

**GENERAL CONDITIONS OF SALE**

**OF**

**INSULATED STRUCTURES (1989) (PROPRIETARY) LIMITED**

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**Hofmeyr**

**Hofmeyr Herbstein & Gihwala Inc**

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## GENERAL CONDITIONS OF SALE

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### **NO APPENDIX**

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1	Deed of Suretyship
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# GENERAL CONDITIONS OF SALE

## 1 INTERPRETATION

1.1 In these standard terms, unless inconsistent with or otherwise indicated by the context –

1.1.1 “**the/this agreement**” means the agreement for the purchase and sale of goods that comes into existence between Insulated Structures and the purchaser upon the acceptance by the purchaser of the quotation, and which agreement comprises the quotation, these standard terms and where applicable the credit application form and the deed of suretyship;

1.1.2 “**business day**” means a day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.1.3 “**Insulated Structures**” means Insulated Structures (Proprietary) Limited, a division of CGIS Refrigeration Group (Pty) Ltd, registration number 2010/003723/07, a private company incorporated in accordance with the laws of South Africa;

1.1.4 “**credit application form**” means the credit application form completed by the purchaser pursuant to which application is made for the extension of credit by Insulated Structures to the purchaser;

1.1.5 “**deed of suretyship**” means the deed of suretyship executed in favour of Insulated Structures for the due, proper and timeous performance by the purchaser of its obligations in terms of the agreement;

1.1.6 the “**goods**” means the goods purchased by the purchaser from Insulated Structures, as specified in the quotation;

1.1.7 “**parties**” means Insulated Structures and the purchaser;

- 1.1.8 “**prime rate**” means the publicly quoted basic rate of interest (expressed as a nominal annual compounded monthly in arrears rate) levied by First National Bank from time to time, calculated on a 365 (three hundred and sixty five) day year, irrespective of whether the applicable year is a leap year, and proved, *prima facie*, in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any manager of that bank (whose appointment, authority and qualification need not be proved);
- 1.1.9 “**purchase price**” means the purchase price for the goods, which price is stipulated in the quotation, as well as VAT thereon;
- 1.1.10 the “**quotation**” means the quotation issued by Insulated Structures to the purchaser, as envisaged in 3.1, which quotation shall, once accepted, constitute a binding agreement between the parties, subject to these standard terms;
- 1.1.11 these “**standard terms**” means the standard terms and conditions applicable to the sale of good by Insulated Structures contained in this document;
- 1.1.12 “**VAT**” means Value-Added Tax, as defined and envisaged in the Value-Added Tax Act, 1991, as amended;
- 1.2 Any reference to –
- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 natural persons includes juristic persons and vice versa;
- 1.2.3 any one sex or gender includes the other sexes or genders, as the case may be;
- 1.2.4 a party includes a reference to that party’s successors in title and assigns allowed at law.

- 1.3 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.4 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.6 If any period is referred to in this agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the 1<sup>st</sup> (first) day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.
- 1.7 If the due date for performance of any obligation in terms of this agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 1.8 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 (local time at the place where the obligation or act is required to be performed) on that day.
- 1.9 This agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa from time to time.
- 1.10 The rule of construction that this agreement shall be interpreted against the party responsible for the drafting of this agreement, shall not apply.

## **2 APPLICATION**

- 2.1 Unless specifically otherwise agreed, these standard terms shall apply to every agreement for the sale of goods concluded between the Insulated Structures and the purchaser.
- 2.2 These standard terms shall be deemed to have been accepted by the purchaser and a binding agreement for the sale of goods shall be deemed to have come into existence between Insulated Structures and the purchaser in respect of the goods, as soon as the quotation is accepted by the purchaser.

## **3 QUOTATION**

- 3.1 Each quotations issued by Insulated Structures shall at least–
- 3.1.1 specify the goods to be sold to the purchaser;
  - 3.1.2 specify the prices of the goods;
  - 3.1.3 stipulate the estimated delivery date of the goods;
  - 3.1.4 stipulate the addresses of Insulated Structures and the purchaser;  
and
  - 3.1.5 provide for the acceptance of the quotation by the purchaser by affixing a signature to the quotation.
- 3.2 All quotations issued by Insulated Structures will remain valid for a period of 30 (thirty) days.
- 3.3 The purchaser shall accept the quotation by signing it in the space provided for that purpose and returning the signed quotation to Insulated Structures.
- 3.4 If the purchaser accepts a quotation after the expiry of a period of 14 (fourteen) days from the date of issue of the quotation, such acceptance shall be subject to the availability of goods, the ability of Insulated

Structures to deliver goods on the estimated delivery date and increases in the prices of the goods specified therein.

