiency which has not been rectified.

Any cause whatsoever not attributable to the company.

The company shall, unless it otherwise agrees, undertake any repairs contemplated in this warranty clause, on the premises of the company.

Where any replacement parts are provided by the company in terms of this warranty or any repairs are effected by the company in terms of this warranty, those replacement parts or the repairs themselves shall not themselves be subject to this warranty clause and are supplied *voetstoots*.

Save as aforesaid, no warranties or representations of any nature whatsoever whether as to the suitability of the goods sold for any specific purpose or as to the materials forming part of the goods or as to the standard of labour in respect of such goods or, (without limiting the generality of the foregoing), otherwise, are or have been made by the company and the goods are accordingly sold or repaired *voetstoots* and with the exclusion of all common law rights and remedies of the customer.

Any warranties given do not cover any portion of the goods sold which were not manufactured by the company.

Customers who acquire goods for the purpose of on-selling those goods, whether such customers are permitted to do so or not (and nothing herein contained shall be deemed to allow customers to on-sell goods acquired from the company), shall not advertise or issue or in any way give or make any warranties, guarantees or representations as to the goods in any form whatsoever or offer to do so, which could result in liability being imposed upon the company.

The warranties, if any, provided herein and the obligations of the company hereunder are in lieu of, and the customer waives, all other warranties, guarantees, conditions or liabilities, express or implied, arising by law or otherwise, including without limitation, any obligation of the company in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the goods or the customer's premises and whether or not

occasioned by the company's negligence (gross or otherwise) or any act or omission on its part. For the purposes hereof, any reference to the company shall include its servants, agents or contractors or any other person for whose acts or omissions the company may be liable in law. This also constitutes a *stipulatio alteri* in favour of such persons the benefits of which may be accepted by them at any time.

28 INTERPRETATION

The headings in these conditions are for convenience only and are not to be taken into account for the purpose of interpreting the contract.