

GENERAL TERMS AND CONDITIONS OF SUPPLY DUNLOP INDUSTRIAL AFRICA (PTY) LTD

These terms and conditions can be found on the Internet under www.dunlop-africa.co.za

1. Definitions

- 1.1 **"Agreement"** means these terms and conditions contained herein together with (i) such additional terms as may be stated in the Seller's written quotation; (ii) such specifications, drawings or other documents stated within Seller's Quotation and the Purchase Order to the extent it is approved by the Seller in writing;
- 1.2 **"Confidential Information"** means proprietary or confidential data including pricing, terms, documents, specifications, plans or drawings that are not generally known to the public;
- 1.3 **"CPA"** means the Consumer Protection Act 68 of 2008 and as amended from time to time;
- 1.4 **"Days"** means calendar days, unless the term working days is used;
- 1.5 **"Disclosing Party"** means the Party disclosing Confidential Information to the other Party;
- 1.6 **"Effective Date"** means the date when the Purchaser Order has been accepted by the Seller in writing or in case of the Agreement documents are signed by the Parties, the date of the latest signing;
- 1.7 **"Goods"** means conveyor belts and related products as set out in the Quotation and/or Purchase Order that has been approved in writing by the Seller;
- 1.8 **"End-User"** means the ultimate user and/or the ultimate owner of the Scope of Supply;
- 1.9 **"Force Majeure"** means any event that hinders or prevents the Seller from executing its obligations in terms of this Agreement including but not limited to: strikes, lockouts or industrial actions, civil commotion, riots, war (declared or undeclared), acts of God, fire, flood or other similar cause, civil insurrection, the requirements of any State, Government or other authority, trade restrictions including embargoes or sanctions, provided that any such specified cause or other similar cause is beyond the reasonable control of the Seller;
- 1.10 **"Incoterms"** means the version in force on the Effective Date of the document published under the name "Incoterms" by the International Chamber of Commerce;
- 1.11 **"Parties"** means the Purchaser and Seller or "Party" either of them as the context refers;
- 1.12 **"Personal Information"** means the definition ascribed to it in the Protection of Personal Information Act 4 of 2013 as amended from time to time (the Act);
- 1.13 **"Price"** means the total sum indicated in the Purchase Order or as modified in accordance with these terms and conditions. For Services carried out on a time basis, the price in low cap shall be determined in accordance with the hourly rates specified in the Purchase Order;
- 1.14 **"Purchase Order"** means the order document issued by the Purchaser for the order of the Scope of Supply in the version confirmed in writing by the Seller;
- 1.15 **"Purchaser"** means the Party defined as the Purchaser in the Purchase Order, or if such definition is missing, the Party issuing the Purchase Order;
- 1.16 **"Quotation"** means the Seller's written proposal for the delivery of the Scope of Supply;
- 1.17 **"Receiving Party"** means the Party receiving Confidential Information to the other Party;
- 1.18 **"Republic"** means the Republic of South Africa;
- 1.19 **"Scope of Supply"** means the Goods and/or Services to be delivered or performed under this Agreement;
- 1.20 **"Seller"** means Dunlop Industrial Africa (Pty) Ltd, a private company incorporated in accordance with the laws of the Republic, under registration number: 2002/023707/07, with its registered office at 22-24 Lincoln Road, Nestadt Industrial Sites, Benoni 1500;
- 1.21 **"Services"** means site services such as but limited to splicing of conveyors, pulley lagging and idler maintenance and repairs of conveyor belts;
- 1.22 **"VAT"** means Value Added Tax as set out in the Value Added Tax Act 89 of 1991 as amended from time to time;
- 1.23 **"Warranty Period"** means the period stipulated in clause 9 below.

2. General

- 2.1 The Agreement supersedes all previous negotiations, representations and/or contractual commitments between the Parties. Seller hereby gives notice of its objection to and rejection of any different or additional terms, and Purchaser agrees that the terms contained in the Agreement shall apply and govern to the exclusion of all others.
- 2.2 An offer by the Seller in its Quotation that does not stipulate an expiry date shall not be binding unless otherwise stated in the Quotation. In this case, the Agreement shall be deemed to have been entered into upon written acknowledgment of the Purchase Order by an authorized representative of Seller.
- 2.3 All contracts are exclusively subject to our general terms and conditions of supply, the Seller rejects



any terms and conditions of the Purchaser to the contrary or deviating from Seller's general terms and conditions unless the Seller has expressly consented to their validity in writing.

