



## Pryde Trusses

### Terms and Conditions of Trade

#### 1. Status of Agreement:-

- 1.1. This Agreement, together with each written order and order confirmation, represents the entire Agreement between the customer and the supplier and supersedes all previous negotiations, terms, conditions and Agreements between the customer and the supplier and no representations or undertakings between the customer and the supplier shall be binding on either of the parties unless reduced to writing and signed in accordance with this Agreement.
- 1.2. No variations, alterations or consensual cancellations of this agreement shall be binding unless it is reduced to writing and signed by the parties in accordance with the provisions of this Agreement.
- 1.3. This Agreement will govern all future contractual relationships between the parties, notwithstanding receipt of or acknowledgement of the customer's own order form or conditions.
- 1.4. This Agreement also applies to all existing debts between the parties.
- 1.5. This Agreement is final and binding and not subject to any suspensive or resolutive conditions.
- 1.6. Any conflicting terms, conditions or agreements are without prejudice to any securities or guarantees held by the supplier.
- 1.7. This agreement applies to all employees and sub-contractors of the supplier and the customer.

#### 2. Manner of signing and binding nature of agreement:-

- 2.1. This Agreement and all alterations and amendments thereof shall only be binding on the parties when signed by the parties' duly authorised representatives. Either party is entitled to call for proof of the signatories' authority.
- 2.2. This Agreement and any offers, orders or contracts of sale pursuant thereto, become binding only when communicated to and accepted by the supplier at its business address.

#### 3. Status of the agreement and inter action with the consumer protection act (cpa):-

- 3.1. If the customer is a Company, a Close Corporation, a Partnership or a Trust the provisions of the CPA do not apply and this Agreement constitutes the sole recordal of the contract between the parties.
- 3.2. In the case of individuals and Corporate entities to which the provisions of the CPA do apply, the provisions of the CPA will, in the event that they differ from the provisions of this Agreement apply in the place of the provisions of the Agreement.

#### 4. Quotations and placing of orders:-

- 4.1. Quotations are valid for a period of fifteen (15) days from the date of the quotation.
- 4.2. In the event that a new price list is published during the period of fifteen (15) days specified above, the new prices shall, at the option of the supplier apply to the quotation and the supplier shall advise the customer of the amendment of the quotation.
- 4.3. Quotations are subject to:-
  - 4.3.1. the availability of input goods or services;
  - 4.3.2. the supplier's right to correct good faith errors and omissions;
  - 4.3.3. the increase in the costs of materials;
  - 4.3.4. currency fluctuations.
- 4.4. The supplier shall advise the customer of any amendments to the quotation as soon as they occur.
- 4.5. Quotation shall only be binding on the supplier once it has received the customer's written acceptance of such quotation.

#### 5. Reservation of goods and the placing of advanced orders:-

- 5.1. The customer has, subject to the provisions hereof, the right to cancel any advance order for any goods.
- 5.2. The supplier shall, in accepting a reservation to supply the customer with goods on a later date:-
  - 5.2.1. Require the customer to pay a reasonable deposit in advance; and
  - 5.2.2. impose a reasonable charge for cancellation of the order or reservation.
- 5.3. The charges imposed by the supplier in terms of sub clause 2 above, shall be set out in the order placed by the customer and the supplier shall be entitled to set off the charge stipulated in sub clause 2.2. against the deposit.
- 5.4. The customer acknowledges that he shall not have the right to cancel an advance order where the goods are to be especially made up for him by the supplier.

#### 6. No warranty:-

- 6.1. The customer must ensure that the goods ordered are fit for the use and purpose to which the customer intends to put such goods.
- 6.2. The supplier gives no warranties, whether express or implied, that the goods ordered by the customer will be fit for the use or purpose to which the customer intends to put such goods.

#### 7. Delivery of goods:-

- 7.1. The supplier shall, unless the customer collects the goods from the supplier, deliver the goods to the address indicated by the customer in the order form.
- 7.2. The supplier shall deliver the goods to the customer on the date and time indicated by the customer in writing and shall

not be obliged to deliver the goods on any other date and time unless the customer has provided the supplier with adequate prior written notice of the change of date and time.

