



WERNER SOUTH AFRICA PUMPS & EQUIPMENT (PTY) LTD

Werner South Africa Pumps & Equipment (Pty) Ltd
Terms and Conditions of Delivery and Payment
(as amended on 18 March 2020)

1. INTERPRETATION

- 1.1 The Clause headings herein are for reference purposes only and shall not be used in interpretation thereof.
- 1.2 Unless the context clearly indicates a contrary intention: -
 - 1.2.1 Expressions which denote any one gender, shall include the other genders;
 - 1.2.2 A person shall include a natural person, company, partnership, firm, close corporation or any other legal personae;
 - 1.2.3 The singular shall include the plural and vice versa.
- 1.3 When any particular number of days is provided for the doing of any Act or for any other purposes, the reckoning shall exclude the first day and shall include the last day and shall include all Saturdays, Sundays and Public Holidays which occur during the period.
- 1.4 Any other counterpart, whether documented in or in electronic format referenced in these Terms and Conditions, as amended, shall be deemed to be incorporated herein and shall form an integral provision of this Agreement.
- 1.5 If any provision in a definition is a substantive provision conferring any right or imposing any obligation on any Party to this Agreement, then notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in these Terms and Conditions.
- 1.6 In these Terms and Conditions, unless inconsistent with or otherwise indicated by the context, the following expressions shall bear the meaning assigned to them hereinunder and cognate expressions shall bear corresponding meanings:

“**Agreement**” means any Agreement entered into between the Supplier and the Customer;

“**Business Day**” means any day of the week excluding Saturdays and Sundays and Public Holidays;

“**the Client**” means any person or entity who contracts with the Supplier to execute Works;

“**Order**” means any order or instruction, written or oral given by the Customer to the Supplier for Works, and shall include an amendment and/or variation to any Order;

“**Public Holiday**” means any South African public holiday as published in the Government Gazette from time to time.

“**The Supplier**” means any of **WERNER SOUTH AFRICA PUMPS AND EQUIPMENT (PTY) LTD**, upon whom the Customer places an Order and/or who performs Works and is named on invoices addressed to the Customer whose chosen *domicilium citandi et executandi* for purposes of this Agreement is **4-6 EDISON ROAD, NEW ERA, SPRINGS**;

“**Terms and Conditions**” means these Terms and Conditions as amended from time to time hereafter;

“**Unrest**” means the break downs of machinery, transportation accidents, civil disturbance and disobedience, strike, labour unrest, riot, disruptions, protest action, demonstrations, commotions, go slows, lock outs at the Supplier’s company or at one of the Supplier’s suppliers, threats of terrorism, violence and which includes but is not limited to war hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, embargo, rebellion, revolution, insurrection, military or usurped power, civil war, regulations or order of any Government, power outages/load shedding, shortage of raw materials and/or other cause beyond the Supplier’s control that has not been brought about through gross negligence on the Supplier’s part. The same applies, if the circumstances mentioned arise at one of our suppliers.

“**Works**” means services rendered, parts and equipment used in the manufacturing and servicing of the Trucks, Equipment supplied by the Supplier to the Customer.

2. THE AGREEMENT AND ACCEPTANCE

2.1 The Customer agrees that:

- 2.1.1 these Terms and Conditions shall apply to every Order and Agreement entered into by the Supplier and the Customer and shall regulate the parties' relationship and responsibilities to each other in respect of all Works;
- 2.1.2 these Terms and Conditions are and will be final and binding upon the Customer and is not subject to any suspensive or resolutive terms or conditions;
- 2.1.3 these Terms and Conditions supersede, and replace all prior agreements, understandings and representations save for securities and guarantees held by the Supplier which shall continue to remain of force and effect, and remain binding on the Customer;
- 2.1.4 these Terms and Conditions supersede the Customer's own terms and conditions;
- 2.1.5 the Terms and Conditions attached to, contained in or referenced on any Order are expressly excluded from and are superseded by these Terms and Conditions.

3. VALIDITY

- 3.1 The Supplier supplies exclusively according to the following Terms and Conditions in respect of delivery and payment.
- 3.2 The Customer's terms of business will only apply if their validity has been expressly agreed to for the single transaction.

