

## **TOP T CERAMICS PROPRIETARY LIMITED STANDARD TERMS AND CONDITIONS**

1. This document contains the standard terms and conditions that shall apply to, and form part of each and every agreement, whether written or oral, concluded between TOP T and the Customer in respect of the sale and/or supply of any Goods, in accordance with the provisions of clause.

### **2. INTERPRETATION**

2.1. The clause headings contained in this agreement are not to be used in the interpretation thereof.

2.2. Unless such meaning is inconsistent with the context, the following terms shall, throughout this agreement, have the meaning ascribed to them below:-

2.2.1. "Cash Sale" means any sale of Goods to a Customer whom TOP T has not, prior to, or at the time of accepting the Customer's order for such Goods, agreed to supply such Goods, or all Goods, on credit;

2.2.2. "Change of Control" means any transaction, as a result of which: -

2.2.2.1. a majority of the issued share/s or member's interests in the Customer vests in a different person or combination of persons, to that in which it vested prior to such transaction;

2.2.2.2. a majority of the votes at any general meeting of the shareholders or members of the Customer are exercisable by a different person or combination of persons, to that in which it vested prior to such transaction;

2.2.2.3. the right to appoint a majority of the directors of the Customer vests in a different person or combination of persons, to that in which it vested prior to such transaction; or

2.2.2.4. ownership of the business of the Customer is transferred to any person or combination of persons;

2.2.2. "Credit Bureau" means any person, firm or association, that collects and/or publishes, for the information of third parties, records and information relating to the creditworthiness and/or debt payment records of any person/s;

2.2.3. "Customer" means jointly and severally, the signatory hereto and/or any entity/person on whose behalf the signatory signs this agreement;

2.2.4. "Goods" means any goods sold or offered for sale by TOP T to the Customer;

2.2.5. "TOP T" means TOP T Ceramics Limited and its subsidiaries and associate companies as well as the franchisees of those entities, from time to time.

2.2.6. "Parties" means both TOP T and the Customer.

2.2.7. "Quotation" shall mean the written quotation provided to the Customer by TOP T, in respect of the supply of any Goods;

2.2.8. "Standard Quantities" shall mean the standard quantities in which Goods are packaged by TOP T, which varies according to the type of the Goods sold.

### **3. NOTIFICATION**

The Customer hereby undertakes:

3.1. to notify TOP T in writing of any Change of Control not less than 30 (thirty) days prior to the effective date thereof; and

3.2. to notify TOP T in writing of any change of address and/or telephone number and/or contact details of the Customer and/or its business, not less than 30 (thirty) days prior to the effective date of any such change;

3.3. not to sell or dispose of any Goods of which the purchase price has not been paid in full;

3.4. not to allow any Goods of which the purchase price has not been paid in full to become encumbered in any way;

3.5. to inform the landlord of any premises at which any Goods of which the purchase price has not been paid in full of TOP T's ownership of such Goods.

#### **4. CREDIT CHECKS**

The Customer hereby unconditionally authorizes TOP T and its employees and/or agents: -

4.1. to conduct credit enquiries relating to the Customer, by accessing any Credit Bureau database; and

4.2. to submit reports to any Credit Bureau as to the manner in which the Customer has performed in meeting its payment obligations in terms of this agreement;

4.3. in the event that the Customer fails to meet its obligations in terms of payment with TOP T in terms of this agreement, to notify and record the Customer's non- performance with any Credit Bureau; and

4.4. to record the consent of the Customer that any and/or all information disclosed by TOP T to any Credit Bureau, in respect of the Customer, may be assessed by other institutions and used by them in making risk management decisions.

#### **5. PRICES AND QUOTATIONS**

5.1. The Customer acknowledges that: -

5.1.1 all Goods are sold by TOP T in Standard Quantities; and

5.1.2. accordingly, should the Customer place an order for any quantity of Goods that is not a Standard Quantity, having regard to the nature of the Goods ordered, TOP T shall be entitled to submit a Quotation for the nearest number of Standard Quantities of the Goods that is not less than the quantity of Goods ordered. If such Quotation is accepted by the Customer in accordance with clause, the resultant agreement shall be for the supply of the quantity of the Goods specified in the Quotation.

5.2. All Quotations will be valid for a period of 14 (fourteen) days from the date of the quotation unless withdrawn sooner or otherwise stipulated and will expire on the conclusion of that period.

5.3. In the absence of any agreement to the contrary:

5.3.1. the prices quoted in any Quotation shall be understood to exclude value-added tax, packaging and delivery costs;

5.3.2. packaging and delivery costs shall be borne by the Customer.

