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July 2024

## **FREEDOM WON: STANDARD TERMS AND CONDITIONS OF TRADE**

In these terms and conditions the goods mean the goods as indicated on any company forms, price list, quotation orders, delivery notes or invoices.

### **1. PRICES AND QUOTATIONS**

- 1.1. The price of the goods sold or services rendered shall be the usual price as set out in the Freedom Won price list at the time of the sale of the goods.
- 1.2. Freedom Won has the right to change the prices of the goods from time to time on at least 2 (two) weeks' prior notice to the customer. Such amended prices shall not affect the price of any products which are the subject matter of any order which has already been placed by the customer with Freedom Won, and which has been accepted in writing by Freedom Won.
- 1.3. All quotes remain valid for 2 (two) weeks from the quote date. The validity of any quote is subject to availability.
- 1.4. Unless otherwise expressly stated, prices are exclusive of value added tax, which shall be for the account of the customer.

### **2. PAYMENT**

- 2.1. Payment is due immediately upon receipt of invoice, save if alternative payment arrangements have been agreed to in writing by Freedom Won.
- 2.2. An order may only be considered firm and confirmed for the purposes of securing availability and lead times once the required payment has been made, save if alternative payment arrangements have been agreed to in writing by Freedom Won.
- 2.3. The payment terms applicable are as noted on the quote and invoice, save if alternative payment arrangements have been agreed to in writing by Freedom Won.
- 2.4. The customer has no right to withhold payment or make set offs or deductions from any payment due by it for any reason whatsoever. No extension of payment of any nature will be granted unless reduced to writing and signed by the customer and a duly authorised representative of Freedom Won.
- 2.5. If any amount owed is not settled in full (a) on due date (b) on demand, Freedom Won is entitled to, without prejudice to any of its rights to exercise its rights in terms of clause 6;
- 2.6. Should any amount not be paid by the customer on due date, the full outstanding amount in respect of all purchases by the customer shall become due and payable, and the customer shall be liable to pay interest in respect of amount unpaid at the rate of a 5% (five percent) above the prime overdraft rate of Standard Bank Limited on all overdue amounts nominal annual compounded monthly in arrear from due date until date of payment, calculated and payable monthly in advance.
- 2.7. Freedom Won reserves the right to suspend service and repairs of goods including warranty services to a customer if any amount due by the customer is unpaid or overdue.

### **3. ORDERS**

- 3.1. Orders may be sent to Freedom Won in writing and/or verbally. All such orders and any variations to orders will be binding, subject to these standard terms and conditions and may not be varied or cancelled without prior written consent from Freedom Won. Freedom Won will not be responsible for any errors or misunderstandings occasioned by the customer's failure to make the order in writing. Freedom Won may require the customer to confirm verbal orders in writing before acceptance of such orders by Freedom Won.
- 3.2. Orders shall constitute irrevocable offers to purchase the goods in question at the usual prices of Freedom Won as at the date when the customer places the order of the goods, and shall be capable of acceptance by Freedom Won by the delivery of the goods, written acceptance or confirmation of the order. For the avoidance of doubt, Freedom Won will accept or reject an orders within 5 (five) business days of receipt of such order. Should Freedom Won fail to accept or reject any order within the aforementioned 5 (five) Business Day period, it will be deemed to have accepted this placed order.
- 3.3. The estimated lead time applicable to an order is as per that noted on the quote or invoice.

#### **4. COLLECTION/DELIVERY**

- 4.1. Any collection note (copy or original) signed by the customer and/or its authorized representative and/or its nominated agent and held by Freedom Won, shall be *prima facie* proof that the customer collected the product/s and accordingly that delivery was made to the customer. Freedom Won shall not be obliged to establish the authority of any person sent by the customer, or purporting to be sent by the customer, to collect the products from Freedom Won.
- 4.2. Freedom Won shall be entitled to split the collection batches of the goods ordered in the quantities and on the dates it decides, with the prior consent of the customer, which consent shall not be unreasonably withheld.
- 4.3. The customer shall be responsible for transport of the goods and indemnifies Freedom Won against any claims of any nature that may arise after Freedom Won has loaded the goods. Where Freedom Won has loaded the goods onto the customer arranged transport, all handling and transport risks, revert to the customer the moment the goods have been placed onto the customer's vehicle. In cases where Freedom Won is unable to load the goods for reasons of weight – i.e. containers that require a crane – the customer is required to make all arrangements for loading. In such cases all handling risks transfer to the customer the moment the goods first leave the ground for the loading process.
- 4.4. Freedom Won does not guarantee that the goods will be available for dispatch on any particular date and time, and the customer shall have no claim against Freedom Won in respect of any loss occasioned by any reasonable delay in availability for collection of any goods ordered and/or services rendered, nor may the customer cancel any order by reason of such reasonable delay.
- 4.5. Freedom Won will provide frequent updates to the customer on the status of the orders which it has placed, including the estimated completion dates for such orders on request, but no more frequently than every 2 (two) weeks.
- 4.6. All goods taken on an evaluation, approval or demonstration basis or all goods taken on consignment by the customer are deemed sold to the customer within 7 (seven) days of issue if not returned to Freedom Won in a perfect condition in the original packaging and with all accessories and manuals intact.
- 4.7. The customer shall, and shall ensure that its customers shall, comply with and conform to all applicable laws relating to the possession, use and maintenance of the products.

