

TERMS OF CONTRACT

- 1.1 The terms hereof shall form part of and apply to this contract and all future contracts or other agreements entered into unless specifically excluded or amended by the parties, such exclusion or amendment to be in writing.
- 1.2 Unless otherwise specifically stipulated in writing to the contrary, the terms hereof shall supersede and prevail over any terms and conditions contained in any documents submitted by the customer.

2 PRICE AND PAYMENT

- 2.1 The purchase price of the goods listed on the face hereof shall be paid by the customer to Burncrete without any deduction or set off within the period of the agreed credit terms allowed to the customer after the date of the statement submitted by Burncrete.
- 2.2 Burncrete shall be entitled to charge interest on all overdue amounts at the maximum rate permissible from time to time for credit transactions in terms of the Usury Act equivalent legislation, as amended. Such interest shall be calculated and payable monthly in advance on the first day of each and every successive month on the balance outstanding from time to time by the customer to Burncrete, and shall be added to the amount due to Burncrete by the customer in respect of the purchase price of the goods.
- 2.3 The ownership of all goods supplied by Burncrete to the customer shall remain vested in Burncrete until the purchase price in respect thereof has been paid in full, but the customer shall have the right to dispose thereof in the ordinary course of normal business it being agreed that all payments made the customer shall in the first instance be and be deemed to have been made in respect of those goods which have been disposed of by the customer in the ordinary course of business.
- 2.4 Where any payment is affected by cheque or by electronic transfer or where any cheque is sent in the post, all risks arising from the use of a cheque, electronic transfer or the use of the post shall lie with the customer who shall be liable for all damages / losses sustained as a result thereof.
- 2.5 The price of the goods sold to the customer is subject to the discounts shown on the invoice.
- 2.6 Any agreed settlement discount shall only be allowed if payment is received by Burncrete strictly by the due date and shall only apply to the actual price of the goods themselves and not to any value added tax, transport costs, insurance, storage charges or other duties or taxes.
- 2.7 All prices quoted are based on rates of exchange of currencies, freight, insurances, landing charges, dock duties, customs and import duties, railage and statutory wage rates in existence at the time that negotiation for the purchase of the goods to which the invoice in question relates, and consequently any variation in such rates will be for the account and be borne by the customer.
- 2.8 All applications, prices, lists, illustrations, diagrams, or prices issued or advertised by Burncrete from time to time are to be utilized only as a general guideline in respect of the matters to which they relate, are subject to change or variation without notice, do not constitute offers for sale nor form part of any contract entered into between Burncrete and the customer.

3. DELIVERY

- 3.1 Delivery shall be completed when goods are loaded by the customer or a carrier engaged (whether by Burncrete or the customer) to transport the goods to the customer.
- 3.2 Should Burncrete at the customer's request, agree to engage a carrier to transport the goods to the customer, then:
- 3.2.1 Burncrete is authorised to engage a carrier on such terms and conditions as it deems fit, and
- 3.2.2 the customer indemnifies Burncrete against all demands and claims which may be made against it by the carrier so engaged and all liability which Burncrete may incur to the carrier arising out of the transportation of the goods.
- 3.3 The risk in the goods shall pass to the customer on delivery of the goods.
- 3.4 Burncrete shall not be liable under any circumstances for any loss or claim arising from any alleged shortage in delivery or defect in the goods unless written notice is received by Burncrete within seven days after delivery of the goods to the customer.
- 3.5 The signature of any employee or agent of the customer which appears on Burncrete's official delivery note or way-bill or the delivery note of any authorised independent carrier shall constitute conclusive evidence of goods purchased.
- 3.6 If more than one delivery is to be made, then the provisions of this clause 3 shall apply to each delivery.
- 3.7 The time of delivery shall not be of the essence of the contract.
- 3.8 The sale of the items reflected on the invoice in question does not include installation, erection or commissioning unless otherwise specifically referred to.
- 3.9 Burncrete shall not be liable for any loss of profit or for any damage sustained by the customer whether such damage be direct, indirect, consequential or otherwise arising as a result of:
- 3.9.1 supply of defective items;
- 3.9.2 incorrect or late deliveries;
- 3.9.3 faulty erection, installation or commissioning;
- 3.9.4 failure to deliver the items to which this invoice relates caused by breakdowns in/ of machinery, strikes, labour disputes, riots, civil commotions, accidents, orders or regulations of any government or authority, shortage of material, acts of God or any other causes either wholly or partly beyond Burncrete's control.

4. EXCLUSIONS

- 4.1 Burncrete's liability to the customer for any damages sustained by the customer from any cause whatsoever including any damages arising out of Burncrete's negligence or that of its servants, agents or subcontractors shall in any event and under all circumstances, be limited to the replacement at Burncrete's premises of goods which at the date of delivery thereof are defective.
- Except as provided in 4.1 above, Burncrete shall in no circumstances whatsoever be liable for any loss of profit or any damage, direct or indirect, consequential or otherwise sustained by the customer whether or not caused by the negligence of Burncrete, its agents or employees.
- 4.2 The customer shall not have any claim of any nature whatsoever against Burncrete for any failure by Burncrete to carry out any of its obligations as a result of causes beyond Burncrete's control, including but not limited to any strike, lockout, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier of Burncrete, riot, political or civil disturbances, the elements, any act of any State
- 4.3 or Government, any delay in securing any permit, consent or approval required by Burncrete for the supply of goods or any other authority or any other cause whatsoever beyond Burncrete's absolute and direct control.