4. CONCLUSION OF THE AGREEMENT

- 4.1 The Supplier's quotations are without engagement.
- 4.2 Customer orders will be effective when valid Purchase Orders have been received by the Supplier and are legally binding on the Customer. Orders are effective, if the Supplier complies and duly satisfied the Customer through the remittance of a delivery note and/or the goods and the requisite invoice.
- 4.3 The Supplier reserves its rights to make changes or modifications to our Products.

5. PRICES

- 5.1 In as much as no special agreements have been made between the Supplier and the Customer, our prices are quoted ex-works. Additional costs for packaging, freight etc. are not included in the prices unless stipulated otherwise on our quotations. The Customer's terms of business will only apply if their validity has been expressly agreed to for the single transaction.
- 5.2 All prices are subject to Value Added Tax (VAT) at the statutory rate which is currently 15%, as amended.
- 5.3 Any prices and/or discounts that have been quoted verbally require our written confirmation.

6. PAYMENT CONDITIONS

- 6.1 The Supplier's invoices are payable in ZAR either as a payment in advance or as a 30 (thirty) days net from Invoice date, which will be expressly stipulated on all Supplier quotations.
- 6.2 The Customer consents that any additional cost(s) over and above the Exchange Rate is for the Customer's expense.
- 6.3 The Supplier's Payment Terms are C.O.D (cash on delivery) Prices and are subject to Exchange Rate fluctuations.
- 6.4 The Supplier's Prices are Excluding Forward Cover, Tax, Transport, Insurance and Packing costs.
- 6.5 For 30 (thirty) day Customers where discount structures are applicable, no discount is permitted, if the Customer is in arrears with any payment to the Supplier of other invoices, unless otherwise agreed in writing by the Supplier. No settlement discounts are allowed due to discount structures already included in the Supplier's quoted prices, unless specifically and expressly stated on Supplier quotations provided or otherwise agreed to in writing.
- 6.6 In the instances of a delay or deferral in payment, and without affecting the Supplier's right to claim for further damages, the Supplier is entitled to the right to charge interest at the rate of 2% above the prescribed prime rate of the Bank.

- 6.7 The Supplier agrees to accept cash deposit payments for purposes of payment however, this should be expressly agreed to in writing between the Supplier and the Customer and the Customer will be held liable for all bank costs involved in the transaction.
- 6.8 Under no circumstance may the Customer withhold payment, apply set-off or otherwise deduct any amounts from the invoice price.
- 6.9 Should demands for payment fall due, the Customer is not authorised to lodge a claim for retention of goods, nor to set this off by counter-claims that are disputed by the Supplier and that have not been recognised by a judgement having the force of law.
- 6.10 Should the Customer's payment remain overdue for more than 14 (fourteen) days, or if the Customer's payments have ceased, or if following conclusion of the contract there is a marked deterioration in the Customer's financial means, then the Supplier is entitled to request for payment in advance or an appropriate provision of security.
- 6.11 All risk of whatsoever nature attaching to payment shall vest with the Client.
- 6.12 Subject to the discretion of the Supplier, payments received from the Client will firstly be allocated to legal costs where applicable, thereafter to interest and finally only to the capital amount owing
- 6.13 Interest will be charged on all overdue amounts at the rate determined by the Minister of Finance in terms of the Prevailing Rate of Interest Act, compounded monthly in arrears from the date upon which payment fell due, to the date of full and final payment.

7. DELIVERY TIME

- 7.1 The delivery times indicated by the Supplier can in isolated cases be exceeded. The Supplier undertakes to use will its best reasonable commercial endeavors to supply goods within the time fixed as stipulated in any Supplier quotation provided or any extension thereof.
- 7.2 Time is not being regarded as the essence of the order.
- 7.3 The time stated for delivery is given in good faith, and the Customer shall accept delivery when delivery is tendered and shall not be entitled to resile from the order on account of delay in delivery nor shall any claim for damages of any nature whatsoever and from whatsoever cause arising, lie against the Supplier in respect of any such delay
- 7.4 The Supplier's delivery obligation is suspended, for as long as the Customer is in arrears with a debt or obligation and/or has to provide documentation, approvals or releases. All prices are subject to Value Added Tax (VAT) at the statutory rate currently 15% (fifteen), as amended.
- 7.5 The Supplier shall not be held responsible for delays in delivery due to force majeure, business disruptions and unrest.