#### **5. OWNERSHIP AND RISK**

- 5.1. All possession of, and risk in and to all goods sold by Freedom Won to the customer shall pass to the customer on collection thereof by the customer. The customer accepts within 30 (thirty) calendar days of receipt of the goods at its premises that the services and goods were inspected and that the customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects<sup>1</sup>.
- 5.2. Ownership in all goods sold and delivered shall remain vested in Freedom Won until the full purchase price has been paid.
- 5.3. The customer shall fully insure the goods purchased from Freedom Won under a product liability insurance policy for an insured amount which is acceptable to Freedom Won, against loss or damage until the customer has paid the full purchase price for such goods. Pending payment to Freedom Won for goods purchased, all benefits in terms of the insurance policy relating to the insurance of such goods, shall be ceded to Freedom Won and/or Freedom Won shall be named as co-insured in this insurance policy/ies. The customer shall furnish Freedom Won with a copy of the product liability insurance policy, so that Freedom Won can provide the customer with its confirmation that it is satisfied with the insurer/s, the nature of the cover, the levels of the cover and the terms of the insurance policy. If an insured event occurs under the aforementioned insurance policy/ies, the customer shall notify Freedom Won of such event within 5 business days of the occurrence thereof and will afford Freedom Won an opportunity to participate in the claims process. The customer must not do or pursue any act, or permit or suffer any circumstances, by which the insurance policy may at any time become void or voidable, and the customer must always and at its own expense comply with the conditions of the insurance policy, including the requirements of the insurer to prevent the invalidation of the insurance policy or the prejudice of the rights of any of the insured parties thereunder.
- 5.4. The customer shall inform the landlord of the premises at which the goods are kept that such goods are the sole and absolute property of Freedom Won until such time as the customer has paid the full purchase price to Freedom Won.

#### **6. BREACH OF CONTRACT**

- 6.1 Save as specifically provided for in these terms and conditions:
  - 6.1.1 in the event of a breach of these terms and conditions by the customer, should the customer fail to remedy such breach within 30 (thirty) calendar days after receipt of notice to that effect from Freedom Won; or

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<sup>1</sup> A "defect" is an abnormal imperfection in a product that (i) destroys or substantially impairs its utility or effectiveness for the purpose for which it is generally used; or (ii) renders it unfit for the special purpose for which it was intended to be used by the ultimate purchaser, provided that Freedom Won had actual knowledge of that special purpose, such that a reasonable person with knowledge of the defect would not have purchased the product, taking account of (a) the class, category or type of product, where the abnormal attribute is one that a reasonable person would not expect to find in that class, category or type of product; and (b) the purpose for which it is generally used or a specific purpose for which it is sold and of which both the customer and Freedom Won are or are deemed to be aware.

- 6.1.2 if the customer fails to pay any amount to Freedom Won which is due and payable in terms of this agreement on the due date for such payment; or
- 6.1.3 if the customer is sequestrated or placed under liquidation or enters into business rescue or performs any act of insolvency or enters into a compromise with its creditors; or
- 6.1.4 fails to satisfy a judgement granted against it within 30 (thirty) calendar days of the date of judgement or within such longer period as may be permitted in terms of the judgement; or
- 6.1.5 there is a change of control<sup>2</sup> in respect of the customer without notification to Freedom Won in terms of clause 13.7, Freedom Won shall be entitled without prejudice to its rights in law or in terms of this agreement:
  - 6.1.5.1. to terminate any agreement between Freedom Won and the customer; and
  - 6.1.5.2. to cancel any outstanding sales of products or provide the customer with a reasonable period of time (which period shall be no longer than 90 (ninety) days) within which to sell the customer's remaining stock of the products (and to comply with any obligations, the due date for performance of which falls during the aforementioned period from termination date); and
  - 6.1.5.3. (i) in the circumstances contemplated in 6.1.2, or (ii) if a customer does not sell the customer's remaining stock of the products within the reasonable period of time granted to it by Freedom Won (as contemplated in 6.2) and for purposes of Freedom Won, in its sole and absolute discretion, refunding the customer the price paid by the customer for such goods, provided that such products are in the same condition as at the date on which they were sold by Freedom Won to the customer, the customer is obliged to return to Freedom Won as soon as reasonably possible, or Freedom Won shall be entitled to take possession of, any products delivered to the customer, and Freedom Won is hereby irrevocably authorised to enter upon the customer's premises to take delivery of such products without a court order. The customer shall be obliged to ensure that in each contract which it concludes for the disposal of the products, provision is made for the assignment of the customer's rights and obligations thereunder to Freedom Won at Freedom Won's option in the event of a cancellation or termination of an agreement between Freedom Won and the customer in the circumstances contemplated in 6.1.2; or

