

SUBLIME CARBON (PROPRIETARY) LIMITED (REGISTRATION NUMBER 1996/016880/07)
TERMS AND CONDITIONS OF SALE

- These are the terms and conditions of sale which apply to all goods sold by Sublime to the buyer:
1. **DEFINITIONS**

In this contract, including the preamble above, unless the context requires otherwise:

 - 1.1 "the buyer" means the buyer reflected on the order form;
 - 1.2 "the contract" means these terms and conditions of sale, the contents of the order form and the written acceptance referred to in clause 2.2;
 - 1.3 "the goods" means the goods described in the order form;
 - 1.4 "order form" means the order form to which these terms and conditions are attached; and
 - 1.5 "Sublime" means Sublime Carbon (Proprietary) Limited, registration number 1996/016880/07.
 2. **ORDERS**
 - 2.1 The buyer shall purchase goods from Sublime by completing an order form Specifying the quantities and particulars of the goods required, the specifications of the goods and, if applicable, the address to which the goods must be delivered.
 - 2.2 No order placed by the buyer with Sublime shall be binding on Sublime unless and until Sublime has accepted such order in writing.
 - 2.3 Sublime shall be entitled in its sole discretion to decline any order placed.
 - 2.4 Each order accepted by Sublime shall constitute a separate contract.
 - 2.5 After written acceptance of an order by Sublime in terms of clause 2.2 above, the buyer shall only be entitled to cancel or vary such order if Sublime has not placed an order for such goods with its supplier of such goods, provided that the buyer shall not be entitled to cancel or vary any order after [60 (sixty)] days from the date of written acceptance of the order by Sublime in terms of clause 2.2 above.
 - 2.6 If the buyer wishes to cancel or vary an order in terms of clause 2.5, it shall give written notice of such cancellation or variation to Sublime, within the [60 (sixty)] day period referred to in clause 2.5.
 - 2.7 Sublime shall notify the buyer within [14 (fourteen)] days from receipt of the notice referred to in clause 2.6 whether or not it has placed an order for such goods with its supplier of such goods, and the following shall apply:
 - 2.7.1 If Sublime has not placed an order for such goods with its supplier of such goods, the order shall be deemed to have been duly cancelled, or, in the case of a variation of the order, Sublime shall be entitled in its sole discretion to decline or accept such varied order and, if Sublime accepts such varied order, the provisions of this contract shall apply to it.
 - 2.7.2 If Sublime has placed an order for such goods with its supplier of such goods, the original order shall apply and the buyer shall be bound by the provisions of this contract in respect of the goods set out in such order.
 3. **PRICES**
 - 3.1 The prices payable by the buyer for the goods shall be Sublime's ruling prices stipulated in writing by Sublime at the time the order for the goods is placed by the buyer in terms of clause 2.1, which prices shall be inclusive of Value Added Tax.
 - 3.2 If Sublime has agreed to deliver the goods to the buyer, then in addition to the Purchase price payable in terms of clause 3.1, the buyer shall pay to Sublime all reasonable costs of delivery of the goods to the address stipulated in the order form, including, without limiting the generality of a foregoing, the cost of insurance.
 4. **TERMS OF PAYMENT**
 - 4.1 Unless otherwise agreed in writing by Sublime, the purchase price of the goods sold by Sublime to the buyer, together with the costs of delivery of the goods, if applicable, shall be paid by the buyer in cash against delivery of the goods to the buyer.
 - 4.2 The amount to be paid to Sublime in terms of this contract shall be paid in South African Rands without deduction or set-off, at a place nominated by Sublime from time to time.
 - 4.3 Any amount not paid by the buyer on due date shall bear Interest at the prime rate from the date it falls due until it is paid in full.
 - 4.4 For the purposes of clause 4.3, "prime rate" shall mean the published prime overdraft rate for interest ruling from time to time expressed as a rate per annum and applied as a rate of simple interest and not compound interest, at which Sublime's bankers lend on overdraft to its customers from time to time; and a certificate from any manager or accountant (whose appointment need not be proved) of that bank as to that rate at any time shall be prima facie proof of such rate.
 - 4.5 Subject to clause 4.6, Sublime may, in its sole discretion, decide to grant credit to the buyer for the purchase of the goods.
 - 4.6 Before any credit is agreed to in writing:
 - 4.6.1 the buyer agrees to furnish Sublime with trade references that may be verified and contacted by Sublime in Sublime's sole discretion; and
 - 4.6.2 Sublime shall be entitled to require the buyer to provide security to the satisfaction of Sublime for payment.
 5. **DURATION**

This contract shall commence on the date on which the order is accepted by Sublime and shall remain in force until the purchase price in respect of the goods ordered has been received by Sublime in full.
 6. **DELIVERY**
 - 6.1 Unless otherwise agreed in writing by Sublime, delivery of the goods shall be made to the buyer by making the goods available for collection by the buyer at Sublime's premises.
 - 6.2 Sublime shall notify the buyer that the goods are available for collection and the buyer shall collect the goods from Sublime's premises within 14 (fourteen) days from the date of such notice.
 - 6.2 While Sublime shall use reasonable endeavours to ensure that the goods are delivered on the date(s) specified in the order form, time shall not be of the essence of the contract
 - 6.3 If delivery cannot be completed by Sublime due to any fault or omission of the buyer, its servants, agents or sub-contractors, Sublime shall be entitled to cancel the contract in respect of those goods, in accordance with clause 13.
 7. **OWNERSHIP**

Notwithstanding the delivery of any goods to the buyer, ownership in the goods shall not pass to the buyer unless and until Sublime has received payment of the full purchase price of those goods.
 8. **RISK**

