



## STANDARD TERMS AND CONDITIONS OF TENDER, CONTRACT OF SALE

### 1. DEFINITIONS

- 1.1 "the Goods" means the goods indicated on any company forms, price lists, quotations, Delivery notes, orders or invoices.
- 1.2 "Paramount Trailers" means Paramount Trailers Pty Ltd registration number 2012/206831/07.
- 1.3 "Current Quotation" means a quotation not older than 30 days at the date of order received, or as specified on the quotation order tender.
- 1.4 "the Customer" means the legal entity whose name appears on the document, or any relevant sales transactions documentation such as an order, quotation, invoice, or credit application.
- 1.5 "Manufacturer's Warranty" means Paramount Trailer's standard manufacturer's warranty agreement.
- 1.6 Domicile.

### 2. QUOTATIONS

- 2.1 Quotations are not offers but are invitations to the Customer to do business and Paramount Trailers may revoke these at any time or accept or reject in whole or in part any order placed upon it pursuant to the quotation.
- 2.2 A contract shall only come into force if after receipt of the Customer's order or acceptance of the quotation, Paramount Trailers confirms that such a contract has been concluded or if Paramount Trailers supplies, or tenders to supply the Goods in question to the Customer.
- 2.3 The quotation is based on rates of exchange, freight charges, insurance, railage, costs of labour and material and other charges ruling at the date of the quotation. Any variation subsequent to the date of quotation shall entitle Paramount Trailers to vary the amount of the quotation accordingly.



### **3. ORDERS**

- 3.1 Orders by the Customer of Paramount Trailers goods or services shall be made in writing and submitted through the agreed electronic media or in physical form to such Domicile as may be nominated by Paramount Trailers from time to time.
- 3.2 Orders shall constitute irrevocable offers to obtain Paramount Trailers services at Paramount Trailers usual fees and/or to purchase the goods in question at the usual prices of Paramount Trailers, and shall be capable of acceptance by Paramount Trailers by the delivery of the goods and/or provision of the services or by written acceptance or confirmation of the order.
- 3.3 Oral orders shall similarly be capable of acceptance by Paramount Trailers, but Paramount Trailers will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to make orders in writing. However, delivery of goods will not be made by Paramount Trailers before the oral order has been confirmed in writing.
- 3.4 Orders accepted by Paramount Trailers shall not be varied or cancelled by the Customer, except with the written consent of Paramount Trailers. Cancellation fees: refer to 10.2.
- 3.5 All orders placed on Paramount Trailers by the Customer shall be in terms of the conditions set herein, except for specific variations, additions and/or deletions agreed to in writing by both parties. Placement of an order or the acceptance by the Customer of the goods and/or services supplied by Paramount Trailers (whatever occurs first) shall be prima facie proof of the Customer's acceptance of these Terms and Conditions of Sale.

### **4. PRICE**

- 4.1 The price of the goods shall be the usual price current at the time of the dispatch of the goods or as otherwise specified by Paramount Trailers in writing in a Current Quotation unless otherwise stated in Paramount Trailers order confirmation.
- 4.2 Paramount Trailers reserves the right to adjust the price of its goods from time to time. Paramount Trailers will use its best endeavours to notify the Customer of price changes but it bears no liability in this regards.
- 4.3 Company price lists shall be considered as guidelines only and are subject to change or alterations without prior notification.



- 4.4 Prices exclude VAT and statutory charges or duties unless otherwise specified in writing.
- 4.5 The Customer shall be obligated to pay to Paramount Trailers in addition to the contact price herein –
- 4.5.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force after the date on which any price charged is determined;
  - 4.5.2 any price variations resulting from factors beyond the control of Paramount Trailers such as, but not limited to delays in delivery, changes in the exchange rate, steel prices, labour, freight or transport charges, customers and excise duties, handling and shipping charges, modifications or alterations to the order at the instance of the Customer.
- 4.6 Prices quoted on products or services that are imported or that contain imported content (i.e. materials, components, or sub-assemblies) shall be subject to fluctuations in relevant foreign exchange currencies until such time as Paramount Trailers is in position to secure prices and exchange rates with its suppliers or by means of a forward exchange contract, which will not be longer than 1 (one) week after an official order has been received by Paramount Trailers. Any fluctuations in these rates and the effect thereof on shipping, clearing, surcharges and transport between the date of quote and the securing of the price will be for the Customer's account.

