

TERMS & CONDITIONS OF SALE

1. INTERPRETATION

1.1. For the purposes of these terms and conditions, unless the context otherwise indicates, the following words will have the following meanings, namely:

- 1.1.1 **“this agreement”** means the terms and conditions set out herein;
- 1.1.2 **“day”** means a business day and, for the purposes of the calculation of any time period provided for in these terms and conditions, will include everyday other than a Saturday, Sunday or official public holiday in the RSA;
- 1.1.3 **“delivery address”** means the address specified in the invoice, at which the Purchaser will accept delivery of the products and/or service;
- 1.1.4 **“products”** means items which are stocked, manufactured, imported or locally sourced and supplied by Syam Distributors cc.
- 1.1.5 **“incoterm”** means the international sales terms published by the International Chamber of Commerce in 2000;
- 1.1.6 **“international transaction”** means purchases made by customer resident / registered outside of the RSA;
- 1.1.7 **“local transactions”** means purchases made by customers resident / registered in the RSA;
- “invoice”** means the VAT invoice describing the products sold, incorporating this agreement.
- 1.1.8 **“parties”** means the Seller and the Purchaser and **“party”** means one of them;
- 1.1.9 **“RSA”** means the Republic of South Africa;
- 1.1.10 **“sale”** means the sale transaction effected pursuant to the placing and acceptance of an order of the products in terms of this agreement;;
- 1.1.11 **“statement”** means a statement of account corresponding to the invoice;
- 1.1.12 **“VAT”** means Value-Added Tax, as levied in terms of the Value Added Tax Act 89 of 1991, as amended; o
- 1.1.13 **“Purchaser”** means the entity identified as such in the invoice;
- 1.1.14 **“Seller”** means Syam Distributors CC
- 1.1.15 **“services”** means any services offered by the Seller with regard to the products, including the installation thereof.
- 1.1.16 **“shipping document”** means the invoice, bill of lading or other document applicable to any shipment of the products.

2. PRICE ESTIMATES AND QUOTATIONS

2.1. The Seller's prices and specific remarks are determined as per the Seller's quotation when applicable. Quotations are given by the Seller in writing, excluding VAT, and are valid for a period of 30 days and are subject to prior sale. Unless provided for in writing, any price estimate provided by the Seller in respect of any products is given for guidance purposes only. The Seller may, at any point prior to having received a purchase order pursuant to a quotation, revoke such quotation without notice to the Purchaser.

2.2. Quotations are submitted and orders are only accepted subject to the following terms and conditions, unless otherwise agreed by the parties in writing. Any advice given by the Seller in respect of goods, or similar respect, is given free of charge, and the Seller does not guarantee the correctness or accuracy thereof.

3. PLACEMENT, ACCEPTANCE AND PAYMENT OF ORDERS

3.1. All orders shall be placed with the Seller by the Purchaser via telephone, fax or email. The order shall include a reference to the Seller's quotation and/or a complete description of the products and quantity thereof required and any additional requirements of the Purchaser.

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- 3.2. The Purchaser shall make payment of the required deposit amount as stipulated in the quotation on the issuing of the order. No order will be processed until the deposit amount has been received by the Seller into its nominated bank account, unless otherwise agreed to in writing by the Seller.
- 3.3. Delivery dates as per the quotation are indicative only and are subject to the current workload at the time of the quotation. Should an order arise from this quotation it shall be the responsibility of the Purchaser to fix a delivery date with the Seller. Should the Purchaser not do this then the quoted delivery date will be accepted as an indication only of when the goods are required.
- 3.4. The seller will endeavour to meet the quoted delivery date, however the Seller's failure to do so shall not give rise to any claim for damages or consequential loss for any cause whatsoever arising and shall not entitle the Purchaser to cancel the order.
- 3.5. No products will be dispatched or delivered to the Purchaser as well as services been completed or commissioned prior to full payment been received by the Seller into its nominated bank account, unless otherwise agreed to in writing by the Seller.
- 3.6. All amounts due by the Purchaser to the Seller will be paid by the Purchaser in full, free of bank exchange and without deduction or set off.
- 3.7. All overdue amounts shall bear interest at the maximum permissible rate of interest as determined by legislation from time to time. In the event of any amount owing by the Purchaser falling into arrears, the Seller shall have the right to appropriate any payment received, firstly toward interest, then costs and thereafter in reduction of the capital amount owing.
- 3.8. The Purchaser agrees that in the event of an invoice or any portion thereof being disputed, the Purchaser shall forthwith pay the full outstanding amount, without deduction or set off, whatsoever in nature according to the agreed terms of payment.
- 3.9. The Purchaser hereby consents to the recording, in any manner whatsoever, by the Seller of all telephone calls pursuant to clause 3.1, and that such recordings, in whatsoever form, will be *prima facie* proof of the orders to which they relate.