- 2.4 In the event of a conflict between these terms and conditions and any other terms and conditions of the Seller, then the latter shall take precedence.
- 2.5 All moulds, designs, drawings, sketches, models or samples and the rights therein remain the Seller's property, shall be treated as strictly confidential, shall not be divulged to third parties without the Seller's written consent and must be returned immediately upon the Seller's request.
- 2.6 If any of the provisions of this Agreement are held to be invalid, the validity of the remainder of this Agreement shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the invalid term and to this end the provisions of this Agreement and the application thereof are hereby declared to be severable.
- 2.7 Accordingly, purported amendments by the Purchaser are ineffective and the return of the Purchaser's standard order acknowledgement or the Purchaser's own conditions of sale do not constitute the Seller's agreement to any amendment to the Agreement.

3. Price / Terms of Payment

- 3.1 Price lists issued by the Seller from time to time, are for information only and do not constitute offers for sale.
- 3.2 Save in so far as may be otherwise specifically agreed in writing to the contrary by the Seller, Purchaser Orders are accepted only at prices and transport tariffs ruling on that date of dispatch.
- 3.3 The Incoterms version current at the Effective Date of the Agreement shall apply. If no specific Incoterms' concept has been stated in the Agreement or subsequently agreed by both Parties, delivery will be made (i) exworks (Seller's or Seller's sub-supplier's works) for domestic deliveries (delivery within the country in which the Scope of Supply is performed), or (ii) it will be made FCA (free carrier, Seller's or sub-supplier's works) for international transactions. Irrespective of the delivery term, for purpose of determining compliance with the delivery date, the delivery shall be deemed to have been made on the date the Seller notifies the Purchaser that the Scope of Supply is ready for shipment.
- 3.4 All prices shall specifically exclude VAT and any other taxes that may be levied in respect of the Scope of Supply.
- 3.5 All prices shall be in the agreed currency confirmed in

the Quotation, Purchase Order and/or invoice.

- 3.6 The Seller reserves its rights to effect price increases from time to time without notification to the Purchaser. The onus shall be on the Purchaser to remain informed of the prices of the Seller. No Seller employee, official, agent or nominee shall have the authority to effect or authorise any discounting of the Price of the Scope of Supply save a Director of the Seller.
- 3.7 The Seller reserves its right to add a reasonable charge for storage on any items which have not been collected or could not be delivered within fourteen (14) days of the date on which they were available for delivery or collection, as the case may be, and in the event that this is as a result of the Purchaser's conduct.
- 3.8 If any discount is agreed to as required in 3.6 above, it shall only be allowed if payment is received by the Seller on or before the due date and shall apply to the actual Price of the Scope of Supply themselves.
- 3.9 It is specifically agreed and recorded that interest on overdue accounts shall be at the maximum rate as permitted by law.
- 3.10 Unless otherwise agreed payment in full without deduction or set off in respect of the Scope of Supply sold shall be made on a cash on delivery basis.
- 3.11 Incoming payments shall be set off against the oldest debt at the time. The Purchaser shall be entitled to make a set-off only if the Purchaser's counter claims have been recognised by a court order or are uncontested.
- 3.12 Where specifications, illustrations and other particulars are supplied by the Purchaser, the price is made on estimates of quantities required, and the Seller reserves the right to over or under supply such custom-made Goods up to ten percent (10%) of the quantity ordered. Should there be any adjustments in quantities above or below the quantities estimated by the Seller and set out in a quotation, then any such increase or decrease shall be adjusted on a unit rate according to unit prices set in the schedule, and the Purchaser shall bear such costs.
- 3.13 The Seller reserves the right to extend credit facilities to Purchaser from time to time without any obligation to do so notwithstanding having extended such facilities in the past to any Purchaser.
- 3.14 Where the Seller has agreed to supply the Scope of Supply on credit, payment in full shall be due within thirty (30) days from date of the first monthly statement rendered by the Seller.
- 3.15 The monthly accounts of the Seller are closed on the 25th day of each month. Payment must be credited to the banking accounts of the Seller by the 25th day of



the following month.

