

**DRICONEQ AFRICA (PTY) LTD**  
**TERMS AND CONDITIONS OF SALE**

**1. Application**

- 1.1 These terms and conditions of sale ("**Terms and Conditions**") shall apply to all contracts between Driconeq Africa (Proprietary) Limited (the "**Company**") and you (the "**Customer**"), and supersede, replace and/or override any terms and conditions contained in any prior communication which are different from, or in addition to, these Terms and Conditions.
- 1.2 All information and data contained in general documentation relating to the product and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in these Terms and Conditions.
- 1.3 The Company and the Customer waive the right to rely on any alleged term and/or condition not expressly contained in these Terms and Conditions or incorporated by reference herein.
- 1.4 No contract varying, adding to, deleting from or cancelling these Terms and Conditions and no waiver of any right under these Terms and Conditions, shall be effective unless reduced to writing and signed by or on behalf of the Company and the Customer.

**2. Prices**

- 2.1 The price payable for the product by the Customer to the Company will be the price as quoted by the Company prior to the order being placed.
- 2.2 All prices are quoted *ex-works* at Customer home currency and all orders shall be placed in that same currency.
- 2.3 Prices may be revised by the Company due to exchange rate fluctuations.

**3. Payment Terms**

- 3.1 The purchase price of the product shall be payable by the Customer within 30 days of the date of the invoice in respect of the product purchased by the Customer, unless otherwise specified on the invoice.
- 3.2 if the Customer fails to make payment within 30, 60 or 90 days of the invoice, the Company shall:

- 3.2.1 without prejudice to any other rights which it may have against the Customer, immediately suspend the carrying out of its obligations until full payment is made; and
- 3.2.2 temporarily suspend the Customer's credit facilities until such a time as the outstanding payment has been made, or at the discretion of the Company.
- 3.3 Should the Customer fail to make payment on the stipulated date, the Company shall be entitled, without prejudice to its rights, to charge interest on all overdue amounts from the date that such amounts were required to have been paid until the date of payment, and the Customer agrees to pay this interest on all overdue amounts. The interest rate applied by the Company will be 2% percentage points above the prime rate of interest declared by the First National Bank of South Africa, and shall not exceed the maximum interest rate allowed by law.
- 3.4 The Customer shall be liable for the following penalties in respect of all orders cancelled after the start of manufacturing the products, or after the products have left a port in South Africa:
  - 3.4.1 a penalty of 50% on standard products; and
  - 3.4.2 a penalty of 100% on special, customised orders and/or freight charges.
- 3.5 The Company may grant the Customer credit upon the basis of these Terms and Conditions as well as the credit application form and such other documents and information as may be required by the Company. Until the Company grants the Customer credit by notice in writing, the Company will only supply the product to the Customer on the basis of cash in advance.
- 3.6 Any credit facilities granted by the Company to the Customer may be withdrawn at any time, at the discretion of the Company, should these Terms and Conditions be breached.
- 3.7 If an order exceeds the total value of the Customer's credit limit, the Company may, at its discretion, request additional security or an interim payment.
- 3.8 The Customer's credit limit will be reviewed by the Company upon written request from the Customer.