- 7.3. Any additional costs occasioned by a change of the date, time or place of delivery will be for the customer's account .
- 7.4. The goods shall remain at the supplier's risk until the customer accepts delivery thereof.
- 7.5. The customer shall be regarded as having accepted delivery of any goods on the earliest of the following instances:-
  - 7.5.1. When the customer expressly or implicitly communicates to the supplier that he has accepted delivery of the goods; or
  - 7.5.2. when the supplier has delivered the goods to the customer, and;
    - 7.5.2.1. the customer does anything in relation to the goods that would be inconsistent with the supplier's ownership of the goods; or
    - 7.5.2.2. the customer retains the goods without indicating to the supplier within a reasonable time of delivery that he has rejected delivery of the goods.
- 7.6. The supplier shall, on tendering delivery of the goods to the customer, allow the customer a reasonable opportunity to examine the goods for the purpose of ascertaining whether the customer is satisfied that the goods:-
  - 7.6.1. Are of a type and quality reasonably contemplated in the order.
  - 7.6.2. Reasonably conform to the material specifications of the special order placed by the customer.
- 7.7. If the supplier delivers a larger quantity than ordered by the customer, the customer may:-
  - 7.7.1. Accept delivery of the entire order and pay the difference for the excess goods at the agreed rate, or
  - 7.7.2. reject all of the delivered goods.

#### **8. Customer's right to return goods:-**

- 8.1. In the following circumstances the customer may return goods to the supplier and receive a full refund of any consideration paid for those goods:-
  - 8.1.1. the customer did not have an opportunity to examine the goods before delivery and has rejected delivery of those goods because they were not of a type and quality reasonably contemplated in the Order between the parties and, in the case of a special order did not reasonably conform to the material specifications of that special order.
  - 8.1.2. The goods were mixed with goods not contemplated in the order and the customer had either rejected all of the delivered goods or rejected the goods that were not of a description contemplated in the order.
  - 8.1.3. The goods were intended to satisfy a particular purpose communicated to the supplier and does not satisfy such purpose.
- 8.2. The customer shall not have the right to return the goods if those goods have been supplied to the customer and have, at the direction of the customer been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with or embedded with other goods or property.

- 8.3. Should the customer elect to return goods to the supplier, he shall do so within ten (10) days after delivery of the goods to him.
- 8.4. The goods shall be returned at the suppliers' risk and expense.
- 8.5. Upon returning the goods to the supplier, the supplier shall refund to the customer the price the customer paid for the goods less any amount that the supplier may charge for the use, consumption or depletion of the goods by the consumer as well as any amounts that the supplier may have to expend to render the goods fit for re-stocking.

#### **9. Security:-**

- 9.1. The Seller shall remain the owner of all goods supplied to the customer until such time as the goods have been paid for in full, whether those goods have been installed or attached to other property or not.
- 9.2. Any item that the customer may deliver to the supplier shall be deemed to be pledged to the supplier as security for all amounts owing by the customer to the supplier.
- 9.3. The supplier shall retain a lien over all or any of the customer's property in the supplier's possession until such time as amounts owing by the customer to the supplier have been settled in full.
- 9.4. The customer cedes and assigns in favour of the supplier all its right, title and interest in and to debts which are now, or which may in the future, become owing to the customer by any third party or parties as security for the payment by the customer of all amounts which are now and may from time to time become owing to the supplier. The customer agrees that it shall, on request by the supplier, hand over to the supplier all books of account, contracts, invoices and documents, which may be required by the supplier in order to exercise its rights in terms of this Cession.