## **5. PAYMENT AND DEFAULT**

- 5.1 Payment shall be cash on collection of the equipment or products or as otherwise specified by Paramount Trailers in writing. No rebates or discounts may be claimed or taken unless specifically agreed upon in writing by Paramount Trailers.
- 5.2 Deliveries in instalments shall be deemed to be independent transactions if invoiced separately, payable upon each delivery. In such an instance payment shall not be postponed until such time as all the goods ordered have been delivered, unless otherwise agreed upon in writing.
- 5.3 In all cases where the Customer uses a postal, banking, electronic or similar such service to effect payment, such services shall be deemed to be the agent of the Customer.



5.4 In the event of non-payment by the Customer on due date or defaulting on any other term of this Agreement, all of which are deemed to be material:

5.4.1 The whole amount in respect of all purchases by the Customer (whether or not then due and payable) shall become due, owing and payable; and

5.4.2 The Customer shall be liable to pay interest in respect of amount unpaid at the compound rate of 5% per annum above the prime overdraft lending rate of Paramount Trailers Bank from due date until date of payment, calculated daily and payable monthly in advance and should the said interest not be paid in full as aforesaid, the same shall be added to the principle sum, and the total shall form the principal debt which shall bear interest in the manner as set out above; and

5.4.3 Paramount Trailers shall have the right to suspend credit and/or deliveries and to exercise its rights in terms of clause 7.1.

5.5 The Customer shall not be entitled to claim set-off or deduction in respect of any payment due by the Customer to Paramount Trailers for goods or services supplied.

5.6 Paramount Trailers may appropriate all payments made by the Customer to such accounts of the Customer as it will in its sole and absolute discretion decide, in reduction of the Customer's indebtedness towards Paramount Trailers.

5.7 The Customer shall not be entitled to counter claim against Paramount Trailers for a debasement of account to frustrate making payment to Paramount Trailers. Furthermore, the Customer undertakes to keep a comprehensive set of books at all material times from which it will be able to ascertain its liability to Paramount Trailers without the need for any debasement.

5.8 Acceptance of a negotiable instrument by Paramount Trailers shall not be deemed to be a waiver of Paramount Trailers rights under this agreement. In relation to cheques furnished by the Customer to Paramount Trailers, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonoured.

## **6. CREDIT FACILITIES**

6.1 The Customer agrees that Paramount Trailers decision to grant credit facilities to the Customer is at the sole discretion of Paramount Trailers.



- 6.2 Paramount Trailers reserves the right to withdraw any credit facilities at any time without prior notice and the nature and extent of such facilities shall at all times be in Paramount Trailers sole discretion.
- 6.3 Despite the fact that Paramount Trailers may grant the Customer a credit facility up to a certain amount, Paramount Trailers reserves the right to increase or decrease this amount at its sole discretion. The credit limit shall not be deemed to be the limit of Customers indebtedness to Paramount Trailers.

## **7. DELIVERY AND RISK**

- 7.1 The risk in and to the goods purchased shall pass to the Customer upon collection thereof by the Customer or upon delivery thereof to the Customer's premises, or to an address nominated by the Customer, or to the carrier service transporting the goods for the Customer.
- 7.2 Delivery is deemed to take place upon notification that the product or equipment is ready for dispatch or collection. If the Customer fails to collect the goods ordered within a reasonable time period, or in any way delays the delivery of goods ordered, then the risk in the goods shall immediately pass to the Customer and the Customer shall be liable to pay Paramount Trailers the reasonable costs of storing, insuring, and handling the goods, until delivery takes place.
- 7.3 The signature of any employee, agent or representative of the carrier service on a delivery note or invoice shall be prima facie proof that the goods indicated on the document have been properly delivered to and/or received by the Customer, in good order and condition and quality.
- 7.4 The Customer shall be barred from logging any claim in respect of the condition of the goods received shortages in delivery or failure of the goods to comply with the Customer's specifications unless any defect or discrepancies is so indicated on the delivery note or invoice.
- 7.5 Where delivery to the Customer occurs by carrier the carrier shall be the Customer's agent and delivery to the carrier services is deemed to be a delivery to the customer. Paramount Trailers may engage the carrier on such terms and conditions as it deems fit, unless otherwise agreed upon in writing and the Customer shall be liable for payment of



all fees, charges, expenses and the like due to the said carrier in respect of the transport of the goods and indemnifies Paramount Trailers against it by the carrier so engaged and all liability which Paramount Trailers may incur towards the carrier arising out of the transportation of the goods.

7.6 Delivery of goods to any delivery address selected by the Customer shall constitute proper delivery of the goods, despite the fact that such address may not have been the address or premises of the Customer.