4.0. EXECUTION OF ORDERS

- 4.1. The Seller shall reasonably endeavour to execute the Purchaser's order within two days of receipt of payment in terms of clause 3.2 above. The Seller's failure to execute a purchase order within two days as aforesaid, shall not give rise to any claim for damages or consequential loss for any cause whatsoever arising and shall not entitle the Purchaser to cancel the order.
- 4.2. The Seller and the Purchaser, where necessary, shall each appoint agents to attend to the delivery and collection, respectively, of the goods ordered by the Purchaser.

5.0. OWNERSHIP AND RISK

- 5.1. In respect of local transactions, notwithstanding delivery of any products and transfer of possession thereof to the Purchaser, ownership therein will remain vested in the Seller until such time as payment has been received by the Seller in full, , together with any interest thereon.. All risk in the products will, however pass to the Purchaser on deliver of the products to the Purchaser.
- 5.2. Notwithstanding **clause 5.1**, the Purchaser shall be responsible for insuring all products being delivered to it from the moment the products leave the possession of the Seller.

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5.3. In respect of international transactions, the transfer of possession and risk in products and the responsibility for insuring the products will occur in accordance with the specific incoterm reflected on the relevant invoice and/or contract.

6.0. BREACH AND ORDER CANCELLATION

6.1. Cancellation of orders by the Purchaser prior to dispatch of products will be accepted at the sole discretion of the Seller and may be subject to a cancellation fee, as imposed by the Seller in its sole discretion. All order cancellations and the terms thereof will be agreed to in writing should the Seller elect to accept an order cancellation.

6.2. Custom or specifically imported products may under no circumstances be cancelled 3 working days after the Purchaser's deposit payment been received into the bank account of the Seller.

6.3. The Purchaser agrees and acknowledges that if the Purchaser breaches any term of this agreement, fails to pay any amount on the due date, suffers any civil judgement to be taken or entered against it, causes a notice of surrender of its estate to be published in the terms of the insolvency Act 24 of 1936, as amended, dies and/or is placed under any order of provisional or final sequestration, winding up or judicial management, as the case may be, then all amounts owing to the Seller by the Purchaser will immediately become due and payable. The Seller may, without detracting from the Seller's right to claim damages and any other remedies which may be available to it-

6.3.1 summarily cancel any sale without notice to the Purchaser. The Purchaser consents to the Seller repossessing any products supplied to, but not paid for in full by the Purchaser, and the Purchaser hereby waives any right it may have for the spoliation order against the Seller in the event that the Seller takes possession of any products in terms hereof;

6.3.2 claim specific performance of all of the Purchaser's obligations, whether or not such obligations would otherwise then have fallen due for performance,

7. DELIVERY

7.1. A delivery note signed by the Purchaser or its employee or its duly authorized agent or representative, or a shipping document signed by the shipping agent (meaning the person engaged by the seller to ship the relevant goods), will constitute *prima facie* proof that the products specified therein or in the corresponding invoice have been delivered to and received, in sufficient quantity and in satisfactory condition, by the purchaser.

