

**Standard Terms and Conditions**

**1. DEFINITIONS**

The following expressions shall bear the meaning assigned to them below and cognate expressions bear corresponding meanings

- 1.1 "applicant" – means the legal entity or person named on the application annexed hereto next to the caption "Registered Name" or if no such application is annexed hereto, or name thereon, or in any other circumstances, any person or persons at whose request or on whose behalf OHSCON undertakes to supply any goods, do any business, or provide any advice or service;
- 1.2 "client" – refers to any legal person, entity or company who utilises the services of OHSCON for the purposes of sale of goods or supply of services.
- 1.3 "agreement": Any agreement, which is binding in law, between OHSCON and the Applicant for the sale and purchase of Goods, and supply of services, incorporating these conditions.
- 1.4 "signatory" – shall mean the authorised individual who signs this agreement and the annexed application on behalf of the Applicant.
- 1.5 "OHSCON" shall mean Occupational Health and Safety Consultants (Proprietary) Limited, duly registered and incorporated in terms of the laws of the Republic of South Africa, including inter alia its representatives, assigns, agents and employees.
- 1.6 "goods" shall mean any goods of whatsoever nature sold by OHSCON to the Applicant in terms of this Agreement.
- 1.7 "services" shall mean any services of whatsoever nature provided by OHSCON to the Applicant in terms of this agreement.
- 1.8 A reference to specific legislation is a reference to it as it is in force for the time being taking account any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 Words in the singular include words in the plural and words in the plural include words in the singular.
- 1.10 A reference to one gender includes a reference to the other gender.
- 1.11 Clause headings do not affect the interpretation of those clauses.

**2. THESE TERMS AND CONDITIONS TO PREVAIL**

- 2.1 Goods sold by OHSCON to the Applicant are and be subject to the conditions hereinafter set out, and each condition shall be deemed to be incorporated in and to be a condition of the agreement between OHSCON and the Applicant.
- 2.2 Services provided by OHSCON to the Applicant are and be subject to the conditions hereinafter set out, and each condition shall be deemed to be incorporated in and to be a condition of the agreement between OHSCON and the Applicant.
- 2.3 No agent or employee shall have the authority to alter or to vary these conditions either by an oral or a written undertaking or representation given before or after receipt of these conditions, nor shall any act or omission of OHSCON be construed as a variation or waiver of any of these conditions.
- 2.4 Notwithstanding the fact that an employee of the Applicant may have incurred charges ostensibly on behalf of the Applicant, whether in the course and scope of his employment or service with the Applicant or not, the Applicant shall be liable for such charges.
- 2.5 Represent the entire agreement between the parties and no alterations or additions may be affected unless agreed to by both parties, reduced to writing and signed by the Client and a duly authorized representative of OHSCON.
- 2.6 Are final and binding and are not subject to any suspensive or dissolutive condition.
- 2.7 Expressly exclude any conflicting conditions stipulated by the Client.
- 2.8 Acceptance of delivery of the goods and / or acceptance of providing services, shall be deemed conclusive evidence of the Client's acceptance of these Terms and Conditions.
- 2.9 The Applicant acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of OHSCON which is not set out in the Agreement or is not signed by an authorised representative of OHSCON.

**3. PRICE AND PAYMENT**

- 3.1 unless otherwise specifically agreed by OHSCON, all sums shall be paid to OHSCON in terms of clause 3.3 below, and the full amount must be paid without any deduction and payments shall not be withheld or deferred on account of any claim, counterclaim or set off.
- 3.2 Unless otherwise expressly stated, prices are exclusive of value added tax which shall be for the account of the Applicant unless the Applicant has given acceptable proof to OHSCON that the goods are zero rated or exempt. The Applicant shall pay or reimburse to OHSCON the amount of any value added tax simultaneously with the purchase price.
- 3.3 The purchase price and all sums payable in respect of any good sold by OHSCON to the Applicant in terms of this agreement shall be payable by the Applicant to OHSCON, at OHSCON's head office—
  - 3.3.1 By electronic fund transfer;
  - 3.3.2 in South African currency without deductions or set-off and fee of any exchange; and
  - 3.3.3 upon issuing of an invoice by OHSCON, shall be payable upon receipt thereof.
- 3.4 Until a determination is made by OHSCON any goods sold or services provided by OHSCON to the Applicant shall be supplied on a "pay-on-order" basis only.
- 3.5 The Applicant has no right to withhold payment for any reason whatsoever. The Applicant is not entitled to set off any amount due to the Applicant by OHSCON against any debt owed by the Applicant to OHSCON nor shall any payment be withheld by virtue of any alleged counterclaim against OHSCON by the Applicant.
- 3.6 Interest on any overdue amount will be payable on the maximum interest rate allowed by law.