5.4. All prices quoted are based on the exchange rates specified in the Quotation relating to the Goods. Save where the Customer has requested in writing, and TOP T has undertaken in writing to provide, forward cover in respect of exchange rate fluctuations, in the event that there is a fluctuation of not less than 5% (five percent) in the value of the Rand against the foreign currency referred to in the Quotation between the date of the Quotation and the date on which the Goods are delivered, the quoted price shall be increased or decreased pro rata to such fluctuation.

5.5. The Customer agrees to pay all costs incurred by TOP T as a result of any act or omission of the Customer after acceptance of any quote including suspension of work, modification of requirements, failure or delay in giving particulars necessary to enable work to proceed on schedule or requirements that work be completed earlier than agreed. Such costs shall be calculated on the basis of TOP T's then prevailing price list, a copy of which is available on request.

5.6. The Customer hereby acknowledges that the decision as to whether to accept any specific order from the Customer, in respect of any specific products and/or services is in the sole, absolute and unfettered discretion of TOP T.

5.7. A binding agreement for the sale of Goods shall be deemed to have been entered into between TOP T and the Customer upon receipt of acceptance in writing from the Customer of any quotation.

## **6. PAYMENT**

6.1. In the case of any Cash Sale, a deposit equal to 50% (fifty percent) of the price of the Goods, as reflected in the Quotation, shall be paid on submission of an order by the Customer, and the balance by prior to delivery of the Goods. In the case of payments made by internet, bank transfer or cheque, payment will only be considered to have been made when the amount thereof has been received as cleared funds in TOP T's bank account.

6.2. The price of any Goods shall be paid by the Customer to TOP T without deduction or set off in cash within 30 (thirty) days after the date of the invoice submitted by TOP T to the Customer in respect of such Goods.

6.3. TOP T shall be entitled to charge interest on all overdue amounts at prime rate of interest charged by Nedbank Limited, plus 5% per annum, alternatively the maximum interest rate applicable from time to time in terms of the National Credit Act 34 of 2005, if applicable.

6.4. The Customer agrees that in the event of any portion of the amount of any invoice being disputed, the Customer shall nevertheless pay the undisputed amount of such indebtedness according to the agreed terms of payment.

6.5. Any discount that TOP T may have agreed to grant on the price of any Goods shall automatically be forfeited if payment in full is not made on the due date, in accordance with clause.

## **7. RESERVATION OF OWNERSHIP**

7.1. Ownership of any and all Goods shall remain vested in TOP T until the purchase price of such Goods has been paid in full.

7.2. Should the purchase price of any Goods at any time be due and payable by the Customer to TOP T, any items in the possession of the Customer, or any person to whom such items have been sold by the Customer, which are of a type that matches the description of the Goods the purchase price of which has not been paid, shall be deemed to be those Goods unless the contrary is proved by the Customer,

## **8. DELIVERY AND STORAGE**

8.1. Should TOP T, at the Customer's request, agree to engage a carrier to transport the goods to the Customer's premises or other destination of the Customer's choice, then: -

8.1.1. TOP T is authorised to engage a carrier on such terms and conditions as it deems fit;

8.1.1.1 Transport will not be refunded after delivery has taken place.

8.1.2. In the case of a Cash Sale, subject to the provisions of clause, TOP T does not undertake that such delivery shall take place: -

8.1.2.1. if delivery is to take place at a destination within the province of Gauteng less than 48 (forty eight) hours after receipt of payment; and

8.1.2.2. if delivery is to take place at a destination outside the province of Gauteng, less than 4 (four) days after receipt of payment;

8.1.3. In the case of any other sale of Goods, subject to the provisions of clause, TOP T does not undertake that such delivery will take place: -

8.1.3.1. if delivery is to take place at a destination within the province of Gauteng, less than 48 (forty eight) hours after receipt of payment; and

8.1.3.2. if delivery is to take place at a destination outside the province of Gauteng, less than 4 (four) days after receipt of payment;

8.1.4. The Customer indemnifies TOP T against all demands and claims which may be made against it by the carrier so engaged and all liability which TOP T may incur to the carrier arising out of the transportation of the goods.

8.2. The delivery periods set out in paragraph and shall be increased: -

8.2.1. In the case of Goods that, at the time of TOP T's receipt of the Customer's order for such Goods, are not available from TOP T's stock on hand at its business premises, by a period of not less than eight (8) weeks; and

8.2.2. In the case of Goods that at the time of TOP T's receipt of the Customer's order for such Goods, are not available from stock on hand at the factory where such goods are manufactured, by a period of not less than twelve (12) weeks.