#### **4 PAYMENT TERMS**

4.1 The purchaser shall pay the purchase price to Insulated Structures in cash –

4.1.1 against delivery of the goods; or

4.1.2 within 30 (thirty) calendar days after the delivery of the goods, if Insulated Structures has agreed to extend credit to the purchaser.

4.2 All payments made by the purchaser to Insulated Structures shall be made free of exchange and bank commission and without deduction or set-off into a bank account nominated for that purpose by Insulated Structures (the “**Insulated Structures account**”).

4.3 Payment of the purchase price shall be deemed to have been made when cleared funds are received into the Insulated Structures account.

4.4 Without limiting the rights of Insulated Structures, all amounts that are not paid on the due date for payment thereof shall bear interest at a rate equal to the prime rate plus 3% (three percent) from the due date for the relevant payment until and including the actual date of payment thereof.

#### **5 INSPECTION**

5.1 Insulated Structures shall inspect the goods prior to delivery of the goods to the purchaser.

5.2 If the purchaser requires that an inspection be carried out by it or its representative, such inspections shall be conducted –

5.2.1 prior to delivery at the premises of Insulated Structures;

5.2.2 at the cost of the purchaser; and

5.2.3 in the presence of and at a time that is convenient to a representative of Insulated Structures.

5.3 If the purchaser elects not to inspect the goods prior to delivery, the purchaser shall be deemed to have accepted that the goods are without defect.

## **6 DELIVERY AND RISK OF PROFIT AND LOSS**

6.1 Delivery of the goods shall be made to the purchaser “ex factory” at the premises of Insulated Structures against signature by the purchaser, or a carrier acting as an agent on behalf of the purchaser, of a delivery note that specifies the goods as well as, where appropriate, the serial numbers of the goods being delivered.

6.2 The risk of profit from and loss of the goods shall pass to the purchaser against signature by the purchaser, or a carrier acting as an agent on behalf of the purchaser, of the delivery note.

6.3 Notwithstanding that delivery of the goods is made “ex factory” and the risk of profit from and loss of the goods pass to the purchaser against delivery, ownership of the goods shall not pass to the purchaser until Insulated Structures has received the full purchase price in accordance with the provisions of 3 above.

6.4 The purchaser shall not dispose of the goods to a third party prior to the date on which ownership passes to it.

6.5 Insulated Structures shall use its best endeavours to deliver the goods within the delivery period specified in the quotation, but the parties agree that time is not of the essence to the agreement. Consequently the purchaser may not terminate or rescind this agreement, or institute a claim for damages against Insulated Structures on account of Insulated Structures’s failure to deliver the goods during the delivery period specified in the quotation.



- 6.6 If the purchaser fails, neglects, or refuses to take delivery of all or any part of the goods, the risk relating to the goods shall nevertheless pass to the purchaser and Insulated Structures shall be entitled, in its discretion to –
- 6.6.1 arrange storage for the goods at the purchaser’s risk and expense;  
or
- 6.6.2 sell the goods to a third party and set the proceeds of such sale off against any amount owed to it by the purchaser in respect of the goods.
- 6.7 If Insulated Structures agrees to delay delivery, at the request of the purchaser, Insulated Structures shall arrange storage for the goods at the risk and cost of the purchaser.
- 6.8 Under no circumstances may any goods be returned to Insulated Structures, unless –
- 6.8.1 Insulated Structures has agreed to accept the returned goods and grant a credit to the purchaser; and
- 6.8.2 the purchaser has agreed to pay a handling fee in an amount equal to 15% (fifteen percent) of the price of the goods to Insulated Structures.