8. SHIPPING AND PASSING OF RISK

- 8.1 The risk passes to the Customer not later than with the dispatch of the delivery consignment, this includes partial deliveries are made. This further applies to any possible return of the goods that the Supplier and Customer may agree to expressly in writing
- 8.2 Should the shipment be delayed as a result of circumstances that are beyond the Supplier's control, then the risk shall pass to the Customer, from the day that the goods are ready to be shipped.
- 8.3 The costs of the shipment are to be borne by the Customer, or as stipulated on each individual Supplier quotation.
- 8.4 Ownership of goods shall remain vested in Werner South Africa Pumps & Equipment (Pty) Ltd and shall not pass to the Customer until payment of the full purchase price has been made.
- 8.5 Where the Supplier undertakes to deliver the goods to the Customer, the Customer bears the sole risk, as from time of arrival at the Customer site, offloading, storage and protection of such goods and shall be the sole responsibility of the Customer who will be responsible for all loss thereof or damages thereto from whatsoever cause arising.

9. DELAY IN ACCEPTANCE OF GOODS ON PART OF THE CUSTOMER

- 9.1 If the Customer fails to take delivery of the goods ordered on the due date, then the Supplier is entitled to give such Customer a reasonable extension, after such time, the Supplier will either dispose of the Order or

we will immediately invoice the Customer for the goods and store them at the Customer's own cost and risk. This does not affect our right to withdraw from the agreement or to demand compensation for non-fulfilment.

- 9.2 Should the Supplier demand compensation for non-fulfilment, then the Supplier shall request without proof 90% (ninety) of the agreed consideration as indemnity.
- 9.3 The Supplier reserves its right to claim higher actual damages.
- 9.4 The aforesaid provisions also apply, if the Customer, within the framework of a call – off purchase order, does not take delivery of partial shipments at the times agreed with such Customer.

10. RETENTION OF TITLE

- 10.1 Werner South Africa Pumps & Equipment (Pty) Ltd retain the title to all goods supplied by ourselves until full settlement of all accounts and/or demands from the Supply Agreement, including all secondary demands, as well as of all other demands on the Customer from other agreements, which are outstanding at the time of the conclusion of the Agreement and until payment has been finalised.
- 10.2 The Customer may only dispose of the Supplier's reserved goods in proper business dealings and by passing on the Supplier's reservation of title. The passing of the Supplier's reservation of title may only be executed on receipt of written confirmation by the Supplier that the Customer is not in payment arrears. The Customer is not authorised to otherwise make available the Supplier's reserved goods.
- 10.3 Should payments be in arrears and/or there be a warranted threat that payment may be suspended and/or there is unsatisfactory information concerning the Customer's ability to tender payment or the financial status of the Customer and/or the Supplier has executed a judgment taken against the Customer and/or the Customer disputes arrear payments, the Supplier shall without notice have the right to take back all reserved goods held by the Customer.
- 10.4 The Customer is under obligation to release all reserved goods held to the Supplier.
- 10.5 The Customer is liable for all costs incurred by the Supplier in order to secure the taking back and exploitation of the reserved goods.
- 10.6 The assertion of the Supplier's retention of title or the seizure of reserved goods by the Supplier does not constitute a withdrawal of the Agreement (Purchase order/Invoice/DN).

11. LIABILITY/WARRANTY CLAIM

- 11.1 Werner South Africa Pumps & Equipment (Pty) Ltd are liable as follows:
 - 11.1.1 New parts supplied and workmanship guaranteed for 6 (six) months from date of commissioning.
 - 11.1.2 It is a condition for the warranty claim, that the Customer gives the Supplier notice of defects without delay in writing after delivery of the goods; otherwise the goods are treated as approved. This does not however affect the liability for defects that are not obvious. However, as soon as these defects do become apparent, the Customer must immediately advise the Supplier of this, otherwise the warranty will not apply
 - 11.1.3 The Supplier accepts no responsibility for damage caused by normal wear & tear, incorrect or careless handling, unsuitable or improper commissioning or negligence.
 - 11.1.4 All products supplied by the Supplier are personally commissioned by our personnel at no additional costs, as to ensure that warranty to be remains valid.
 - 11.1.5 The Supplier is under no circumstances obliged to repair and/or replace the goods for as long as the Customer remains in arrears with payment to an amount regard to the purchase price that exceeds the reduced value of the goods taking into consideration the defect.
 - 11.1.6 All servicing and maintenance of the equipment supplied must be conducted by Werner South Africa Pumps & Equipment (Pty) Ltd within the warranty period. Where products are serviced by another company within the warranty period the Customer consents and acknowledges that t shall forfeit the warranty.
 - 11.1.7 Call out and additional costs incurred will be for the Customer's account on any warranty claims, and where the claim is not a valid claim as detailed above, all costs involved will be billed to the Customer. All prices are subject to Value Added Tax (VAT) at the statutory rate currently at 15%, as amended.
 - 11.1.8 Where the Supplier manufactures or supply goods to the Customer's specification and/or drawings or carries out work according to the Customer's instructions or those of the Customer's advisors, the Supplier does not accept responsibility for the efficiency or workability of goods manufactured or work carried out.
 - 11.1.9 Under no circumstances shall the Supplier be responsible for loss of the Customer's profit or for any consequential or indirect or any other damages of any nature whatsoever cause arising.