8.3. Should the Customer place any order for a quantity of Goods that is less than a full container load, TOP T shall be entitled to delay delivery of such Goods until other products sold by TOP T to other persons are ready for despatch that, together with such Goods, make up a full container load.

8.4. The signature by any employee or agent of the Customer (whose authority the Customer shall not be entitled to deny or repudiate) of TOP T's official delivery note or way-bill or the delivery note or way-bill of any authorised independent carrier shall constitute prima facie proof of delivery of the Goods referred to.

8.5. Risk in any Goods shall pass to the Customer upon dispatch of those Goods. If the Customer wrongfully fails to take delivery of the Goods, or should the dispatch be delayed due to circumstances beyond TOP T's control, the risk shall pass from the date the Goods are ready for dispatch to the Customer.

8.6. Notwithstanding the content of paragraphs, time shall not be of the essence in respect of the delivery of any Goods, and TOP T does not guarantee delivery of Goods on any specific date.

8.7. TOP T shall be entitled, in its sole discretion, to suspend delivery of Goods as long as the Customer is in default with any payment due in respect of any Goods previously delivered to the Customer.

8.7.1. The Customer accepts that the variations in the colour, shade and/or size may occur amongst individual items and batches of Goods;

8.8. The Customer agrees to accept any quantity of Goods that does not exceed or fall short of the quantity ordered by more than 10% as good and complete delivery of the quantity ordered.

8.9. The Customer may request TOP T to store the goods purchased and paid for by the Customer at the premises of TOP T, in which event the Customer shall bear the risk of damage to, destruction or theft of the goods so stored.

## **9. LIMITATION OF LIABILITY**

9.1. Subject to clause, TOP T's total liability for damages, whether contractual or delictual, arising out of or in connection with the supply of any Goods shall be limited to a refund the purchase price of the Goods. Without limiting the generality of the foregoing, in no event shall TOP T be liable for any incidental or consequential damages including but not limited to loss of profits, loss of sales, expenses incurred in anticipation of TOP T's performance or lost production, whether suffered by the Customer or any third party.

9.2. TOP T shall in any event have no liability of any nature whatsoever arising out of or in connection with any defect in any Goods unless: -

9.2.1. The Customer, within seven (7) days of delivery of the Goods, has called upon TOP T in writing to rectify the defect, affording TOP T a period of not less than thirty (30) days to do so; and

9.2.2. no person not authorised by TOP T has modified, altered or attempted to repair the Goods;

9.2.3. the Goods have only been used for the purpose for which they were designed or intended; and

9.2.4. The Customer shall return such Goods to the premises of TOP T at the Customer's own cost and packed in the original packaging within thirty (90) days from date of delivery, provided that TOP T shall in that event be entitled to charge the Customer a handling fee of 10% of the total amount of the invoice relating to such goods.

9.3. Insofar as any of TOP T's obligations are carried out by any of its servants, agents, sub-contractors, associates or subsidiaries, the provisions of this clause 12 above shall operate for the benefit of each of them.

9.4. The Customer agrees that neither TOP T nor any of its employees or agents will be liable for any innocent or negligent misrepresentations made to the Customer.

9.5. Any and all warranties implied by law in respect of: -

9.5.1. latent defects; or

9.5.2. the fitness of any Goods for the Customer's purpose; or

9.5.3. any loss or injury (including indirect or consequential loss) arising from or in connection with the supply of Goods, including any loss or injury (whether direct, indirect or consequential) attributable to any negligent act or omission by TOP T or its servants or agents; or are hereby excluded.

9.6. The Customer hereby indemnifies and holds TOP T harmless against any claims made against TOP T and/or the Customer for any undertakings of whatsoever nature given by the Customer whether in oral or writing to any third parties in respect of the supply of any Goods.