- 3.16 Credit facilities shall only be afforded to Purchasers after completion of the necessary documents required by the Seller and having provided the Seller with the required guarantees/suretyships.
- 3.17 The Seller reserves its right to, at any time and after having provided the Purchaser with reasonable notice, and reasonable notice to be deemed to be five (5) days, advise that credit facilities to a Purchaser by the Seller will be terminated, and the Seller will be under no obligation whatsoever to provide any reasons for such termination.
- 3.18 It is specifically agreed and recorded that at all material times, it shall be the sole prerogative of the Seller to decide to which Purchasers it would be willing to extend credit facilities, it specifically being understood by Purchasers that any differentiation shall not be deemed to be discriminatory, but shall be deemed to form part of the Seller's internal credit risk limitation processes.
- 3.19 The Seller shall be entitled to refuse provision of the Scope of Supply to any Purchaser in the event of overdue accounts owing by the Purchaser to the Seller or in the event that a Purchaser is not able to obtain/provide satisfactory guarantees/suretyships. It is specifically recorded and agreed that any late payments by a Purchaser shall constitute an automatic breach of any credit facility agreement entered into between the Seller and the Purchaser and provided to the Purchaser by the Seller and accordingly, the Seller reserves the right at any time to refuse any further supply of the Scope of Supply to the Purchaser on a cash on delivery basis until all outstanding accounts including any accrued interest on such outstanding accounts have been settled in full by such Purchaser.
- 3.20 It is specifically recorded and agreed that the Purchaser waives all claims against the Seller for any damages or losses that it may suffer as a result of the refusal of the Seller to provide Scope of Supply to the Purchaser in the event of an overdue account, or in connection with any other dispute whatsoever arising out of payment for the Scope of Supply.

4. Delivery & Risk

- 4.1 Time of delivery shall not be of the essence in this Agreement.
- 4.2 Whilst every commercially reasonable effort will be made to dispatch and deliver the Goods as advised, the Seller does not guarantee dispatch and/or delivery on any specific date and shall not be liable for any damages including consequential damages that may be suffered by the Purchaser as a result of any delays in the delivery of the Goods that may occur, to the extent that the Seller may be liable for any losses

in terms of Section 47 of the CPA.

- 4.3 The Purchaser shall not be entitled to cancel any Purchaser Order due to delays. The Purchaser shall be entitled to impose liquidated damages at a rate of 0.5% per full week not to exceed a maximum of 5% of the Price, provided that the Purchaser notify the Seller of its intention to impose liquidated damages by the next payment cycle.
- 4.4 Should the Seller be prevented from the performance of any of its obligations because of Force Majeure, the delivery date for Goods or time for completion of the Services will be extended to reflect the length of time lost by reason of such delay. Payment obligations shall not be affected by Force Majeure events. If the grounds for Force Majeure continue for more than hundred and eighty (180) consecutive days, either Seller or Purchaser may terminate the Agreement upon 7 (seven) days written notice to the other Party.

5. Ownership & Risk

- 5.1 Ownership of the Scope of Supply shall pass to the Purchaser upon full payment of the Price.
- 5.2 Risk of loss or damage to the Scope of Supply shall pass to Purchaser from the Seller upon delivery according to applicable Incoterms.