**4. OWNERSHIP**

- 4.1 Notwithstanding delivery of the goods to the Applicant, ownership thereof shall not pass to the Applicant until OHSCON has received full payment of the purchase price and all incidental costs related thereto.

**5. INDEMNITY**

- 5.1 OHSCON shall by no means be liable on grounds of breach for negligence in respect of any type of loss or damage, howsoever arising, whether in respect of or in connection with any instructions, business, advice, information or service or otherwise, unless it is provided that the loss or damage was caused by the gross negligence of OHSCON.
- 5.2 The client hereby undertakes to indemnify OHSCON against any claims for harm /damage (including any loss or damage that may be incurred / sustained due to circumstances such as theft) that may result due to reasons beyond the reasonable control or unintentional act of any person, whether or not in the employ or in his/her representative capacity of the Supplier. This will include any economic loss pertaining to such harm/damage caused due to circumstances beyond the reasonable control of the Supplier.
- 5.3 OHSCON shall not in any circumstances be liable for any consequential or indirect loss howsoever causes, to the extent allowed by law.

**6. NO VARIATION OR AMENDMENTS**

- 6.1 This agreement constitutes the whole agreement between the applicant and OHSCON relating to subject matter hereof.
- 6.2 No amendments or consensual cancellation of this agreement or any provisions or terms thereof or of any agreement bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement if any dispute arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by a duly authorised representative of OHSCON. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 6.3 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 other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against OHSCON in respect of its rights under this agreement, nor shall it operate so as to preclude OHSCON thereafter from exercising its rights strictly in accordance with this agreement.
- 6.4 OHSCON shall not be bound by any express or implied terms, representation, warranty, promise or the like not recorded herein, whether it induced the agreement between OHSCON and the Applicant or not.

**7. WARRANTIES AND GUARANTEES**

- 7.1 Save for the guarantees or warranties furnished in writing by OHSCON which have been signed by a duly authorised representative of OHSCON, no warranties guarantee or representations, express or implied or tacit whether by law, agreement or otherwise and whether they induce the agreement or not, which are not set forth in this agreement shall be binding on OHSCON, the Applicant irrevocably waiving any right (common law or otherwise) it may have to rely on.

**8. GENERAL**

- 8.1 Save with the written consent of OHSCON, the applicant shall not cede, assign, transfer, alienate or dispose of their rights in respect of the goods sold or services provided to the Applicant by OHSCON until such time as the Applicant has paid the full purchase price plus any incidental costs, including interest, relating to the goods and services to OHSCON.
- 8.2 All specifications, descriptive matter, drawings, instruction manuals and other documents furnished to or by OHSCON do not form part of this agreement and may not be relied upon, unless they are agreed in writing by OHSCON to form part of this agreement. All descriptive matter, specifications, drawings, instructions manuals and particulars given by OHSCON which form part of the agreement are approximately only and OHSCON cannot be held responsible for loss due to discrepancies therein, unless such loss or was due to our negligence.
- 8.3 OHSCON shall have the right to institute any action for monies owing by the Applicant in either the relevant Magistrates Court or the High Court in the Republic of South Africa notwithstanding that the quantum claim may exceed the jurisdiction of the Magistrate's Court.
- 8.4 The Parties choose the domicilium citandi et executandi address on the service level agreement of legal service for the purposes of the giving if any notices, the payment of any sum, the serving if any process and for any other purpose arising from this agreement at their addresses.
- 8.5 The Applicant 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.
- 8.6 Each paragraph or clause in this agreement is severable the one from the other and if any paragraph or clause is found by any competent court to be defective or unenforceable for any reason whatever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.
- 8.7 Each right or remedy of OHSCON under the Agreement is without prejudice to any other right or remedy of OHSCON whether under the Agreement or not.
- 8.8 Failure or delay by OHSCON in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of any of its rights under the Agreement.
- 8.9 Any waiver by OHSCON of any breach of, or any default under, any provision of the Agreement by the Applicant shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Agreement.
- 8.10 Acceptance by the Applicant of these terms and conditions shall be deemed to have taken place in the event that the Applicant places an order for the goods with OHSCON or supplying of services.
- 8.11 OHSCON reserves the right in its sole discretion to vary these terms and conditions.
- 8.12 Any transaction is subject to cancellation by OHSCON due to force majeure from any cause beyond the control of OHSCON, including, without restriction the generality of the aforesaid, inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbances, riot, state emergency, strike, lockout, or other labour disputes, fire, flood, draught, or legislation.
- 8.13 The Applicant shall forthwith after the conclusion of the agreement, furnish OHSCON with all information reasonably required by OHSCON to enable it to comply with its obligations.
- 8.14 No notices, cheques, cash or other documents sent to OHSCON though the post shall be deemed to have been received unless and until received by OHSCON.
- 8.15 This agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.