7.7 Whilst every effort will be made to dispatch goods as advised, paramount Trailers does not guarantee dispatch in any specific date and shall, notwithstanding any contrary provision in the agreement, not be liable for any damages or penalties for failure to effect delivery/despatch timeously for any reason beyond Paramount Trailers reasonable control, including but not limited to secure transport, factory workload, labour, power, materials, equipment or supplies or by reason of an act of God, war, civil disturbance, riot state or emergency, strike, lockout or other labour disputes, fire, flood, drought, legislation, international shipping schedules and Port or Custom delays. The Customer shall not be entitled to cancel any order by reason of such delay.

7.8 In the event that Paramount Trailers makes delivery to the Customer in instalments each instalment shall be deemed to be the subject of a separate contract and non-delivery of any instalment shall not affect the contracts in respect of the other instalments to entitle the Customer to cancel the other contracts relating to such instalments.

## **8. OWNERSHIP**

8.1 Notwithstanding that all risks in and to all goods sold by Paramount Trailers to the Customer shall pass on delivery, ownership in all goods sold and delivered shall remain vested in Paramount Trailers until the full purchase price in respect thereof and interest (if any) accrued thereon has been paid. In the event of a breach of these terms and conditions by the Customer, or if the Customer is sequestrated or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgement granted against it within 7 days of the date of judgement or changes the structure of its ownership, Paramount Trailers shall be entitled to take possession of the goods without prejudice to any further



- rights vested in Paramount Trailers, and is hereby irrevocably authorised to enter upon the Customer's premises to take possession of such goods without a Court order.
- 8.2 In the event of the Customer obstructing Paramount Trailers in the process of removing its goods from the Customer, necessitating the obtaining of a Court order, Paramount Trailers shall be entitled to obtain an award of costs against the Customer on the attorney and own client scale.
- 8.3 Furthermore, the Customer shall have no claim against Paramount Trailers for damages caused due to loss of profits or otherwise occasioned by the removal of goods from the Customer's premises as aforesaid notwithstanding that such removal was effected without a court order.
- 8.4 Goods in the possession of the Customer bearing Paramount Trailers' name, trademarks and labels shall be deemed to be those for which payment has not yet been made, and should any breach of these terms occur, may be repossessed by Paramount Trailers in terms of Paragraph 7.1.
- 8.5 The Customer shall fully insure the goods purchased from Paramount Trailers against loss or damage until the full purchase price has been paid by the Customer for such goods, which insurance policy will be exhibited to Paramount Trailers upon request. Pending payment to Paramount Trailers for goods purchased, all benefits in terms of the insurance policy relating to such goods are ceded to Paramount Trailers.
- 8.6 It shall not be necessary for Paramount Trailers to prove either to the Customer or the Customer's liquidator or trustee which goods in the possession of Paramount Trailers have actually been paid for and which has not been paid for.
- 8.7 Paramount Trailers shall be entitled to identify its goods merely by way of packaging and other distinguishing marks. Paramount Trailers shall not be obliged to identify its goods by way of serial numbers or any other form of intricate identification.
- 8.8 Specifically, Paramount Trailers shall be entitled to remove all goods of whatsoever nature owned by it from the Customer's premises notwithstanding that certain of such goods removed may have been paid for. The rationale for permitting Paramount Trailers to act in this manner is due to the fact that the Customer's account is in debit and after a reconciliation thereof, should it emerge that with the recovery of all goods on the premises of Paramount Trailers, the said Company is due a credit, such credit shall be





passed, or the goods equal to the value of the credit due be returned, at the discretion of Paramount Trailers.

## **9. LEGAL PROCEEDINGS AND ARBITRATION**

9.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and constructed under and in accordance with the laws of the Republic of South Africa.

9.2 Paramount Trailers has the sole option to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall bind both Company and Customer. The arbitrator must be a person agreed upon by the parties or, failing agreement, an arbitrator must be appointed by the Arbitration Foundation of South Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of SA.

9.3 Paramount Trailers shall, at its option and notwithstanding that the amount of its claim exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such court.

9.4 A certificate issued and signed by any member of Paramount Trailers, whose status and authority need not be proved, shall be prima facie proof of the amount of the Customer's indebtedness to Paramount Trailers or in respect of any other fact, including the fact that such goods were sold and delivered, or purposes of obtaining judgement, provisional sentence, summary judgement or any other relief against the Customer.

9.5 The Customer's physical address as provide for on the Tax Invoice, shall be recognised as the Customer's domicilium citandi et executandi (domicilium) for all purposes in terms of this agreement, whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature.

9.6 The Customer shall pay all legal costs, including attorney/own client costs, tracing agent's fees and collection charges which Paramount Trailers may incur in taking any steps pursuant to any breach or enforcement of these terms and conditions by the Customer.





