

# ISCAR SOUTH AFRICA (PROPRIETARY) LIMITED

## GENERAL CONDITIONS OF SALE

These are our General Conditions of Sale which apply to all goods sold by us, except to the extent to which they may be excluded or modified with our agreement.

### 1. ORDERS

- 1.1 No order for any of our goods shall be binding on us until the order has been accepted by us.
- 1.2 We shall be entitled in our sole discretion to decline any order placed.
- 1.3 Each order accepted by us shall be a separate contract.

### 2. PRICES

- 2.1 The prices payable by the purchaser shall be the prices in our price list ruling at the date of delivery of the goods.
- 2.2 All prices are inclusive of Value Added Tax.

### 3. TERMS OF PAYMENT

- 3.1 The terms of payment are cash against delivery unless otherwise agreed by us in writing.
- 3.2 If delivery has to be made by installments then each installment will be invoiced and paid for separately, otherwise in accordance with 3.1.
- 3.3 Any amount not paid by the purchaser on due date shall bear interest at prime rate from the date it falls due until it is paid.
- 3.4 For the purposes of 3.3, "prime rate" shall mean the minimum overdraft rate which our bankers allow to first class corporate borrowers from time to time, and a certificate from any manager or accountant (whose appointment need not be proved) of that branch as to that rate at any time shall be final and binding on the parties in the absence of any manifest error.

### 4. DISCOUNTS

- 4.1 The purchase price is not subject to any discount unless expressly agreed in writing by us.
- 4.2 If any discount is agreed to in writing, it shall only be allowed if payment is received by us by the due date, and shall only be calculated on the net purchase price of the goods.

### 5. DELIVERY

- 5.1 Unless otherwise agreed in writing delivery shall be made to the purchaser at our premises.
- 5.2 The purchaser shall be responsible for procuring and arranging for the transportation of the goods from our premises to any destination required by the purchaser unless otherwise agreed by us in writing.
- 5.3 Subject to 5.2, delivery shall be completed when the goods are handed to the purchaser or its agent at our premises and before loading commences.
- 5.4 Subject to 5.2, after completion of delivery we shall not be responsible for the arrival of the goods at their destination or for any loss or damage to the goods from any cause whatever while in transit.
- 5.5 Should we, at the purchaser's request, agree to engage a carrier to transport the goods for the purchaser, then:
  - 5.5.1 we shall have the authority to engage any carrier on such terms and conditions as we deem fit,
  - 5.5.2 the purchaser shall indemnify us against all demands and claims which may be made against us by the carrier so engaged and all liability which we may incur to the carrier arising out of the transportation of the goods.
- 5.6 Notwithstanding any other provision of the contract to the contrary, the obligation to deliver the goods shall in all cases be subject to the following conditions precedent:
  - 5.6.1 the availability to us of the goods ordered;
  - 5.6.2 timeous receipt by us of all drawings, designs and specifications that may be required by us from the purchaser provided that such drawings, designs and specifications shall be deemed to have been given to us for the purposes of description only and shall not form part of the contract .
- 5.7 Time shall not be of the essence of the contract and delivery dates must be treated as approximate only based on the latest information available to us. Under no circumstances shall the purchaser be entitled to withdraw from or terminate the contract on account of any delay in delivery or have any claim of nature against us arising from late delivery.
- 5.8 If the purchaser fails to take delivery of the goods on due date, then:
  - 5.8.1 the risk shall pass immediately from us to the purchaser;
  - 5.8.2 the purchaser shall refund to us on demand the reasonable costs (including storage and insurance) for keeping goods during the period of that delay.
- 5.9 If delivery is made in installments then the provision of this clause 6 shall apply to each installment
- 5.10 Should the purchaser be debited by us for goods and should the purchaser not have received delivery of those goods, then it shall notify us in writing within 14 (fourteen) days of receipt by it of any invoice or statement of account from us in respect of the goods that have not been delivered, failing which the purchaser shall be deemed to have received the goods in question and be liable to us for the amount claimed in respect of them.

### 6. OWNERSHIP

Notwithstanding the delivery of any goods to the purchaser, ownership shall not pass until we have received payment of the full purchase price. No order for any of our goods shall be binding on us until the order has been accepted by us.

### 7. RISK

Subject to 5.8.1, the risk shall pass to the purchaser when the goods leave our premises or if delivery is to be made by us, then on the delivery to the purchaser.

### 8. EXEMPTIONS

- 8.1 All specifications, illustrations, drawings, diagrams, price lists, dimensions, performance figures and other technical data furnished by us in respect of any goods, and whether in writing or not, and including advertising matter, are furnished only on the bases that they will not form part of any sale or be relied upon by the purchaser for any purpose, unless and to the extent that they are expressly warranted or guaranteed in writing by us and are, as such, expressly stated by us to form part of the sale.
- 8.2 If any goods are to be supplied in accordance with any specifications, measurements or other instructions furnished by the purchaser, the purchaser shall not have any claim of any nature whatsoever against us:
  - 8.2.1 for any loss or damages sustained by the purchaser as a result of any error, discrepancy or defect in the specifications, measurements or other instructions, or
  - 8.2.2 if the goods are not suitable for the purposes for which they are required, whether or not those purposes are known to us.