## **7 CREDIT FACILITY**

- 7.1 If the purchaser has completed a credit application form and Insulated Structures has agreed to provide a credit facility to the purchaser, then –
- 7.1.1 the purchaser shall be required to pay the purchase price in the manner envisaged in 4.2 above by not later than 30 (thirty) days after the “ex factory” delivery date of the goods (or such later date as Insulated Structures may have agreed to in writing);

- 7.1.2 the purchaser may be required to execute the Deed of Suretyship annexed to these standard terms as **Appendix 1**; and
- 7.1.3 the purchaser shall be obliged to provide Insulated Structures with proof that the goods are insured for the period commencing on the “ex factory” delivery date and terminating on the date on which the purchase price is paid in full, and that the interest of Insulated Structures is noted on such insurance policy.
- 7.2 It is specifically recorded that the purchaser shall not be entitled to withhold payment of the purchase price, or any portion thereof, on account of delays in the transportation or installation of the goods.
- 7.3 If Insulated Structures has reason to believe that the information provided to it in the credit application form is no longer true and accurate, it shall be entitled to deliver written notice to the purchaser of the immediate withdrawal of the credit provided to the purchaser. All amounts owed to Insulated Structures shall immediately become due and payable against delivery to the purchaser of the aforesaid written notice.

## **8 DISCOUNT**

The purchase price is not subject to any discount unless a discount is agreed to in writing by Insulated Structures.

## **9 TRANSPORTATION OF GOODS**

- 9.1 The purchaser shall be responsible to arrange for the transportation of the goods from the premises of Insulated Structures to the premises of the purchaser or such other premises to which the goods may be transported (the “**final address**”).
- 9.2 Should Insulated Structures, at the request of the purchaser, agree to engage a carrier to transport the goods to the final address on behalf of the purchaser then –

- 9.2.1 Insulated Structures is authorised to engage a carrier on such terms and conditions as it deems fit;
- 9.2.2 the purchaser shall be liable for the costs of transportation of the goods from Insulated Structures's premises to the final address;
- 9.2.3 the purchaser shall provide Insulated Structures with such information as it may require from time to time to enable it to engage a carrier to transport the goods to the final address;
- 9.2.4 the purchaser shall reimburse Insulated Structures promptly on demand, should Insulated Structures incur any costs in relation to the transportation of the goods;
- 9.2.5 Insulated Structures shall not be liable for any loss or damage suffered by the purchaser during, or arising from the transportation of the goods by the appointed carrier; and
- 9.2.6 the purchaser shall indemnify Insulated Structures against all claims and demands that may be made against Insulated Structures and all liabilities that may be incurred by Insulated Structures, arising out of or in connection with the transportation of the goods.

## **10 INSTALLATION OF THE GOODS**

- 10.1 The purchaser shall be responsible to arrange for the installation of the goods at the final address.
- 10.2 Should Insulated Structures, at the request of the purchaser, agree to engage a contractor to install the goods on behalf of the purchaser, then –
- 10.2.1 Insulated Structures is authorised to engage a contractor on such terms and conditions as it deems fit;
- 10.2.2 the purchaser shall be liable for the costs of installation of the goods at the final address;

- 10.2.3 the purchaser acknowledges that payment for the goods delivered to the purchaser in accordance with 6.1 may not be withheld for any reason prior to the installation of the goods as envisaged in this clause 10;
- 10.2.4 the purchaser shall provide Insulated Structures with such information as it may require from time to time to enable it to engage a contractor to install the goods at the final address;
- 10.2.5 the purchaser shall reimburse Insulated Structures promptly on demand, should Insulated Structures incur any costs in relation to the installation of the goods;
- 10.2.6 Insulated Structures shall not be liable for any loss or damage suffered by the purchaser during, or arising from the installation of the goods by the appointed contractor; and
- 10.2.7 the purchaser shall indemnify Insulated Structures against all claims and demands that may be made against Insulated Structures and all liabilities that may be incurred by Insulated Structures, arising out of or in connection with the installation of the goods.
- 10.3 Until such time as the purchase price as well as any amount payable to Insulated Structures in respect of the installation of the goods are paid in full –
- 10.3.1 the parties agree that the goods shall not accede to any property, notwithstanding the installation of the goods at such property;
- 10.3.2 the purchaser –
- 10.3.2.1 undertakes that it shall not use the goods in any form or manner for trading purposes;
- 10.3.2.2 undertakes to notify any third party on whose premises the goods are installed in writing of the ownership rights of Insulated Structures;

- 10.3.2.3 warrants that the goods will not form part of any general or special notarial bond and undertakes to procure a warranty from any third party on whose premises the goods are installed to this effect;
- 10.3.2.4 undertakes to notify Insulated Structures from time to time of the whereabouts of the goods; and
- 10.3.2.5 undertakes to affix a notice to the goods confirming the ownership interests of Insulated Structures.