The risk in the goods shall pass to the buyer upon delivery of the goods in terms of clause 6.1 above.
 9. **EXEMPTIONS**
 - 9.1 If any goods are to be supplied in accordance with any specifications, or measurements furnished in writing by the buyer the buyer shall not have any claim of any nature whatsoever against Sublime -
 - 9.1.1 for any loss or damage sustained by the buyer as a result of any error, discrepancy or defect in the specifications, measurements or other instructions, or
 - 9.1.2 if the goods are not suitable for the purposes for which they are required, whether or not those purposes are known to Sublime.
 - 9.2 Sublime shall be exempted from and not be liable under any circumstances whatsoever for 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, which the buyer may suffer as a result of any act or omission of Sublime, with the exception of any act or omission that is committed intentionally or with gross negligence.
 10. **WARRANTY AND LIMITATION OF LIABILITY**

Sublime warrants to the buyer that all goods supplied are free of defects in material and workmanship, subject to the following limitations:

 - 10.1 This warranty shall not apply to any goods, parts or components that are not manufactured by Sublime. Where any of these are defective, the buyer shall have the same rights against Sublime as Sublime shall have against its supplier and Sublime's liability shall be limited accordingly.
 - 10.2 Sublime shall not be liable under this warranty unless it receives written notice of the alleged defect within 14 (fourteen) days from the date the goods are delivered and unless the goods are returned to Sublime without any costs to it within reasonable time after that notice.
 - 10.3 This warranty shall not apply to any goods that have been subjected to any application for use for which they are neither designed nor intended.
 - 10.4 The warranty given in this clause is given to the buyer and to no other person or entity, whether being any subsequent purchaser, user, licensee, assignee, employee or otherwise.
 - 10.5 Sublime's sole liability to the buyer for any breach of warranty shall be limited to the purchase price paid for the goods or The cost of replacement of the goods.

- 11. PATENTS**
If the goods are to be manufactured by Sublime (or on behalf of Sublime) according to any specification or design supplied by the buyer, the buyer shall indemnify Sublime against all claims and demands which may be made against it and all liability which it may incur, for the infringement of any patent or design rights vesting in any third party, as a result of complying with the buyer's specifications or designs; and against all costs incurred by it in any proceedings against it arising out of any such infringement.
- 12. VIS MAJOR**
12.1 Sublime shall not be liable for any delay or any failure to perform any obligation under this contract due to any cause beyond Sublimes reasonable control including, but not limited to, lack of instructions from the buyer, stock shortage, failure by any of its suppliers or manufacturers to deliver goods to Sublime, strikes, lock-outs, all other industrial action, government action, acts of God, sabotage, terrorism, civil commotion, riot, war, fire, explosion, natural physical disaster, impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
12.2 Upon the occurrence of any delay or failure referred to in 12.1, 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 3 (three) months from when it arose, the contract may be terminated by Sublime upon written notice to the buyer.
12.3 Notwithstanding anything stated in this clause 12, should any delivery of goods be suspended or postponed, the buyer undertakes nevertheless to accept delivery and to pay for any part of the goods that Sublime may be able to deliver.
12.4 Sublime shall not be liable for any loss (including loss of profits) or damages of any kind whatsoever that may be related to any of the events or delays mentioned above.
- 13. CANCELLATION**
13.1 If the buyer:
13.1.1 commits a breach of any of its obligations under this contract and fails to remedy such breach within a period of 14 (fourteen) days after receipt of written notice by Sublime requiring it to do so,
13.1.2 being an individual, dies or is provisionally or finally sequestered or surrenders his estate;
13.1.3 being a partnership, the partnership is terminated;
13.1.4 being a company, is placed under provisional or final order of liquidation or judicial management or
13.1.5 compromises or attempts to compromise generally with any of the buyer's creditors.
then Sublime shall be entitled -
(i) without prior notice, to suspend further delivery of any goods until all amounts payable by the buyer are paid; and/or
(ii) forthwith to cancel this contract or to claim immediate payment and/or performance by the buyer of all of the buyer's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to Sublime's rights to claim damages.
13.2 Sublime's rights in terms of this clause 13 shall not be exhaustive and shall be in addition and without prejudice to any other rights it may have at law.
- 14. NOTICES**
The buyer chooses domicilium citandi et executandi for all purposes under the contract at its address reflected in the order form.
- 15. JURISDICTION**
The buyer consents in terms of Section 28(1) of the Magistrates' Court Act No. 32 of 1944 (as amended), to the jurisdiction of the Magistrates' 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 Magistrates' Court shall not be a substitute for the jurisdiction of any other competent court that has jurisdiction but shall be in addition to it.
- 16. GENERAL**
16.1 This contract contains the entire agreement between the parties.
16.2 Neither party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this contract.
16.3 The failure by either party to enforce any provision of this contract shall not affect in any way that party's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision.
16.4 No variation, addition to or cancellation of this contract and no waiver of any right under this contract shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties to this contract.
- 16.5 No indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from any of its rights in the future.
16.6 If any provision of this contract is rendered void or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
16.7 The buyer may not cede any of its rights or delegate any of its obligations in terms of this contract without the prior written consent of Sublime.
16.8 In the event of any conflict between these terms and conditions and the order form, these terms and conditions shall apply.
- 17. INTERPRETATION**
17.7 The headings in these terms and conditions are for convenience only and are not to be taken into account in interpreting the contract.
17.2 For the purposes of this contract, unless the context requires otherwise -
17.2.1 the singular shall include the plural and vice versa;
17.2.2 a reference to one gender, whether masculine, feminine or neuter, includes the other two; and
17.2.3 any reference to natural person includes an artificial person and vice versa.
17.3 This contract shall be governed by and interpreted in accordance with the law of the Republic of South Africa in all respects.