8.3 We shall be exempted from and liable under any circumstances whatever for:

- 8.3.1 any indirect or consequential damages of any kind or any loss of profit or special damages of any kind, whether in the contemplation of the parties or not, for which the purchaser may suffer as a result of any breach by us of our obligations under any sale;
- 8.3.2 any claim for any alleged shortage in delivery unless written notice of the claim is received by us within 14 (fourteen) days after the purchaser receives the goods.

8.4 Subject to and without limiting any of the provisions of this clause 8 our liability to the purchaser for any damages sustained by the purchaser and which arise in any way out of any goods purchased from us, including any damages caused by our negligence or that of our servants, agents or sub-contractors, shall in any event and under all circumstances be limited to an aggregate for all claims of 10 % (ten percent) of the purchase price of the goods concerned.

### 9. WARRANTY

We warrant to the purchaser that all goods supplied by us will be free of defects in material and workmanship, subject to the following limitations:

- 9.1 This warranty shall not apply to any goods, parts or components which are not manufactured by us. Where any of these are defective, the purchaser shall have the same rights against us as we shall have against our supplier and our liability shall be limited accordingly.
- 9.2 Our liability for goods covered by this warranty shall be limited to repairing or replacing the, at our election, with reasonable promptness and without any charge if the fail to comply with the warranty.
- 9.3 We shall not be liable under this warranty unless we receive written notice of the alleged defect within 6 (six) months from the date the goods are delivered and unless the goods are returned to us without any costs to us within a reasonable time after that notice.
- 9.4 This warranty shall not apply to any goods which have been subjected to any application for use for which they are neither designed nor intended.
- 9.5 Our liability for any defect in any goods supplied by us shall be limited strictly to our obligations under this warranty.

### 10. PATENTS

If the goods are to be manufactured to any specification or design supplied by the purchaser, the purchaser shall indemnify us against all claims and demands which may be made against us and all liability which we may incur, for the infringement of any patent or design rights vesting in any third party, as a result of complying with the purchaser's specifications or designs; and against all costs incurred by us in any proceedings against us arising out of any such infringement.

### 11. VIS MAJOR

- 11.1 We shall not be liable for any delay or any failure to perform any obligation under the contract due to any cause beyond our reasonable control including, but not being limited to, any of the following: strikes, lock-outs, all other industrial actions, sabotage, terrorism, civil commotion, riot, war, threat of war, preparation for war, fire, explosion, storm, flood, epidemic or other natural physical disaster, impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport, any act or policy of any state or government, or other authority having jurisdiction over either party.
- 11.2 Upon the occurrence of any delay or failure referred to in 11.1, the provisions of the contract effected shall be suspended for as long as the cause in question continues to operate, provided that if that cause has not ceased to operate within 6 (six) months from when it arose, the contract may be terminated by us.

### 12. CANCELLATION

- 12.1 We may cancel the contract or any uncompleted part of it if the purchaser:
  - 12.1.1 commits a breach of any of the terms or conditions of the contract; or
  - 12.1.2 being an individual, dies or is provisionally or finally sequestered or surrenders his estate; or
  - 12.1.3 being a partnership, the partnership is terminated; or
  - 12.1.4 being a company, is placed under provisional or final order of liquidation or judicial management; or
  - 12.1.5 compromises or attempts to compromise generally with any of the purchaser's creditors.
- 12.2 Our rights in terms of 12.1 shall not be exhaustive and shall be in addition to our common law rights.
- 12.3 No relaxation which we may submit at any time in regard to the carrying out of the terms of the contract shall prejudice or be a waiver of our rights under the contract.
- 12.4 Upon termination of the contract for any reason whatever:
  - 12.4.1 all amounts then owed by the purchaser to us in terms of the contract shall become due and payable forthwith, and
  - 12.4.2 we may retake possession of any goods in respect of which ownership has not passed.

### 13. NOTICES

The purchaser choose *domicillum citandi et executandi* for all purposes under the contract at his address reflected on the face hereof.

### 14. JURISDICTION

The purchaser consents in terms of Section 28 (1) of the Magistrate's Court Act No. 32 of 1944 (as amended), to the jurisdiction of the Magistrate's Court for the district which at the time of the proceedings in question has jurisdiction in terms of that Section. This consent to the jurisdiction of the Magistrate's Court shall not be a substitute for the jurisdiction of any other competent court which has jurisdiction, but shall be in addition to it.

### 15. CESSION

The purchaser may not cede any of its rights under the contract without our written consent.

### 16. VARIATION

Any alteration or variation of the contract once concluded shall be of no force or effect unless it is recorded in writing and signed by us or on our behalf.

### 17. INTERPRETATION

The headings in these terms and conditions are for convenience only and are not to be taken into account in interpreting the contract.