7.2. Notwithstanding anything to the contrary:

7.2.1. the obligation to supply products will in all cases be conditional upon the availability of the products ordered as well as the timely receipt by the Seller of all drawings, designs and/or specifications that may be required by the Seller from the Purchaser, provided that such will be deemed to have been provided to the Seller for the purpose of description only and will not form part of the sale;

7.2.2 unless otherwise agreed between the parties, the seller shall make the products available for collection by the purchaser at the Seller's premises.

7.2.3 where delivery is offered and quoted for it will be quoted as "ONE MAN KERBSIDE" and does not include unpacking, handling, assembly and installation unless agreed to in writing and quoted accordingly.

7.2.4. time will not be of the essence of any sale. Delivery dates are to be treated as estimates only. Under no circumstances may a purchaser withdraw from or terminate any sale on account of any

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delay in delivery or have any claim of any nature whatsoever against the seller arising from late delivery; and

7.2.5. the seller shall not under any circumstances whatsoever be liable for any damages of any nature whatsoever (including, without, limitation, any indirect, consequential or special damages or loss of profit) which the purchaser may suffer as a result of any delay in the delivery of the products ordered.

7.3. in the event of there being any defect or query relating to products delivered, such defect or query shall be brought to the attention of the Seller in writing within 48 hours of the date stated on the delivery note, failing which, all products shall be deemed to have been received by the Purchaser free of any defect whatsoever in nature.

7.4. The Seller shall not, under any circumstance, be liable for any defects, shortages in delivery or non-compliance of goods with the Purchaser's specification, and the Purchaser shall not withhold any payment in respect of such goods from the Seller pending the resolution of any dispute or complaint. Subject to the foregoing, the Seller may, at its discretion, remedy any failure by replacing such goods or, should the Seller so require, by refunding all or part (as the case may be) of the contract price paid in respect thereof after return of such goods to the Seller.

8. LIMITATION ON PURCHASERS

8.1. The Seller may in its sole and absolute discretion place a limitation on the value of any purchase/s made / to be made by the Purchaser from time to time, and shall be entitled to withdraw, amend or vary such limitation at any time without prior notice should the Purchaser have agreed payment terms with the Seller.

9. CREDIT INFORMATION

9.1. The Purchaser consents to the Seller making enquiries about the Purchaser's credit record with any credit agency or other party. The Seller may also provide credit reference agencies with regular updates regarding the manner in which the Purchaser conducts its accounts including any failure to comply with these terms and conditions. The Purchaser further consents to such credit reference agencies making the Purchaser's credit record and details available to other credit grantors.

10. RETURN OF PRODUCTS

10.1. Products may be returned by the Purchaser at the Seller's sole discretion, provided that such products are unused, still has the protective PVC coating on properly and is still in the original undamaged packaging and done so in writing by the Seller. The return of products shall be subject to a minimum 20% handling charge. Photos of the products may be requested from the Purchaser to establish their condition. The Purchaser shall be liable for all costs of delivery to the Seller's designated premises. Upon return, the products will be subject to a final inspection and acceptance by the Seller's QA/QC department. Should the return of these products arise to a refund the terms of the refund will be agreed to in writing by the Seller.

11. WARRANTIES, REPRESENTATIONS AND EXCLUSIONS OF LIABILITY

11.1. The products are supplied with Operator's Manuals. The Purchaser agrees to read and understand the Operator's Manual for safe use and operation. Where products supplied by the Seller are covered by a warrantee, the warrantee will be according to the terms and conditions of a warrantee specific to the item reflected in the Operators Manual.

11.2. Save as otherwise specifically provided herein, the Seller shall not be liable to the Purchaser or to any other person for any indirect or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever, whether in the contemplation of the parties or not, which the

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Purchaser may suffer as a result of any breach by the Seller of any of its obligations under these terms and conditions or out of any other cause whatsoever. The Purchaser hereby indemnifies the Seller against any claim made against the Seller by any other person in respect of any matter for which the liability of the Seller is excluded in terms of the foregoing.