#### 4. **Delivery**

- 4.1 The delivery of the products shall be *ex works* and the Customer shall be responsible for the insurance of the products *ex works*.
- 4.2 The Customer shall be responsible for the receiving, the proper unloading and the inspection of the product in the presence of the person making the delivery.
- 4.3 If the Company anticipates that the Company will not be able to deliver the product at the time for delivery, the Company shall notify the Customer in writing, stating the reason, and, if possible, the time when delivery can be expected. If the Company fails to give such notice, the Customer shall be entitled to terminate these Terms and Conditions.
- 4.4 If the Customer anticipates that the Customer will not be able to accept delivery of the product at the time for delivery, the Customer shall notify the Company in writing, stating the reason, and, if possible, the time when the Customer will be able to accept delivery. If the Customer fails to accept delivery at the delivery time, the Customer shall nevertheless pay any part of the purchase price which becomes due upon delivery, as if delivery had taken place.
- 4.5 If the delay in delivery is caused by any of the circumstances mentioned in Clause 11.1 or by an act or omission on the part of the Customer, the time for delivery shall be extended by a reasonable period having regard to all the circumstances of the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.
- 4.6 Unless the Customer's failure to accept delivery is due to any such circumstances as mentioned in Clause 11.1, the Company may by notice and in writing, require the Customer to accept delivery within a final reasonable period. If, for any reason for which the Company is not responsible, the Customer fails to accept delivery within such period, the Company may by notice in writing terminate the Terms and Conditions. The Company shall then be entitled to compensation for the loss the Company has suffered by reason of the Customer's default. Such compensation shall not exceed that part of the purchase price which is attributed to that part of the Product in respect of which the Contract is terminated.
- 4.7 The Customer waives any claim, including but not limited to, for shortages in quantity, lengths or weight of any product delivered if any claim, including for short delivery, is not lodged with the Company within seven) days from delivery and/or receipt of the product.

The Company reserves the right to charge a handling fee of up to 10% of the price of the product returned.

## **5. Retention of ownership**

5.1 Ownership in and to the product delivered by the Company to the Customer shall remain with the Company and shall not pass to the Customer until payment of the full purchase price for the products, as well as any other amounts due and payable in respect of the products, has been received by the Company.

5.2 The Customer shall, at the request of the Company, assist the Company in taking any measure necessary to protect the Company's ownership in and to the product in the country concerned. The retention of ownership shall not affect the passing of risk under Clause 4.1.

## **6. Product Liability**

6.1 To the extent permitted by law, the Company shall not be liable to the Customer or any third party under any circumstances, whether in contract, delict or otherwise, for any direct or indirect damage or loss arising out of or in connection with, these Terms and Conditions and howsoever caused, including but not limited to, loss of production; loss of profits; loss of use and loss of contracts, as a result of the negligence and/or gross negligence of the Company, its directors, officers, employees and/or agents.

6.2 It is specifically recorded, without limiting the generality of the above provisions and to the extent permitted by law, that the Company will not be liable to the Customer or any third party for any loss or damage arising from the following:

6.2.1 delays in deliveries, completion of orders or non-delivery of product; or

6.2.2 loss or damage to or destruction of the product in transit to the Customer; or

6.2.3 any storage or demurrage fees in respect of the product.

## **7. Breach and Termination**

7.1 The Company shall be entitled, at its own discretion, to terminate these Terms and Conditions with immediate effect by written notice if:

7.1.1 the Customer breaches any provision of these Terms and Conditions in any manner whatsoever which breach is capable of remedy and fails to remedy such breach within 14 days of receipt of written notice from the Company calling upon

the Customer to do so, provided that if the breach can reasonably be remedied within a shorter period, the Customer shall remedy the breach within that shorter period; or

7.1.2 the Customer fails to pay any amount due to the Company under any other contract on due date thereof; or

7.1.3 the Customer is declared bankrupt, is placed in liquidation or sequestration (whether provisionally or finally and whether voluntary or compulsory), becomes insolvent, is unable to pay its debts as they become due, is subject to a scheme of arrangement or compromise or is wound up (or subject to any analogous proceedings under the law of any country outside South Africa).

7.2 In the event of the Customer being in breach of any of these Terms and Conditions:

7.2.1 all amounts due by the Customer to the Company shall immediately become due and payable; and

7.2.2 the Company shall not be obliged to sell and deliver any further product to the Customer and may claim additional costs and expenses incurred as a result thereof.

7.3 Any termination of the Terms and Conditions shall be without prejudice to any other rights which the Company may have against the Customer, whether for damages or otherwise.

## 8. **Consent to credit check**

8.1 By signing the Terms and Conditions of the Company, the Customer authorises the Company to do a full credit check on the Customer and contact the Customer's listed trade references.