6. Warranties

- 6.1 Seller warrants that:
 - 6.1.1 the Scope of Supply will be of the kind and quality as described in the Agreement, and
 - 6.1.2 will be free of defects in workmanship and material, and
 - 6.1.3 to the extent required for the functioning of the Scope of Supply, will be free of defects in design, provided however that Seller shall not be responsible for the design of the Scope of Supply (including but not limited to the selection of the materials) to the extent that the design and/or the selection of the materials has been undertaken nor provided by Purchaser, End-User, or a third party not being a sub-supplier appointed by Seller.
- 6.2 Warranty Period shall be for:
 - 6.2.1 Goods shall be twelve (12) months from date of delivery; or
 - 6.2.2 Services on new belts twelve (12) months or on old belts six (6) months from date of completion; subject to the exclusion set out below.
- 6.3 The Purchaser shall notify the Seller within 5 working days from date of defect and/or non-compliance with Scope of Supply during the Warranty Period.
- 6.4 The Seller's liability for defective and/or non-compliant Scope of Supply or any part thereof shall be limited repairs or replacement of the defective or non-compliant Scope of Supply or any part thereof. Under



no circumstance shall the Seller be liable for the costs of making the defective and/or non-complaint scope of Supply available for repairs or replacement.

- 6.5 The warranties set forth herein shall immediately terminate if the faults or defects cannot be proved to be a result of the Seller's failure under this clause. Such exclusion includes but not limited to: poor belt condition, inappropriate work conditions; modification and/or repairs done by the Purchaser or other third party without the Seller's written approval, failure to carry out proper maintenance, incorrect or negligent handling, normal wear and tear, unsuitable service products or replacements materials, unsuitable foundations or deficiencies beyond the control of the Contractor. Warranties shall also immediately terminate, in case of defects, if the Purchaser does not immediately, take all appropriate steps to mitigate damages and notify the Seller as stated herein
- 6.6 All other warranties, conditions and representations, expressed or implied by statute, common law or otherwise, in relation to the Scope of Supply (including but not limited the implied warranties of merchantability and fitness for a particular purpose) are excluded to the extent permitted by law.

7. Inspection, Acceptance

- 7.1 The Scope of Supply shall be subject to Purchaser's final inspection upon receipt at the delivery site. Claims for damage, shortage, errors in shipping or rejection of the Scope of Supply, or portion thereof, must be made by Purchaser in writing within fourteen (14) days following the date of receipt at the delivery site, or such other time period as agreed in the Purchase Order or provided by applicable law, or such claims are waived and the Scope of Supply is deemed to be irrevocably accepted by Purchaser. Purchaser's sole remedy for such claims is repair or replacement of the Scope of Supply by Seller. After the expiration of the aforesaid fourteen (14) days period, all claims for defects shall be remedied in accordance with Clause 6, Warranty herein.
- 7.2 Services shall be accepted or rejected upon completion of such Services.
- 7.3 Unless otherwise agreed in the Purchase Order, costs related to inspections or tests of the goods shall be borne by the Purchaser.

8. Limitation of Liability

Notwithstanding anything to the contrary in this Agreement and/or any document making part thereof and to the maximum extent permitted in law, the Seller shall be liable to the Purchaser, by way of indemnity or by reason of breach of any Agreement or of statutory duty or by reason of delict

(including but not limited to negligence) for any loss of profit, loss of contract or earnings, delay damages, interruption or loss of production, loss of use, indirect, punitive, incidental, special or consequential damages whatsoever that may be suffered by the Purchaser. The Purchaser further agrees to indemnify and hold the Seller harmless from any claim made by the End-User or the Purchaser's customers for such losses. The remedies of the Purchaser set herein are exclusive, and the Seller's liability with respect to any Agreement, indemnity, delict (including negligence), under warranty, strict liability or otherwise shall not exceed 100% of the Price, unless such claim is due to the Seller's legal liability for personal injuries or due to the Seller's gross negligence or wilful misconduct.

As used herein "gross negligence" shall mean reckless disregard of, or wanton indifference to, harmful and avoidable consequences and "wilful misconduct" shall mean conduct that is committed with an intentional disregard for the safety of others and/or the safety of another's property. "Gross negligence" and/or "wilful misconduct" shall not include any act or omission or any error of judgment or mistake made in good faith.