## **11 WARRANTIES**

- 11.1 Subject to the limitations contained below, Insulated Structures warrants to the purchaser that the goods will function properly and as specified for a period of 12 (twelve) months commencing on the “ex factory” delivery date.
- 11.2 The guarantee is limited as follows –
  - 11.2.1 the guarantee is of no force and effect unless the purchaser –
    - 11.2.1.1 uses the goods in accordance with Insulated Structures’ instructions and under normal use and service conditions;
    - 11.2.1.2 advises Insulated Structures within 3 (three) days of any defect or malfunction;
    - 11.2.1.3 the purchaser provides documentary evidence of the goods being serviced and cleaned on a regular basis;
  - 11.2.2 Insulated Structures’ liability is limited to –
    - 11.2.2.1 the replacement of defective parts;
    - 11.2.2.2 costs of labour and transport incurred in the replacement of defective parts; and

- 11.2.2.3 the removal and installation charges related to the replacement of defective parts;
- 11.2.3 Insulated Structures' liability in respect of any damages whether direct, consequential or indirect is specifically excluded;
- 11.2.4 Insulated Structures' guarantee does not extend to –
  - 11.2.4.1 goods supplied to purchasers outside the Republic of South Africa and adjoining territories;
  - 11.2.4.2 damage from ordinary wear and tear, faulty or careless handling, improper building, unsuitable operating materials, chemical or electrical effects or is put to use other than that normally recommended by Insulated Structures;
  - 11.2.4.3 goods which are altered or assembled in any other way which in the opinion of Insulated Structures affects the performance, stability or purpose for which it is manufactured;
  - 11.2.4.4 any goods or parts that are damaged by fire, flood, act of God, force majeure or any original model or serial number plate which has been altered, defaced or removed;
  - 11.2.4.5 thermometers, glass, painting, globes and pressure switches;
  - 11.2.4.6 damages resulting from, or in any way related to, any leakage of gas and/or refrigerant, it being specifically recorded that the insertion or leakage of gas and/or refrigerant shall be the responsibility of the purchaser or the installation contractor appointed on behalf of the purchaser; and
  - 11.2.4.7 transport, offloading and line up of cabinets.
- 11.3 The warranty provided by Insulated Structures vests solely in the purchaser and is not transferable, unless Insulated Structures agrees to such transfer in writing.

- 11.4 Under no circumstances whatsoever shall Insulated Structures be liable to the purchaser, or to any third party for any consequential loss of whatsoever nature and howsoever arising.
- 11.5 Insulated Structures does not warrant or represent that any goods supplied by it are fit for any particular purpose and the purchaser must use and rely on his own judgement as to their fitness for the purpose intended.
- 11.6 The indemnifications and limitations of liability referred to in this paragraph 11 are stipulated for the benefit of Insulated Structures as well as each of its employees, agents and representatives acting on its behalf in the implementation of this agreement.
- 11.7 The purchaser may elect not to accept the warranty and to purchase the goods on a “voetstoots” basis, in which event the purchase price shall be discounted in the manner envisaged in paragraph 8 above.

## **12 BREACH**

12.1 If the purchaser -

12.1.1 fails to pay the purchase price or any portion thereof on the due date for payment; or

12.1.2 commits any other breach of these standard terms,

and fails to remedy such breach within a period of 5 (five) business days after receipt by the purchaser of a written notice requesting the remedy of such breach, then Insulated Structures shall be entitled, at its sole discretion and without prejudice to any of its other rights in law to discontinue all further supplies of goods to the purchaser and to either claim specific performance of the agreement and these standard terms, or cancel the agreement forthwith and claim and recover damages from the purchaser.