#### **10. Payment:-**

- 10.1. All amounts owing by the customer to the supplier shall be paid strictly in accordance with the terms granted to the customer or in cash against the order.
- 10.2. The customer shall make all payments in such manner and into such account as directed by the supplier in writing.
- 10.3. The risk of payment by cheque through the post or by way of EFT remains with the customer.
- 10.4. The customer may not:-
  - 10.4.1. Withhold payment for any reason whatsoever and;
  - 10.4.2. may not deduct from or set off against amounts owing to the supplier any amounts that the supplier may owe it.
- 10.5. In the event that the customer fails to make payment in accordance with this Agreement or the customer's credit terms, the customer shall forfeit any discount granted to it by the supplier.
- 10.6. A certificate signed by any member or Director of the supplier (whose appointment it shall not be necessary to prove) shall be prima facie proof of any amount owned by the customer to the supplier.

#### **11. Interest:-**

- 11.1. The customer shall pay interest on any arrear amount at the maximum legal rate allowed by the National Credit Act.

11.2. Interest shall be calculated on the daily outstanding balance and shall be compounded monthly in arrears from the date of default until the date of payment.

**12. Credit information:-**

- 12.1. The customer hereby consents to the supplier performing a credit check on the customer at any time during the currency of this Agreement.
- 12.2. In the event that the customer fails to pay any amount on due date or breaches any of the credit terms granted to it by the supplier, the supplier may, in its sole discretion, post a default listing with a credit bureau.
- 12.3. Should the customer remedy the breach that resulted in the credit default listing, the supplier may, in its sole discretion and without any obligation, advise the credit bureau that the breach has been remedied.
- 12.4. The supplier may, in its sole discretion, provide a national credit bureau with updated credit information about the customer.
- 12.5. The customer consents to the supplier using a national credit bureau data base to trace the customer, should that be required, and further consents to being liable for the cost of such tracing.

**13. Supplier's right to cancel:-**

- 13.1. The supplier shall be entitled but not obliged to cancel any order on the happening of any of the following events:-
  - 13.1.1. The customer breaching any of the terms of this Agreement;
  - 13.1.2. the customer being provisionally or finally sequestrated or being provisionally or finally liquidated;
  - 13.1.3. the customer surrendering his Estate;
  - 13.1.4. the customer compromising with any of its creditors.
- 13.2. In the event of such cancellation, the supplier shall be entitled to retain any monies held on behalf of the customer and:-
  - 13.2.1. Set such amount off against any amounts owing to it by the customer or;
  - 13.2.2. set off such portion of the amounts held by it against charges it may raise in terms of this Agreement.

**14. Breach:-**

- 14.1. In the event that the customer fails to pay any amount on due date or breaches any other term of this Agreement and fails to remedy such breach within five (5) days of receiving notice to remedy such breach, the supplier shall be entitled, without prejudice to any other right it may have in terms of this Agreement or the common law, to cancel this Agreement or to insist on specific performance, in either case without prejudice to its right to claim damages.
- 14.2. In the event that the supplier exercises its rights in terms of this clause, all amounts owing by the customer shall immediately become due and payable.

**15. Costs:-**

In the event that the supplier has to take steps to recovery any amounts due to it by the customer, the customer shall be liable to pay the supplier's legal costs on the scale of Attorney and own client.

**16. Clauses specifically drawn to the customer's attention in terms of section 49 of the cpa.**

- 16.1. The Supplier reserves the right to provide alternative products at the prevailing prices to the products ordered by the customer, should the products ordered by the customer have been super ceded, replaced or otherwise have become unavailable.
- 16.2. The supplier shall not be required to work to tolerances closer than those applicable to any materials obtained by it in the ordinary course of trade or supplied to it by the customer. The supplier shall not be held liable for any variations in the standard, quality and performance of such materials.
- 16.3. The supplier shall not be held responsible for imperfections in work done due to defects in or due to the unsuitability of material or equipment supplied by the supplier. In the event that extra costs are incurred through the use of defective materials or equipment supplied by any party other than the supplier, such additional costs shall be for the customer's account.
- 16.4. In the event that the customer requires the supplier to expedite delivery of the goods ahead of the time needed for the proper production of the order, the supplier shall not be liable for any defects resulting from the customer's requirement that the order be expedited.
- 16.5. The customer shall be liable for all costs resulting from any acts, omissions or requests by the customer including disbursements, suspension of work, modifications of requirements, failure or delay in giving particular requisite instructions to enable work to proceed on schedule, or requirements that would be completed earlier than previously agreed.
- 16.6. Any delivery note, invoice or waybill signed by the customer or a third party engaged to transport the goods shall be prima facie proof that the goods have been delivered to the customer.
- 16.7. If the rate for a product is not specified in the order, the customer agrees to the supplier's standard rates, which rates are obtainable on request.