9. Breach

If the Purchaser:

- 9.1 breaches any condition contained in these conditions and failing to pay any amount due and payable on due date, and having failed to rectify such breach or outstanding payment within ten (10) days of having been requested to do so in writing by the Seller';
- 9.2 suffers any civil judgment to be taken or entered against it, causing a notice of surrender of its estate to be published in terms of the Insolvency Act of 1936 (as amended);
- 9.3 dies or ceases to exist;
- 9.4 is placed under an Order of provisional or final winding up, or provisional or final business rescue as the case may be, then, and in that event, the Seller shall, without retracting from other remedies which may be available to it, be entitled to cancel this Agreement and cancel the sale of any Goods to the Purchaser without notice to the Purchaser and to rely on the provisions of this Agreement to repossess those Goods sold and delivered by the Seller to the Purchaser or to claim specific performance of all the Purchaser's obligations whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to the Seller's rights to claim damages.

10. Intellectual Property

- 10.1 Purchaser confirms that Purchaser is fully authorized to use or grant permission to use the technical documentation provided to Seller for the performance of the Scope of Supply by Seller or its subsuppliers,



respectively. In case Purchaser would not be authorized to order said performance from Seller without violation of intellectual property rights of third parties, Purchaser shall inform Seller without any delay. In this case, Seller shall stop the work until the approvals needed for the performance have been obtained. Seller shall not use technical documentation received from Purchaser for any purpose other than to fulfill the Agreement.

- 10.2 Any know-how, inventions, patents, copyrights or the like belonging to or provided by Seller and used for or developed in the course of the fulfillment of the Agreement by Seller shall remain Seller's property, and no ownership shall be transferred to Purchaser, Purchaser's customer or End-User with respect to such know-how, inventions, patents and copyrights, independent of the hardware on which such knowhow, inventions, patents or copyrights is made available (machinery, paper, electronic medium, etc). However, End-User shall be granted a limited right to use such know-how, invention, patents, copyright or the like for the operation, maintenance and repair of the Scope of Supply on a non-exclusive basis, which right shall not include the use of the said intellectual property for the reproduction of the Scope of Supply or parts thereof.
- 10.3 Seller shall make its best endeavors to ensure that the Scope of Supply and any part thereof, in the particular form designed and sold by Seller, shall not infringe any intellectual property rights of third parties. In the event of any infringement of intellectual property rights relating to the said Scope of Supply, Seller may, in its sole discretion, procure the right to use the Scope of Supply without impairing its suitability, or modify or replace it so that it is rendered non infringing. The obligations of Seller set forth herein are contingent upon (i) Seller receiving prompt written notice from Purchaser of such infringement; (ii) Seller receiving assistance from Purchaser in the defense and (iii) the right of Seller to settle or defend.
- 10.4 The obligation of Seller stipulated in Clause 10.3 shall not apply to (i) the Scope of Supply or part thereof which has been manufactured according to Purchaser's design, (ii) services performed using Purchaser's documentation, (iii) the use of the Scope of Supply or any part thereof in conjunction with any other product in a combination not furnished by Seller as part of the Scope of Supply or (iv) products fabricated by using the Scope of Supply. As to any such equipment, service, product, part or use in such combination, Seller assumes no liability whatsoever for infringement of intellectual property rights of third parties, and Purchaser shall indemnify Seller against any respective infringement claims. Seller

shall co-operate with Purchaser in the same manner as required by Seller under 10.3 (i) to (iii) herein above.

- 10.5 Seller's copyrighted material shall not be copied by Purchaser except for archiving purposes or to replace a defective copy. Purchaser's copyrighted material shall not be copied by Seller except for archiving purposes or to replace a defective copy.

11. Confidentiality

- 11.1 In connection with the Agreement, Seller and Purchaser (as to information disclosed, the Disclosing Party) may each provide the other Party (as to information received, the Receiving Party) with Confidential Information. Confidential Information shall not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, or (ii) is or becomes available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party, or (iii) has been or is subsequently independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information, or (iv) is required to be disclosed by order of a competent court or government agency.
- 11.2 The Receiving Party agrees, except as otherwise required by law, (i) to use the Confidential Information only in connection with the performance of the Contract or installation, operation, maintenance and use of the Scope of Supply sold here under, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees for the purpose of performance of the Contract, or installation, operation, maintenance or use of the Scope of Supply sold here under. Further, if disclosure of Confidential Information to a third party is required, the Receiving Party agrees to use its best efforts to require proprietary or confidential treatment of the information by such third party.