**9. BREACH**

9.1 If the Applicant breaches any of the Terms and Conditions hereof or any other agreement with OHSCon or fails to pay any amount payable by 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 OHSCon's rights hereunder or at all, or allows any judgement against it to remain unsatisfied for 7(Seven) days or is placed into provisional or final liquidation or judicial management or under provisional or final sequestration or if its estate is voluntarily surrendered or if more than 25% of the issued share capital or members interest of the Applicant is transferred, pledged, encumbered or ceded to third parties or party, OHSCon shall have the right, without prejudice to any other right which it may have against the Applicant, to effect to;

9.1.1 treat as immediately due and payable all outstanding amounts in respect of the goods sold to the Applicant, to claim such amounts as well as any other amounts in arrear including interest, to immediately enter the premises of the Applicant or wherever the goods are being stored and retake possession thereof until such time as the Applicant has paid all outstanding amounts in respect of the goods to OHSCon and to cease performance of its obligations hereunder as well as under any other Agreement with the Applicant until the Applicant remedies the breach;

9.1.2 Cancel this agreement and take possession of any of the goods sold to the Applicant.

9.2 OHSCon shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the Applicant is indebted to OHSCon in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to OHSCon, whether arising out of this agreement or otherwise. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in stages, OHSCon 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.

9.3 No claim under this Agreement will arise against OHSCon unless the Applicant has given OHSCon 30 (Thirty) day's written notice sent by prepaid registered post to rectify any defect or breach of this Agreement.

9.4 The Applicant agrees that the amount due and payable to OHSCon shall be determined and proven by a certificate issued by OHSCon and signed on its behalf by any person duly authorised by OHSCon which authority need not be proven. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Applicant.

9.5 The Applicant hereby indemnifies OHSCon against any and all damage of whatsoever nature, however and by whosoever caused in relation to the removal of goods, and without derogating from the generality of the foregoing. The removal of such goods pending receipt of payment from the Applicant of all outstanding amounts.

**10. COSTS**

10.1 The Applicant shall be liable for all costs incurred by OHSCon in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own Applicant scale and cost of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with satisfaction or enforcement of such judgement.

10.2 The Applicant undertakes to pay the costs of suretyship and cession contained herein, including any stamp duty payable thereon and agrees that such costs can be debited to the Applicants account upon acceptance.

**11. CESSION**

11.1 The Applicant hereby irrevocably cedes, assigns and transfers, make over unto and in favour of OHSCon, all the Applicant's right, title and interest in and to its claim against its debtors, both present and future and from whatsoever cause arising, as security for all or any of the amounts which the Applicant may now or at any time in the future owe to OHSCon.

11.2 The Applicant irrevocably and in *rem suam* authorises OHSCon in its absolute discretion to claim wholly all or any of the Applicant's debtors in whole or any portion of the indebtedness of anyone or more of them, to give a valid receipt for discharge for such indebtedness, to take any action in its name in any court of competent jurisdiction and to proceed in execution thereunder against all or any of the said debtors, to cede, transfer, negotiate, pledge or otherwise deal with all or any of the said debtors, to exchange promissory notes, cheques, documents of title or any other security held by the Applicant.

11.3 The security created by the cession shall be continuing one, notwithstanding any fluctuation in the amount of indebtedness of the Applicant to OHSCon.

11.4 The Applicant hereby undertakes on demand, to furnish OHSCon with such information concerning its debtors as may be required, to enable OHSCon to give effect to the provisions of this clause.

**12. INTEREST**

12.1 The client agrees that OHSCon may collect interest on the debt at a rate set out by SARB repo plus 3,5% p.a., whether agreemental or mora interest, together with any other claim or expenses the client may have instituted against the debt. The interest shall be part of the payment of the fees of OHSCon but excludes and is not related to the entitlement to claim collection commission.

**13. PRIVACY AND PERSONAL INFORMATION (POPIA)**

OHSCon respects your privacy and is committed to keeping your personal information secure and confidential in accordance with the Protection of Personal Information Act, Act No. 4 of 2013 (POPIA), 2021. OHSCon aims to protect the personal data of all persons, companies and further outlines how institutions should safeguard, collect, process, store, share and manage this information. To ensure the protection of information and privacy, we draw your attention to the OHSCon Privacy Policy which is available on the website, [www.ohscon.co.za](http://www.ohscon.co.za), alternatively please contact our office should you require any further information.