12. SUSPENSION AND/OR CANCELLATION

- 12.1 Notwithstanding anything herein contained to the contrary, the Supplier shall be entitled to suspend, delay and/or cancel performance of the Works and/or any Order and/or vary the terms and conditions of payment by insisting upon advanced payments in the event that the Customer falls into arrears with its account with the Supplier, or breaches any term or condition herein contained, or commits any act of insolvency or is declared by any competent Court to be insolvent, or is placed under an order of sequestration, debt review and/or liquidation (whether provisional or final) and/or is subject to any resolution passed to enable the Customer to be wound up and/or dissolved.
- 12.2 No suspension, delay and/or cancellation as a result of any of the foregoing events shall novate or waive any of the other rights which the Supplier may be entitled to in law in terms of the Agreement or otherwise, including without limitation, the right of the Supplier to withdraw the credit facilities hereby extended to the Customer.
- 12.3 The Supplier reserves the right to terminate, alternatively suspend, any Agreement without cause upon written notice to the Customer without liability to the Customer whatsoever.

13. USE OF CONTRACT DOCUMENTS AND INFORMATION INSPECTION

- 8.6 The Customer shall not, without the Supplier's prior written consent, disclose any specification, plan, drawing, pattern, sample, or information furnished by and on behalf of the Supplier in connection with the Works, to any person other than a person employed by the Customer in the performance of the Agreement. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for the purposes of executing the Works. The Supplier retains all copyright and intellectual property rights to the drawings and/or other documentation concerning our Products. These IP products should under no circumstances be made available to Third Parties without the express approval and written confirmation by the Supplier.

14. GOOD FAITH

In the execution of the Agreement, the Customer undertakes to observe the utmost good faith and warrants in its dealings with the Supplier that it shall not do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interests of the Supplier.

15. EXCLUSIVITY AND NON-VARIATION

These Terms and Conditions constitute the entire Agreement between the Supplier and the Customer and no variation, amendment, consensual cancellation or otherwise shall be of any force or effect unless agreed to in writing and signed by both the Customer and the Supplier.

16. NO NOVATION

No indulgences, latitude, extension of time or the like granted by the Supplier to the Customer shall in any way whatsoever constitute a novation or waiver of any rights which the Supplier may have against the Customer nor may it operate as an estoppel against the Supplier.

17. SOUTH AFRICAN LAWS APPLICABLE

These Terms and conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

18. CERTIFICATE OF INDEBTEDNESS

The Customer confirms that a certificate signed by the credit manager or any director of the Supplier, whose designation it shall not be necessary to prove, showing the amount owing by the Customer to the Supplier shall be sufficient proof that the said amount is due, owing and unpaid and shall be satisfactory proof of what is contained therein for the purpose of any action (whether by way of provisional sentence, summary judgment or otherwise) proof of the debt on insolvency or for any purpose whatsoever. Where the quantum of

the Supplier's claim is thereafter disputed by the Customer, the Customer shall bear the onus of proving that such amount is not owing and/or due and/or payable.

19. NOTICE OF CHANGE OF CIRCUMSTANCES OF CLIENT

19.1 The Customer agrees to notify the Supplier in writing within 7 (seven) days of any event occurring, or information becoming known or available to it, which reasonably considered, would materially affect a creditor in assessing the risk relative to granting credit facilities to the Customer.

19.2 The Customer shall inform the Supplier of any change in ownership of the Customer's business or any transaction where shares or members' interest in excess of 25% (twenty-five percent) of the issued share capital of the Company or members interest, changes hands.