5. DEFAULT

- 5.1 Should the customer default in paying his/its account strictly on due date or commit a breach of any of the terms or conditions of this contract or; being an individual, die or be provisionally or finally sequestered or surrender or make application to surrender his estate or commit any act of insolvency; or being a partnership, the partnership is dissolved; or

being a company or close corporation, is placed under a provisional or final order or liquidation or judicial management; or has judgement recorded against it which remains unsatisfied for seven days; or compromises or attempts to compromise generally with any of the customer's creditors; or enters into any transaction which has the effect of changing the beneficial ownership of the customer's business; or if the customer is a company or close corporation, enters into any transaction which has the effect of a change in the effective control of the company or corporation; then, without prejudice to any other right it might have:

- 5.1.1 Burncrete shall be entitled, but not compelled, forthwith to demand that all amounts outstanding by the customer from whatsoever cause arising, be paid immediately; and
- 5.1.2 Burncrete shall furthermore be entitled to cancel any agreement which exists between it and the customer and suspend the carrying out of any of its then uncompleted obligations, in which event the customer shall have no claim or claims of whatsoever nature against Burncrete arising out of such cancellation or the suspension by Burncrete to carry out any obligations.
- 5.2 Burncrete's right in terms of 5.1 above shall not be exhaustive and shall be in addition to its common law rights.
- 5.3 No relaxation which Burncrete may have permitted on any occasion in regard to the carrying out of the customer's obligations shall prejudice or be regarded as a waiver of Burncrete's right to enforce its obligations on any subsequent occasion.
- 5.4 Upon the cancellation of the contract between Burncrete and the customer for any reason whatsoever;
 - 5.4.1 all amounts then owed by the customer to Burncrete from any cause whatsoever shall become due and payable forthwith; and
 - 5.4.2 Burncrete may retake possession of all goods in respect of which ownership has not yet passed.
6. JURISDICTION
- 6.1 Burncrete shall be entitled but not obliged to institute any proceedings against the customer in any Magistrate Court having jurisdiction over the customer notwithstanding that the claim or the value of the matter in dispute may exceed the jurisdiction of the Magistrate Court. Further, the customer agrees to be liable for all legal costs including costs on the scale as between attorney and his own client and collection charges and tracing costs.
- 6.2 A certificate signed by any director or manager of Burncrete showing the amount due and owing by the customer to Burncrete at any given time shall be prima facie evidence of the amount due by the customer and such certificate shall be sufficient for purposes of judgement or provisional sentence or other legal proceedings.
7. DOMICILIUM
The customer nominates its head office address as reflected on the face hereof as its domicilium citandi et executandi for service upon it of all notices and processes whether in connection with any claim or any sum due to Burncrete or otherwise.
8. NEGOTIABLE INSTRUMENTS
Any promissory note, bill of exchange or other negotiable instrument received by Burncrete from the customer shall not be a novation of the debt for which it is given, and the customer waives presentment, notice of dishonour and protest where applicable.
9. RETURN OF GOODS
If, in the exercise of its discretion, Burncrete shall agree, at the request of the customer, to accept the return of any goods for credit, which goods were correctly supplied by Burncrete and are not faulty or subject to any claim, then Burncrete shall be entitled without the necessity of any further agreement to claim from the customer a handling charge of 10% (ten percent) of the invoice price of the goods so returned.
10. INSURANCE
- 10.1 The customer shall at all times keep the goods sold to it adequately insured against all forms of loss.
- 10.2 Pending payment to Burncrete for goods purchased, all benefits in terms of the insurance policy relating to the insurance of such goods are hereby ceded to Burncrete.
11. LAW APPLICABLE This contract of sale is governed by the laws of the Republic of South Africa.
12. GENERAL
 - 12.1 No variation, alteration or consensual cancellation of any these terms and conditions shall be of any force or effect, unless in writing and signed by Burncrete and the customer.
 - 12.2 No waiver or abandonment by Burncrete of any of its rights in terms of these terms and conditions shall be binding on it unless such a waiver or abandonment is in writing and signed by it.
 - 12.3 No indulgence, extension of time, relaxation or latitude which Burncrete may show, grant or allow to the customer shall constitute a waiver by it of any of its rights and Burncrete shall not thereby be prejudiced or stopped from exercising any of its rights against the customer which may have arisen in the past or which might arise in the future.
 - 12.4 The provisions hereof shall prevail over any terms and conditions which the customer may purport to impose or apply and which are contrary to the terms hereof.
 - 12.5 The customer hereby acknowledges and agrees that information concerning the credit worthiness of the customer may be disclosed to any registered credit bureau and/or for any other suppliers.
 - 12.6 The foregoing terms constitute
The entire agreement between Burncrete and the customer and Burncrete has not given to the customer any undertakings, warranties or representations apart from those set out herein.

SIGNATURE

NAME & POSITION

DATE

INITIAL

WHOLESALE SUPPLIERS OF LIFTING AND PULLING EQUIPMENT

www.burncrete.co.za

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