**17. Consent to jurisdiction:-**

- 17.1. The customer hereby consents that, notwithstanding the amount outstanding, the supplier may institute any action for the recovery of outstanding amounts in the Magistrate's Court having jurisdiction.
- 17.2. The supplier is not precluded from instituting any action for recovery in the High Court should it wish to do so.

**18. Domicilium citandi et executandi:-**

- 18.1. The customer chooses as its domicilium citandi et executandi for all purposes under this Agreement the address specified in its application of credit.
- 18.2. The customer may change its domicilium citandi et executandi by written notice to the supplier.
- 18.3. The customer shall be deemed to have received such notice:
  - 18.3.1. within five (5) days of being posted if posted by pre-paid registered mail to the customer's business or postal address or the personal address of any Director, Member or owner of the customer;

18.3.2. within twenty-four (24) hours of being faxed to any of the customer's fax number or to the fax number of a Director, Member or owner;

18.3.3. within twenty-four (24) hours of being e-mailed to any of the customer's e-mail addressed or the e-mail address of any Director, Member or owner.

18.4. The customer may change its domicilium address by giving written notice of such change to the supplier.

#### **19. General:-**

19.1. No indulgence that the supplier may grant the customer shall constitute a waiver of any of the supplier's rights under this Agreement and accordingly, the supplier shall not be precluded, as a consequence of having granted such indulgence from exercising any rights against the customer which may have arisen in the past or which may arise in the future.

19.2. Any reference in this Agreement to one gender includes a reference to another gender and a reference to natural persons includes a reference to juristic persons.

19.3. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

19.4. If any one or more of the provisions of this Agreement is declared or adjudged (formally or informally) by a competent authority to be illegal, invalid or unenforceable under any law applicable in any jurisdiction in which this Agreement is to be performed:-

19.4.1. That provision shall be deemed for all purposes to be severable from all the other provisions, which provisions shall continue in force unaffected; and

19.4.2. this Agreement thus continuing shall (subject and without prejudice to any Appeal to higher authority as to the status of that provision) exclude the offending provision but, if such deletion substantially affects or alters the commercial basis of this Agreement, include such provision, as the parties it shall in good faith agree which will, while not being void or unenforceable, most nearly achieve the object of the allegedly void or unenforceable provision.

#### **20. Suretyships:-**

20.1. In the event that the customer is a Company, Close Corporation or Trust the supplier may insist on the Shareholders, Directors, Members or Trustees (as the case may be), binding themselves as sureties and coprincipal debtors with the Company, Close Corporation or Trust for the due performance of the customer's obligations to the supplier.

20.2. Notwithstanding the provisions of clause 20.1. above, the signatory to this Agreement hereby binds himself jointly and severally with the customer as surety and coprincipal debtor for the due performance of the customer's obligations to the supplier.

20.3. In the event that the customer is a Company or Close Corporation which becomes subject to business rescue procedures in terms of the Companies Act No. 71 of 2008, and the business rescue practitioner cancels or suspends

the agreement (or any provision thereof) between the customer and the supplier, such cancellation or suspension shall be deemed to be a breach of the agreement by the customer, which breach shall render the signatory and other sureties liable in terms of this clause and other suretyships. Agree Pryde Trusses Confidential Account Application 5.5.2011

#### **21. Camera Surveillance equipment:-**

21.1 Important note: Camera surveillance equipment is being used by Pryde Trusses' drivers to monitor and control theft, other losses, and work output. Please note that any visual material obtained in this fashion could be used as evidence where needed.