- 11.3. When the Seller is required to manufacture and/or supply products in accordance with the Purchaser's specifications and/or drawings, or carries out work according to the Purchaser's direct instructions or those of its nominees, the Seller accepts no responsibility for the efficiency or workability of goods so manufactured and/or supplied or work so carried out, and the Purchaser shall not be entitled to return such products and/or to request a refund of any amount paid for such products.
- 11.4. Should the Purchaser have any complaint of whatsoever nature concerning any products which are not manufactured or supplied by the Seller directly, the Purchaser shall have no claim against the Seller in respect of the products sold and complained of and indemnifies the Seller against any such claims accordingly. The Purchaser shall not for any reason whatsoever withhold payment from the Seller in respect of such products
- 11.5. Appliance(s) requiring a fixed gas installation must be installed by a Registered SAQCC Gas Practitioner strictly in accordance with the Operators Manual supplied and SANS 10087-1 for LPG or SANS 827 for NG.
- 11.6. The Seller will not bear any responsibility for any claim, in whole or part, upon from the Purchaser's unauthorised modification of the products or from any combination, operation or use of the products with other products or services not approved by the Seller.
- 11.7. When the Seller is contracted to carry out installation or site work the Purchaser shall ensure that water or any other type of piping, cabling or system is clearly marked and indicated. The Seller shall not be held liable for any damage occur to such items during the installation of any products.
- 11.8. The Purchaser shall ensure that all valuables, furniture, ornaments, breakables or any other goods in the vicinity of the work being performed by the Seller, are moved, covered or protected by the Purchaser prior to the arrival of the Seller at the Purchaser's premises. The Seller shall not be held liable for any loss or damage caused to any such items.

12. ACTS OF GOD

- 12.1. The Seller shall not be liable to the Purchaser, or any other party, for any inability to perform (in full or in part) and/or any delay in performing in terms of this agreement should such inability or delay arise from any cause beyond the reasonable control of the Seller, which causes will include (without limitation) strikes, lockouts, labour disputes, accident, plant and/or machinery and/or equipment breakdowns, fire, explosion, theft, war (whether declared or not), invasion, acts of foreign enemies, hostilities, riots, flood, earthquake, lightning, acts of local and national government, martial law, failure or delay on the part of the Seller's suppliers of services and/or products to meet delivery dates or by the Seller or its agents to provide the Purchaser with free issue materials or specifications or defects or changes in such specifications.

13. LEGAL PROCEEDINGS

- 13.1. The law governing this agreement, including without limitation, its interpretation, validity, existence or termination for any reason and all disputes out of this Agreement, is the law of the Republic of South Africa.
- 13.2. Any action or proceeding that the Seller may institute against the Purchaser may, at the option of the Seller, be instituted in Magistrate's Court having jurisdiction over the Purchaser, notwithstanding that the amount in dispute in such action or proceedings is beyond the ordinary

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jurisdiction of such court. This clause constitutes consent in writing to such Court's jurisdiction in terms of s 45(1) of the Magistrate's Courts Act 32 of 1944, as amended. Notwithstanding the foregoing, the Seller may, in its sole discretion, institute any action or proceedings in connection with the sale in any other Court of the RSA having jurisdiction. All costs, charges and expenses of any nature whatever that may be incurred by the Seller in enforcing its rights in terms of these terms and conditions, including (without limitation) legal costs on the scale of attorney and own client, collection commission and counsel's fees as per brief, irrespective of whether any proceedings have been instituted or not, will be recoverable from the Purchaser and be payable on demand.

13.3. A certificate issued under the hand of any director or manager of the Seller (whose appointment need not be proved) as to the existence and the amount of the Purchaser's indebtedness to the Seller at any time, as to the fact that such amount is due and payable, the amount of the interest accrued thereon and as to any other fact or matter relating to the Purchaser's indebtedness to the Seller, will be prima facie proof of the contents and the correctness thereof for the purposes of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the Purchaser in any competent court and will be valid as a liquid document for such purpose.