12. Indemnity

- 12.1 The Purchaser hereby indemnifies, holds harmless and defends the Seller and the Seller's directors, officers, employee's and agents, and the directors, officers, employees and agents of any the Seller's parent, subsidiary or related company (Representatives) from and against any and all claims, suits, losses, damages, costs, fees and expenses arising out of the death or injury to person or damage to property resulting from any service performed by the Seller or the purchase, on sale, marketing or use of the Scope of Supply by



the Purchaser, save where such is due to the gross negligence or wilful misconduct of the Seller or its Representatives.

- 12.2 The Seller has no liability if any service, goods, written material, name, style, mark, patent, design, drawing, label, or work, ordered by the Purchaser, or the application of the goods ordered by the Purchaser, contravenes or infringes any law, regulation, or rights of third parties. The Purchaser indemnifies the Seller against all claims and costs attributable to any such contravention or infringement.

13. Legal Action, Jurisdiction & Domicilium

- 13.1 In the event of the Seller instructing attorneys regarding any breach of the Purchaser, of the conditions of this Agreement, then the Purchaser shall pay all the costs on the scale between Attorney and Client, including any costs incidental to such action instituted against the Purchaser.
- 13.2 The Purchaser agrees that all contracts for Goods sold by Seller to the purchaser shall be deemed to have been entered into and performed in Benoni, Gauteng and insofar as may be necessary, the Purchaser shall consent to the jurisdiction of the Gauteng Local Division of the High Court of South Africa.
- 13.3 The Parties do hereby consent that the Magistrate's Court shall have jurisdiction to determine any action or proceedings which may arise under or in connection with this Agreement.
- 13.4 This Agreement, as well as the relationship between the Seller and the Purchaser is governed by the law of the Republic.
- 13.5 A certificate under the hand of a director of the Seller as to the existence and the amount of the Purchaser's indebtedness to the Seller, as well as the amount of interest accrued thereon, and as to any other fact, matter or thing relating to the Purchaser's indebtedness to the Seller, shall be accepted as sufficient (*prima facie*) proof of the contents and correctness thereof and of the amount of the Purchaser's indebtedness for the purpose of provisional sentence or summary judgement or any other proceedings against the Purchaser in any competent Court and shall be valid and constitute a liquid document for such purposes. Furthermore, it shall not be necessary to prove the appointment of the person signing such a certificate and it shall be deemed to be sufficient particularly for any action or any other proceeding instituted by the Seller against the Purchaser.
- 13.6 Any notices to be given to the Parties in terms of this Agreement shall be in writing and delivered by hand during ordinary business hours or posted by pre-paid registered post to the addresses mentioned

hereunder, which addresses the Parties choose as their *domicilium citandi et executandi* for all purposes arising out of this Agreement. The provisions of the ECTA are specifically excluded from this Agreement.

- 13.7 The Seller's address shall be as set out in clause 1.18.
- 13.8 The Purchaser's address shall be as set out in the Purchase Order.

14. Miscellaneous

14.1 Assignment

- 14.1.1 Any attempt by a Party to assign, transfer, or delegate any of the rights, duties or obligations herein to a third party without prior written consent of the other Party shall render such attempted assignment or transfer null and void. Seller's affiliated companies shall not be considered third parties. However, such restriction shall not apply in instances where Seller, in the course of its usual business practices, requires part of its work to be undertaken or supplied by subcontractors or sub-suppliers.

14.2 Waiver of Rights

- 14.2.1 Seller's or Purchaser's failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

14.3 Protection of Personal Information and Security

- 14.3.1 The Parties hereby agree only to process, use and collect Personal Information in accordance to the Act and limit access to Personal Information to personnel strictly necessary for the performance, management and monitoring of this Agreement.
- 14.3.2 The Parties shall only process Personal Information in an environment where its security systems and/or measures have been audited by a reputable independent party and the Parties can provide proof that their systems meets the security safeguards as determined by any data legislation and/or generally accepted information security practices and procedures which may apply to it generally or be required in terms of a specific industry or professional rules and regulations.