If Freedom Won does not exercise its right to cancel outstanding orders in terms of clause 6.1.5.2, and should the customer wish to sell any such stock of the products to Freedom Won, Freedom Won shall be entitled to purchase such products at a price which is equal to the price at which the customer purchased such products from Freedom Won, plus 5% (five per cent) of such price, as well as any reasonable shipping costs applicable to the transport of any such products to Freedom Won, provided that such products are in the same condition as at the date on which they were sold by Freedom Won to the customer.

## 7. LEGAL PROCEEDINGS

- 7.1. These terms and conditions shall be governed and constructed under and in accordance with the law of the Republic of South Africa.
- 7.2. Freedom Won shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought exceeds the jurisdiction of the Magistrate's Court be entitled to institute action out of such court.
- 7.3. A certificate issued and signed by any director, member or manager of Freedom Won, whose authority need not be proved, in respect of any indebtedness of the customer to Freedom Won or in respect of any other fact, including but without limiting the generality of the foregoing, the fact that such goods were sold and delivered, shall be *prima facie* proof of any amount payable by the customer to Freedom Won and the customer's indebtedness to Freedom Won, including (but not limited to) provisional sentence and summary judgment and *prima facie* proof of delivery of the goods in terms of this contract.
- 7.4. A print out of computer evidence tendered by Freedom Won shall be admissible evidence and the customer shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.
- 7.5. The customer's address which appears in the the Business Partner Application form shall be recognised as the customer's domicile for all purposes in terms of this contract whether in respect of the serving of any court process, notices that payment of any amount or communications of whatever nature.
- 7.6. In the event of the customer breaching any of its obligations and/or failing to make payment of any amount to Freedom Won in time, the customer agrees to pay, and shall be liable to pay, all legal costs incurred by Freedom Won in enforcing its rights in terms of these terms and conditions on the attorney/own client scale including collection charges, tracing agent's fees and air fares.
- 7.7. The customer agrees that neither Freedom Won nor any of its employees will be liable for any negligent or innocent misrepresentations made to the customer, nor shall the customer be entitled to resile from these terms and conditions on those grounds.

## 8. ARBITRATION

- 8.1. Freedom Won may refer any dispute arising from or in connection with this contract to arbitration which arbitration award shall be final and binding on the customer and Freedom Won.
- 8.2. The arbitrator will be a person agreed upon by the parties or failing agreement, appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules

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<sup>2</sup> "control" as contemplated in section 2(2) of the South African Companies Act, 2008.

of the Arbitration Foundation of Southern Africa.

## **9. RETURNED GOODS**

- 9.1. Freedom Won is under no obligation to accept the return of goods, but the customer may apply to Freedom Won for permission to return goods to Freedom Won and if written permission is given – such goods must be returned to the offices of Freedom Won at the customer's own cost.
- 9.2. The customer may return any defective goods to the premises of Freedom Won or its nominee at the customer's own cost. Where the return of goods to the offices of Freedom Won is not feasible taking into account considerations such as the distance between the location of the goods and the offices of Freedom Won and the fact that the goods have been installed and/or the weight of the goods, Freedom Won may arrange, at the customer's cost, for the goods to be investigated and inspected by Freedom Won at the place at which the goods are located. Freedom Won shall reimburse the customer for Freedom Won's investigation and inspection costs, including travel, if the customer's claim under the warranty for such goods is approved by Freedom Won. After completion of its investigation and inspection of the relevant goods, Freedom Won shall determine whether the customer's claim under the relevant warranty for the goods is a legitimate claim such that it satisfies the requirements of that warranty for a valid claim. If Freedom Won determines that the customer's claim is legitimate, Freedom Won may, in its sole and absolute discretion, replace such goods with items of the same or similar specification, or refund the customer the price paid by the customer for such goods, or repair such goods.
- 9.3. Upon approval of a warranty claim Freedom Won will refund the customer for transport expenses according to standard tariffs.
- 9.4. Freedom Won reserves the right to offset the value of any goods accepted for return against any amounts due by the customer.
- 9.5. In the event of a cancellation of an order by the customer or goods accepted for return by Freedom Won, Freedom Won reserves the right to charge a handling fee on the value of the order cancelled or goods returned.