14. PRODUCTS AND INSTALLATION

14.1. Permits have been issued by the LPGSASA for the Seller's gas appliances confirming testing and compliance to SANS 1539.

14.2. For safe and proper operation of gas appliances, ventilation requirements in the Owner's manual and SANS 10087-1 (LPG) or SANS 827 (NG) must be adhered to.

14.3. A Natural Gas (NG) conversion is required for appliances installed to operate on NG. For gas fireplaces (Indoor & Outdoor) the Seller must be advised of this in order to carry out the NG conversion prior to dispatch of the goods. For barbecue braais, the conversion kit is packed with the appliance and should be fitted by your SAQCC Registered Gas Practitioner.

14.4. Built-in fireplaces can be flued with compatible flue attachments and kits available as an accessory from the Seller. Only gas fireplaces that are flued may be installed in bedrooms and bathrooms.

14.5. Where appliances require an electrical power supply point, this must be provided for by the Purchaser. The positioning of the power point should be discussed with a representative of the Purchaser. No electrical work is offered by the Seller.

14.6. Where installation is offered and waterproofing needs to be carried out, it is done using available products (Flash Harry or similar) in line with the product's instructions. The waterproofing once done should be maintained in accordance with the product instructions by the Purchaser. No warranty is offered on waterproofing.

14.7. Where the installation of products has been ordered by the Purchaser and the order entails work to be carried out or modifications to fixed structures such as cutting into, chasing, trenching, drilling, core drilling or similar work into walls, floors, roofs and slabs the onus is on the Purchaser to ensure compliance with the relevant building standards and codes and approved by the responsible engineer if required. The Purchaser further agrees that it is their responsibility to check, indicate and advise where wiring, concealed pipework, steel beams or structures, reinforcing or similar items are in the areas where work will be carried out in order to prevent damage to these. Should any of the above be damaged while the contracted work is being carried out save as otherwise specifically provided herein, the Seller shall not be liable to the Purchaser or to any other person for any direct, indirect costs or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever, whether in the contemplation of the parties or not, which the Purchaser may suffer as a result of any work carried out by

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the Seller of any of its obligations under these terms and conditions or out of any other cause whatsoever. The Purchaser hereby indemnifies the Seller against any claim made against the Seller by any other person

14.8. When products require any kind of work such as building work etc. to be done in order for them to be installed, built-in drawings are available on request or on the Seller's website and need to be followed. Unless otherwise agreed between the parties, the Seller does not take any responsibility for this type of work.

14.9. Specifications are subject to change without prior notice.

14.10. If a call out is requested after the order has been supplied and installed, the Seller's "Call Out" procedure process must be followed.

15. NOTICES AND SERVICE

15.1. The Purchaser nominates as its address for service of any court process or documents, the giving of any notice or the making of any other communication of whatsoever nature arising from the sale and/or these terms and conditions, the delivery address and fax addresses reflected on the invoice.

16. GENERAL

16.1. No relaxation or indulgence which the Seller may grant to the Purchaser will constitute a waiver of the rights of the Seller and will not preclude the Seller from exercising any rights which may have arisen in the past or which may arise in the future.

16.2. The invoice together with this agreement constitutes the sole record of the agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

16.3. No addition to or variation of the invoice or this agreement will be of any force or effect unless in writing and signed by or on behalf of the Seller.

16.4. The Seller may, at any time, and without notice to the Purchaser, cede any right, title or interest conferred upon, or delegate any obligation assumed by, it in terms of the invoice. The Purchaser, however, cannot do so without first obtaining the Seller's written consent.

16.5. The invalidity and/or unenforceability of any of the provisions of this agreement and the invoice will not affect the validity or the enforceability of the remaining provisions thereof and the invalid and/or unenforceable provision/s will be severable from the invoice and/or agreement.

16.6. Each party undertakes to procure that the provisions of this agreement and the invoice will be binding upon any successor-in-title and any permitted assign of such party.

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