8.2 Should the Customer's credit rating be an abnormal financial risk to the Company, the Company may request the Customer to make full payment for orders before manufacturing starts.

8.3 If the Customer does not comply with these Terms and Conditions and defaults on payments on a regular basis, the Company may notify the Credit Bureau of the financial risk of the Customer.

- 8.4 A credit limit will be established from the credit check; information on the Customer from the sales team of the Company as well as the Customers' needs.
- 8.5 Any increase of the Customer's credit limit will be subject to the same credit check as when the account was first opened.
- 8.6 The person signing the credit application form and the Terms and Conditions on behalf of the Customer, warrants that he or she is a shareholder, director, member or partner of the Customer or has the requisite authority to sign on behalf of the Customer, and can provide the Company with written proof of such authority.

## 9. **Consent to the processing of personal information**

- 9.1 The Customer consents to the processing by the Company of the Customer's personal information for the purposes of transacting with and supplying product to the Customer.
- 9.2 The record shall include that which is completed in terms of the credit application form to which these Terms and Conditions are attached (if any), and/or that which may otherwise be necessary for the transaction with and supply, by the Company, of product to the Customer.
- 9.3 Unless otherwise agreed in writing between the parties, the Customer consents to the retention by the Company of the record for a period of no longer than 24 months after the supply of product by the Company to the Customer has ceased, after which the Company will delete the record.
- 9.4 The Customer acknowledges its right to access the record, to rectify the information collected by the Company, and the existence of the right to object to the processing of its personal information at any time.
- 9.5 For the purposes of these provisions, the terms "consent", "personal information", "processing" and "record" shall bear the meaning assigned to them in the Protection of Personal Information Act, 2013.

## 10. **Use of Product Documentation**

- 10.1 All drawings and technical documents relating to the product or its manufacture (the "**Documentation**"), submitted by the Company prior to or subsequent to, the formation of these Terms and Conditions, shall remain the Company's property.

10.2 The Documentation shall not, without the consent of the Company, be used for any other purpose than that for which they were provided and may not, without the consent of the Company, otherwise be used or copied, reproduced, transmitted or communicated to any third party.

## 11. Force Majeure

11.1 Either party shall be entitled to suspend performance of its obligations under these Terms and Conditions to the extent that such performance is impeded or made unreasonably onerous by any of the following Force Majeure occurrences: strike, lockout or labour dispute; the breakdown of machinery or facilities, natural disasters and any other circumstances beyond the control of the parties such as fire, war, extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this Clause. A circumstance referred to in this Clause whether occurring prior to or after the formation of these Terms and Conditions, could not be foreseen at the time of the formation of these Terms and Conditions.

11.2 The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.

11.3 If Force Majeure prevents the Customer from fulfilling its obligations, the Customer shall compensate the Company for expenses incurred in securing and protecting the product.

11.4 Regardless of what might otherwise follow from these Terms and Conditions, either party shall to be entitled to terminate these Terms and Conditions by notice in writing to the other party if performance of the Contract is suspended under Clause 11.1 for more than six months.

### **Disputes, Applicable law and Jurisdiction**

11.5 Should there be any dispute arising out of, or in connection with these Terms and Conditions, the Customer and the Company must attempt to resolve the dispute by negotiation in good faith before initiating litigation.

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

11.7 The Company and Customer irrevocably submit to the exclusive jurisdiction of the South African courts for any proceedings arising out of or in connection with these Terms and Conditions.

**ACCEPTANCE**

I / We have studied the standard Terms & Conditions of sale of Driconeq Africa (Pty) Ltd and understand and accept that all transactions are concluded on these Terms and Conditions.

Furthermore, I (print full name) .....

ID number .....

Warrant that I am duly authorised to sign these Terms and Conditions on behalf of the

Customer (print company name) .....

Signature: .....

Position: .....

Signed at: .....

Date: .....

Company stamp
---------------