### **13 CERTIFICATE OF INDEBTEDNESS**

A certificate signed by any director or general manager of Insulated Structures (whose appointment, designation or authority need not be proved) as to the existence of and the amount of any indebtedness by the purchaser to Insulated Structures in terms of this agreement, shall be sufficient proof of the contents and correctness thereof for the purposes of provisional sentence, summary judgement or any other proceedings, shall be valid as a liquid document for such purpose and shall in addition, be *prima facie* proof for purposes of pleading or trial in any action instituted by Insulated Structures arising herefrom.

### **14 NOTICES AND DOMICILIA**

The parties choose as their *domicilia citandi et executandi* their respective addresses set out the quotation for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

### **15 GENERAL TERMS**

- 15.1 No alteration or variation of these standard terms shall be valid unless expressly agreed to between the parties and reduced to writing.
- 15.2 No latitude, extension of time or other indulgence which may be given or allowed by Insulated Structures to the purchaser in respect of the performance of any obligation hereunder shall be construed to be an implied consent or election by Insulated Structures, or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this agreement or estop or preclude Insulated Structures from enforcing strict and punctual compliance with each and every provision or term hereof.
- 15.3 The agreement constitutes the whole agreement between the parties.



- 15.4 The parties consent and submit to the non-exclusive jurisdiction of the Magistrates' Court of South Africa in any dispute arising from or in connection with this agreement.
- 15.5 Should Insulated Structures take any legal action against as a result of the purchaser's failure to perform in terms of this agreement, the purchaser shall be liable for all legal costs, including all costs on Attorney and Client Scale, incurred in connection with such legal action.

**DEED OF SURETYSHIP**

I/We the undersigned ..... (Identity number/s.....) do hereby bind myself/ourselves in my/our personal capacity, jointly and severally, to and in favour of Insulated Structures (Proprietary) Limited ("**Insulated Structures**"), its successors and assigns, as surety and co-principal debtor with ..... (Registration Number .....) (the "**Debtor**") for the due, proper and timeous performance by the Debtor of all its existing and future obligations arising out of and/or in connection with the agreement(s) for the sale of goods concluded between the Debtor and Insulated Structures (the "**agreement**").

This suretyship is irrevocable and constitutes continuing covering security in respect of any present or future indebtedness of the Debtor to Insulated Structures and shall remain in full force and effect until cancelled in writing notwithstanding any fluctuation in or temporary extinction of such indebtedness.

I/We acknowledge that Insulated Structures shall be entitled without reference to me/us to make arrangements with the Debtor for the discharge of the indebtedness at any time without prejudice to the rights of Insulated Structures against me/us in my/our said capacity hereunder. Furthermore the release by Insulated Structures of any other surety or security held shall in no way release me/us from my/our liability hereunder.

I/We hereby expressly waive and renounce the legal benefits and exceptions *non numeratae pecuniae* (no money paid), *non causa debiti* (no cause of debt), revision of accounts and *errori calculi* (errors in calculation) and declare myself/ourselves to be fully acquainted with the meaning and effect of these exceptions and the renunciation thereof.

I/We acknowledge that a certificate by the Secretary of Insulated Structures (whose appointment and authority need not be proved), shall be *prima facie* proof

in any legal proceedings of the fact and the extent of the Debtor's indebtedness to Insulated Structures and such a certificate shall be valid as a liquid document in any competent court for the purpose of obtaining provisional sentence or judgment against me/us in my/our capacity as surety for the Debtor.

I/We choose as my/our *domicilium citandi et executandi* the following address for all purposes arising in connection with this suretyship:-

.....; and  
.....

I/We consent to the jurisdiction of the Magistrate's Court over my/our person in respect of any action which may be instituted against me/us arising out of this suretyship, notwithstanding that the amount of the claim on which such action is based may exceed such Court's jurisdiction. Should Insulated Structures take any legal action against me/us arising out of or in connection with this suretyship, then I/we shall be liable for all legal costs, including all costs on Attorney and Client Scale, incurred in connection with such action including the collection of commission.

**SIGNED** at \_\_\_\_\_ on \_\_\_\_\_

**AS WITNESS:**

\_\_\_\_\_

**NAME:**

\_\_\_\_\_  
(Name of witness in print)

\_\_\_\_\_  
Duly authorised

**AS WITNESS:**

\_\_\_\_\_

**NAME:**

\_\_\_\_\_  
(Name of witness in print)

\_\_\_\_\_  
Duly authorised