## **10. BREACH**

10.1. For the purposes of this agreement, any of the following events shall be deemed to be "an event of breach": -

10.1.1. Should the Customer default in paying his account strictly on due date or commit any breach of any of the terms or conditions of this agreement; or

10.1.2. Should the Customer be an individual, die or be provisionally or finally sequestrated or surrender or make application to surrender his estate or commit any act of insolvency ; or

10.1.3. Should the Customer be a partnership, the partnership be terminated; or

10.1.4. Should the Customer be a company or close corporation, be placed under a provisional or final order of liquidation or judicial management; or

10.1.5. Should the Customer have a judgment recorded against it which remains unsatisfied for seven days; or

10.1.6. Should the Customer compromise or attempt to compromise generally with any of the purchaser's creditors; or

10.1.7. Should the Customer enter into any transaction which has the effect of changing the beneficial ownership of the purchaser's business; or

10.1.8. Should the Customer being a company or close corporation, enter into any transaction which has the effect of a change in the effective control of the company or corporation;

10.2. On the occurrence of any event of breach then, without prejudice to any other right it might have, TOP T shall be entitled, but not obliged: -

10.2.1. forthwith to demand that the whole amount outstanding by the Customer from whatsoever cause arising, be paid immediately notwithstanding the fact that a portion of the amount would not otherwise yet be due in accordance with the agreed terms of payment; and

10.2.2. Itatile 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 TOP T arising out of such cancellation or the suspension by TOP T to carry out any obligations.

10.3. TOP T's rights in terms of clause above shall not be exhaustive and shall be in addition to its common law rights.

## **11. FORCE MAJEURE**

Neither party shall be responsible for or liable because of any delay in or failure, where such delay or failure is due to any event of force majeure. Force majeure shall mean any act or event beyond the reasonable control of the affected party and not caused by the fault, negligence or lack of diligence of such party, including but not limited to acts of God, the elements, accidents, fire, explosion, flood, war, riots, rebellion, strikes, revolution, blockade, restriction or other act or failure to act on any government. The obligations, which are affected by force majeure, shall be deemed suspended so long as any such causes or contingencies prevent or delay its execution.

## **12. GENERAL**

12.1. These terms and conditions constitute the entire agreement between Itatile and the Customer in regard to any matter dealt with herein and no other agreements, representations or warranties between the parties, other than those specifically set out herein below, shall be binding on the parties.

12.2. No addition to, or variation, consensual cancellation or novation of this agreement, including this clause, and no waiver of any right contained herein, or its termination, shall be of any force or effect whatsoever unless reduced to writing and signed by the parties hereto or their duly authorised representatives.

12.3. No latitude, extension of time or other indulgence, which may be given or permitted by TOP T to the Customer, shall operate as a waiver or novation of, or otherwise affect, any of TOP T's rights in terms of or arising from this agreement.

12.4. Each undertaking by either or both of the parties contained in this agreement will be construed as an agreement and undertaking independent of any other provision of this agreement. The parties hereby expressly agree that it is not the intention of any party to violate any public policy, statutory or common law, and that if any sentence, paragraph, clause or combination of the same is in violation of the law of the Republic of South Africa, such sentence, paragraph, clause or combination of the same alone will be void in the jurisdiction where it is unlawful, and the remainder of such clause and this agreement will remain binding upon the parties hereto. The parties further acknowledge that it is their intention that the provisions of this agreement be binding only to the extent that they may be lawful under existing applicable law of the Republic of South Africa, and in the event that any provision hereof is determined to be overly broad or unenforceable, the parties hereto agree to the modification of such provisions to the minimum extent required to make them valid and enforceable.

12.5. TOP T shall be entitled to cede all its rights and delegate its obligations arising out of this agreement.

12.6. The Customer shall not be entitled to cede any of its rights or delegate any of its obligations in terms of this agreement without obtaining TOP T's prior written consent.

12.7. No relaxation which TOP T may have permitted on any one occasion in regard to the carrying out of the Customer's obligations shall prejudice or be regarded as a waiver of TOP T's rights to enforce its obligations on any subsequent occasion.

12.8. This agreement shall be governed and construed in strict accordance with the laws of the Republic of South Africa and all disputes, actions and other matters which may rise in connection with the relationships established by this agreement, or otherwise as a result of this agreement, shall be determined in accordance with such laws.

12.9. TOP T shall be entitled but not obliged to institute any proceedings against the purchaser arising out of any agreement between the Customer and itself for the full balance outstanding, including current purchases, in any Magistrate's 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's Court. Further, the Customer agrees to be liable for all legal costs including costs on the scale as between an attorney and his own client and collection charges and tracing costs.

12.10. A certificate signed by any director or manager of Itatile showing the amount due and owing by the Customer to TOP T 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 judgment or provisional sentence or other legal proceedings.

### **13. AUTHORITY**

The Customer warrants to TOP T that is representative has full power, authority and legal right to conclude this agreement for and on behalf of the Customer and that the conclusion of this agreement in the terms set out herein has been duly authorized by all necessary actions.

### **14. DOMICILIUM CITANDI ET EXECUTANDI**

The Customer nominates its business address set out on the document attached hereto 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 TOP T or otherwise