



## STANDARD TERMS AND CONDITIONS

### 1. Terms and Conditions of Sale

- 1.1 In these terms and conditions relating to both the granting of a credit facility as well as the sale of goods, the Company Macs Automotive and Refrigeration (Pty) Ltd with registration number 83/005948/07 extending credit or selling will be referred to as "Macs"; and the individual, Sole Proprietorship, Company, Close Corporation, Trust or Partnership obtaining credit or purchasing will be referred to as "the Customer".
- 1.2 By placing an order and thereby accepting these Terms, the Customer shall be deemed to have agreed that all existing arrangements between and the Customer in respect of goods shall be governed by these Terms.
- 1.3 The customer may place an order in writing or oral which shall constitute the customer's order, Macs may accept this order in whole or in part.

### 2. Price

- 2.1 Whilst every effort will be made to record the customer's verbal or telephonic instructions accurately, it is the responsibility of the customer to check the details of the order and to notify Macs of mistakes, in writing, within 48 Hours.
- 2.2 Quotations are subject to the availability of raw materials and stocks of any Goods at the time of manufacture and/or delivery and/or supply process.
- 2.2 Save as may be specified on any quotation form, prices are not subject to any discount and are applicable to deliveries made during normal working hours, from Monday to Friday.
- 2.3 If prior to delivery of the goods if there is any increase in the costs of such products, or an increase in the manufacturing or supply costs, or if any other taxes or duties are levied or if any laws are promulgated which directly or indirectly increase the costs to the company of manufacturing or supplying goods, Macs shall be entitled by written notice to the customer to increase the price of the goods.

### 3. Payment Terms

- 3.1 In respect of each contract, the purchase price shall be payable by the customer to Macs within all terms days of the date of statement unless credit facilities have been refused, suspended or withdrawn, in which event, the purchase price shall be payable on delivery.
- 3.2 Payment may be transferred to the following bank account:

#### MACScool Banking details:

Account holder: Macs Cool (Pty) Ltd.  
Branch: First National Bank  
Account Number: 62507661694  
Branch Name: The Glen  
Branch Number: 259 605  
Swift Code: FIRZAJJ

#### MACSauto Banking details:

Account holder: Macs Automotive Aircon (Pty) Ltd.  
Branch: First National Bank  
Account Number: 62703237439  
Branch Name: The Glen  
Branch Number: 259 605  
Swift Code: FIRZAJJ

- 3.2 In the event of any change in the customer's legal status, such as, but not limited to, a change in name, ownership, directorship, partnership or membership, the customer is obliged to advise Macs, in writing, of such change failing which the subsequent entity shall be liable for all amounts payable regardless of whether the goods supplied and statements rendered were before the aforementioned change.
- 3.3 The Customer hereby confirms that the goods or services on any Tax Invoice issued duly represent the goods ordered by the Customer at the prices agreed to by the Customer and, where delivery/performance has already taken place, that the goods were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects. All goods delivered shall be deemed to be in order as aforesaid unless the Customer has given Macs written notification of such specific quality, quantity and or other defects within 30 (thirty) days of such delivery of goods has taken place or invoice has been dispatched to the Customer, whichever occurs first.
- 3.4 The Customer agrees to pay the amount on the Tax Invoice at the offices of Macs or at such other place Macs may designate in writing.
- 3.6 The risk of payment by cheque through the post rests with the Customer.
- 3.7 The Customer shall not withhold payment and agrees that no extension of payment shall normally be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by Macs, reduced to writing and signed by the Customer and a duly authorized representative of Macs.
- 3.8 The Customer is not entitled to set off any amount due to the customer by Macs against any debt whatsoever.
- 3.9 The Customer agrees that the amount due and payable to Macs may be determined and proven by a certificate issued and signed by any director or manager or member or partner of Macs, whose authority need not be proven or by any independent auditor. Such certificate shall be binding and shall be prime facie proof of the indebtedness of the Customer.
- 3.10 The Customer agrees that interest may be levied at the maximum permissible interest provided for by legislation from time to time on any moneys due to Macs and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order, in the event of the Customer having breached any condition contained herein or if otherwise provided.
- 3.11 The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed above in the case of a Credit Approved Customer, Macs is (i) entitled to immediately institute action against the Customer at the sole expense of the Customer, or (ii) to cancel the agreement and take possession of any goods delivered to the Customer and claim damages, or (iii) to enforce and exercise any lien over any item or goods of the Customer on which behalf goods were delivered and or services were rendered and or other goods of the Customer as stated herein until all amount owing by the Customer have been paid in full. These remedies are without prejudice to any other right Macs may be entitled to in terms of this agreement or in law. Macs reserves its right to stop supply immediately on cancellation or in the event of non-payment.