20. COSTS

In the event that the Supplier should institute legal action against the Customer, the Customer shall be liable for all costs and expenses incurred on the scale as between attorney and client, including collection commission.

21. ADDRESS

The Customer undertakes to notify the Supplier in writing of any change of address of its principal place of business and/or registered office, where applicable. The Customer chooses as its address for the purposes of the service of all letters, notices, accounts, summonses and the like at its registered address as reflected at the Companies and Intellectual Property Commission.

22. SEVERABILITY OF CLAUSES

This clause shall be severable from the rest of these Terms and Conditions and shall remain effective notwithstanding that these Terms and Conditions shall for any reason whatsoever, be terminated.

23. SOUTH AFRICAN LAWS APPLICABLE

These Terms and Conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

24. LIQUIDATION AND/OR BUSINESS RESCUE

If the Customer is placed into liquidation (whether by provisionally or finally), suffers any disability, is placed under business rescue, or enters into any compromise, composition or other arrangement with its creditors, the Supplier shall be entitled to prove a claim against the Customer for the full amount of any indebtedness to it and to accept any dividend on account and in reduction of such indebtedness without prejudice to the rights of the Supplier to proceed against the Customer for the full extent of its claim, notwithstanding any compromise, composition or other arrangement entered into with creditors in the course of liquidation, or under business rescue proceedings.

25. ARBITRATION

25.1 Save as otherwise provided in these Terms and Conditions and, in the event that a dispute should arise between the parties, the Supplier shall be entitled to require, by written notice to the Customer, that the dispute be submitted to arbitration in terms of this clause.

25.2 Subject to the provisions of this clause, arbitration shall be held under the provisions of the arbitration laws of the time in force in the Republic of South Africa, provided that the arbitrator shall be a practising attorney of not less than 10 (ten) years standing, agreed upon by the parties, or failing agreement within five (5) days after the date on which the arbitration is demanded, appointed by the Chairperson of the Legal Practice Council.

25.3 The arbitration shall be held at Sandton, at a venue and in accordance with formalities and/or procedures determined by the arbitrator, and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities and/or procedures, pleadings and/or discovery, or strict rules of evidence.

25.4 The arbitrator shall be entitled:-

- 25.4.1 to investigate or cause to be investigated any matter, fact or thing which he/she considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of either part to the dispute, and the right to take copies or make extracts therefrom and the right to have them produced and/or delivered at any reasonable place required by him/her for the aforesaid purpose;
- 25.4.2 to interview and question under oath, any representative of either of the parties;
- 25.4.3 to decide the dispute according to what he/she considers just and equitable in the circumstances; and
- 25.4.4 to make such award, including an award for costs, specific performance, an interdict, damages or a penalty or otherwise as he/she in his/her discretion deems fit and appropriate, provided that should the arbitrator fail to make an award with regards to costs, the costs shall be borne equally by the parties.
- 25.5 The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within thirty days after it has been so demanded.
- 25.6 Immediately after the arbitrator has been agreed upon or nominated in terms of this clause either party shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.
- 25.7 Any award made by the arbitrator:-
- 25.7.1 shall be in writing and shall include reasons therefore;
- 25.7.2 shall be final and binding;
- 25.7.3 will be carried into effect; and
- 25.7.4 may be made an order of any Court to whose jurisdiction the parties to the dispute are subject.
- 25.8 This clause constitutes an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or to claim in any such proceedings that it is not bound by this clause.
- 25.9 This clause shall not preclude any party from obtaining relief by way of motion proceedings on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.

26. FINAL CLAUSES

- 26.1 The Customer may transfer its rights under this Agreement to third parties only with the Supplier's prior Agreement in writing.
- 26.2 The Customer's terms of business will only apply if their validity has been expressly agreed to for the single transaction.
- 26.3 The place of performance for all deliveries, services and payments is 4 -6 Edison Road, New Era, Springs South Africa.
- 26.4 The Customer and Supplier agree that 4 -6 Edison Road, New Era, Springs is the place of jurisdiction.
- 26.5 If any clause within these General Terms and Conditions of Payment and Delivery is or becomes ineffective, then the validity and enforceability of the remaining clauses will nevertheless remain unaffected.
- 26.6 Registration and License Fee costs are not covered and will be charged extra to the Customer's account unless otherwise stated in writing on Werner Quotations.
- 26.7 We as a Company do not condone Corruption and Anti-Competitive behavior in any form or manner.