## **10. WARRANTIES AND INDEMNITY**

- 10.1. Freedom Won branded products may be guaranteed under the Freedom Won product specific warranties only (available on request), and all other guarantees and warranties including common law guarantees and warranties in relation to goods and services are hereby specifically excluded by Freedom Won.
- 10.2. Products branded by other parties shall carry only the applicable manufacturer's warranty and all other guarantees and warranties including common law guarantees and warranties in relation to goods and services are hereby specifically excluded by Freedom Won.
- 10.3. Freedom Won will not be liable to the customer for any loss, damage or expense of any nature, whether direct, special, indirect or consequential, including but not limited to loss or profits arising out of Freedom Won's performance or customers' use of the goods or services rendered.
- 10.4. The customer indemnifies and holds Freedom Won (including its employees, subcontractors or subsidiaries) harmless against all claims of whatsoever nature that may be brought or threatened against Freedom Won by any third party arising from or in connection with any defect, latent or otherwise on any goods supplied and/or services rendered by Freedom Won.

## **11. REPAIRS**

Freedom Won's liability in terms of a manufacturer's warranty is restricted to, in Freedom Won discretion, the cost of repair or replacement of defective goods or services or the granting of a credit in respect of goods which are proved by the customer (i) not to conform to the technical specifications for those goods or services or (ii) to contain latent defects<sup>3</sup> in material and workmanship, during the period which is provided for in the specification sheet applicable for the relevant product, which specification sheet shall be available on Freedom Won's website.

## **12. DISCLOSURE OF PERSONAL INFORMATION**

- 12.1. The customer understands that the personal information given in the Business Partner Application form may be used by Freedom Won for the purposes of assessing credit worthiness.
- 12.2. Freedom Won has the customer's consent at all times to contact and request information from any persons, credit bureau or businesses including those mentioned in the Business Partner Application form and to obtain any information relevant to the customer's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, length of time customer has dealt with each supplier; type of goods purchased and manner and time of payments.
- 12.3. Information given in confidence to Freedom Won by a third party on the customer will not be disclosed to the customer.
- 12.4. The customer hereby consents to and authorises Freedom Won at all times to furnish credit information

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<sup>3</sup> "latent defect" means a defect which is not discoverable (i) on careful and reasonable external inspection by a normally intelligent person or (ii) by a normal trial run, and of which the customer was, at the relevant time, not aware.

concerning the customers dealing with Freedom Won to a credit bureau and to any third party seeking a trade reference regarding the customer in his dealings with Freedom Won.

### **13. GENERAL**

- 13.1. Freedom Won 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 amended or varied terms are published by Freedom Won.
- 13.2. This contract represents the entire agreement between Freedom Won and the customer, unless, in addition, a separate distributor agreement has been concluded between Freedom Won and the customer, and shall govern all future contractual relationships between Freedom Won and the customer.
- 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 Freedom Won. No agreement, whether consensual or unilateral or bilateral, purporting or obligating Freedom Won to sign a written agreement to amend, alter, vary, delete, add to or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of Freedom Won.
- 13.4. No relaxation or indulgence with Freedom Won may grant the customer shall prejudice or be deemed to be a waiver of any of Freedom Won's rights in terms of these terms and conditions.
- 13.5. The customer shall not cede its rights nor assign its obligations under these terms and conditions without the prior written consent of Freedom Won (which consent shall not be unreasonably withheld).
- 13.6. Freedom Won shall at any time in its sole discretion be entitled to cede all or any of its rights, or delegate any of its obligations, under these terms and conditions to any third party without prior notice to the customer.
- 13.7. The customer undertakes to notify Freedom Won within 7 (seven) days of any change of address or change of control<sup>4</sup> in respect of the customer.
- 13.8. The headings in this document included for convenience and are not to be taken into account for the purpose of interpreting this contract.
- 13.9. Each of the terms herein shall be a separate and divisible terms and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 13.10. The customer undertakes to inform Freedom Won in writing at least 14 (fourteen) days prior to the intended selling or alienating of the whole of or any part of the customer business and failure to do so will constitute a material breach of this contract entitling Freedom Won to cancel the contract without further notice to the customer, and if the result of such sale or alienation is such that the customer ceases to function as a going concern, or to conduct its operations in the ordinary course, Freedom Won shall be entitled to terminate this agreement.

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<sup>4</sup> "control" as contemplated in section 2(2) of the South African Companies Act, 2008.