## 10. RETURNED GOODS

Goods sold by Paramount Trailers are not returnable save at the option of Paramount Trailers. Should Paramount Trailers in its absolute discretion elect to accept the return of any goods, the following shall apply –

- 10.1 All goods returned must be complete, clean, saleable and undamaged and, where applicable, in their original packaging.
- 10.2 The value of credit for goods returned will be calculated at the invoice value when the goods were purchased, less 15% handling and re-stocking fee.
- 10.3 The relevant sales department must be notified of relevant invoice, packing slip and batch numbers before any claim will be considered.
- 10.4 All goods are to be returned at the Customer's expense and the risk in the goods remains with the Customer until the goods are received by Paramount Trailers.

## 11. WARRANTIES, INDEMNITY AND LIMITATION OF LIABILITY

- 11.1 Warranty on the goods is limited to the Manufacturer's Warranty, a copy of which is available upon request. All other warranties express or implied, including any warranty that the goods are fit for a particular purpose are expressly excluded. Paramount Trailers' liability for any breach of warranty shall be limited to and fully discharged by Paramount Trailers when it supplies, free of charge, goods replacing those found to be defective. Paramount Trailers decision as to whether goods are defective or not shall be binding on the Customer and any end-user of purchaser thereof.
- 11.2 Paramount Trailers shall not be liable for any loss or damages whether direct, indirect, consequential or otherwise (Including, without limitation, loss of profits and loss of use) suffered by the Customer or any third party as a result of any cause arising in connection with any dealings between Paramount Trailers and the Customer (Including, without limitation the execution of the order, the supply of the goods, the use of the goods, late completion and any cause arising from anything done or not done pursuant to the contact) whether such loss or damages results from breach of contract (whether fundamental/material or otherwise), delict, negligence or any other cause without limitation.



- 11.3 If, despite the limitations contained herein or made elsewhere, Paramount Trailers shall be held and found liable for breach of contract or otherwise, such liabilities will not exceed in the aggregate of actual damages, costs, fees and expenses capable of being awarded to the Customer, the total price paid or due to be paid by the Customer for the services rendered of goods supplied.
- 11.4 Paramount Trailers gives no warranty, express or implied, nor any representation that the goods sold by Paramount Trailers are suitable for the purpose for which they have been ordered.
- 11.5 Any advice or opinion given by Paramount Trailers employees for the Customer's benefit only and Paramount Trailers accepts no responsibility for any damages that the Customer may occur as a result of the Customer relying upon such advice.

## 12. SECURITY FOR OBLIGATIONS

Paramount Trailers reserves the right to require satisfactory security from the Customer for the due performance of any of the Customer's obligations, including but not limited to the payment of the purchase price. Paramount Trailers may require that the Customer shall deliver, at its own costs, confirmed irrevocable Letters of Credit or guarantees by financial institutions acceptable to Paramount Trailers and upon terms acceptable to Paramount Trailers. If such security or guarantees or letters of credit are not furnished within 7 (seven) days after any such demand, Paramount Trailers shall be entitled to withdraw from the contract in whole or in part.

## 13. GENERAL

- 13.1 Paramount Trailers reserves the right in its sole discretion to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the Customer from the time that the Customer is notified thereof. Any subsequent dealings shall be on Paramount Trailers amended terms and conditions.
- 13.2 This contract represents the entire agreement between Paramount Trailers and the Customer and shall govern all future contractual relationships between Paramount Trailers and the Customer and shall be applicable to all debts which the Customer



- may owe to Paramount Trailers prior to the Customer's signature hereto.
- 13.3 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a Director of Paramount Trailers. No agreement, whether consensual or unilateral or bilateral, purporting to obligate the Company to sign a written agreement to amend, alter, vary, delete, add, or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of Paramount Trailers.
- 13.4 No Warranties, representations or guarantees have been made by Paramount Trailers or on its behalf which may have induced the Customer to sign this document.
- 13.5 No relaxation or indulgence which Paramount Trailers may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of Paramount Trailer's rights in terms of any Contract.
- 13.6 The Customer shall not cede its rights nor assign its obligations in respect of any of its contractual relationships with Paramount Trailers.
- 13.7 Paramount Trailer shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of any of its contractual relationships with the Customer to any third party without prior notice to the Customer.
- 13.8 The Customer undertakes to notify Paramount Trailers within 7 (seven) days of any change of address or any changes in the information as set out in this agreement.
- 13.9 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement.
- 13.10 Each of the terms herein, shall be a separate and divisible term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 13.11 Provided that they do not conflict with any of the terms and conditions contained herein, such general practices, term and conditions applicable to the industry or profession in which Paramount Trailers conduct business shall be applicable to all dealings between Paramount Trailers and the Customer.