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- 3.12 Macs shall be entitled to withdraw credit facilities for a good reason within its discretion after consultation with the Consumer.
- 3.13 In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.
- 3.14 Macs may enter the Customer's premises to repossess any goods delivered and Macs shall not be liable for any damage relating to the removal of repossessed goods, which might be caused by its agents or representatives.
- 3.15 All goods supplied by Macs remain the property of Macs until such goods have been fully paid for whether such goods are attached to other property or not. Upon the delivery or tender thereof, any risk to any goods shall pass to the Customer.
- 3.16 The Customer is not entitled to sell or dispose of any goods unpaid for without the prior written consent of Macs. The Customer shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Macs in the goods.
- 3.17 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law, the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of goods in ownership to Macs.
- 3.18 The Customer shall be liable to Macs for all legal expenses on the attorney-and-own client scale of an attorney and counsel incurred by Macs in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Macs may demand.
- 3.19 The Customer will in the sole discretion of Macs be granted a discount of 1, 5% of the invoiced amount after dispatch of the invoice to the customer. Macs will in its sole discretion allow such a discount and such a discount will be confirmed in writing by Macs to the customer, this is not a right excisable by the customer it is indeed an indulgence from Macs which may at its sole discretion apply same.

#### 4. Credit Facilities

- 4.1 Macs may, in its sole discretion, grant credit facilities to the Customer.
- 4.2 Macs shall have the right, in its sole discretion, to amend or withdraw any credit facilities granted to the Customer, upon written notice to the Customer, and any amounts then owing to Macs by the Customer under the credit facilities will become due and payable on demand.
- 4.3 Macs shall have the right, in its sole discretion, to use and to disclose to any source any personal information provided to it for the purpose of evaluating the Customer's credit-worthiness and protecting Macs credit risk and the Customer hereby consents to such use and disclosure.

#### 5. Delivery

- 5.1 Macs shall provide the dates and times of delivery of Goods in good faith and shall not be liable to the Customer for any subsequent variations.
- 5.2 Macs shall be entitled, in its sole discretion, to split the delivery of Goods in quantities, on the dates and at the times it decides, and to invoice separately each delivery actually made.
- 5.3 Any delivery of Goods by Macs to the Customer shall be deemed to be completed when the Goods are off-loaded at the delivery address of the Customer, failing which, the premises of the Customer, or when the Goods are handed over to the third party engaged to transport the Goods on behalf of the Customer in terms of clause 6.3.
- 5.4 The Customer shall provide suitable access roads to and level ground at the point of off-loading at the delivery address or premises of the Customer.
- 5.5 Delivery will be in full economical loads and at one point only.
- 5.6 If Macs agrees to engage a third party to transport the Goods, Macs is hereby authorized to engage, at the cost of the Customer, such third party on the Customer's behalf and on the terms deemed fit by Macs. The Customer indemnifies Macs and holds it harmless against any claims that may arise from such agreement.
- 5.7 The signature of any employee or representative of the Customer on Macs' Delivery Note (copy or original) shall be prima facie proof that the type and quantity of Goods, manufactured to the correct specifications, were properly delivered to and accepted by the Customer.

#### 6. Suspension of deliveries

- 6.1 If any amount due and payable by the customer to Macs is in arrear, Macs shall have the right until such amount has been paid to suspend any delivery under any contract then in force between Macs and the customer.
- 6.2 Notwithstanding anything to the contrary herein contained, Macs shall have the right to suspend any delivery under any contract at any time if in its sole discretion it considers that:
  - 6.2.1 The amount owing by the customer (whether due or not) has reached the limit to which it is prepared to allow the customer credit, or;
  - 6.2.2 It comes to its notice that the customer's financial position has deteriorated, or
  - 6.2.3 It no longer considers the customer to be credit worthy, or;
  - 6.2.4 The customer does not acknowledge that any contract is upon the terms set forth in these terms and conditions.

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## 7. Return of Goods and Guarantees

- 7.1 The company shall not be liable under any circumstances whatsoever for any loss or damage of any nature whatever, whether direct or indirect, consequential or otherwise, sustained as a result of any goods sold by Macs under any contract, being defective or not conforming to the description thereof or as result of any other cause whatsoever, and Macs' liability in respect of any good sold by it shall be limited to that provided for in 6.
- 7.2 Macs:
- 7.2.1 Does not warrant or represent that the goods are fit for any particular purpose (whether or not that particular purpose is known to Macs);
- 7.2.2 Shall not be liable to the Customer in any way whatever for any defect, whether latent, or patent, in any goods sold as sub-standard.
- 7.3 If any goods not being sub-standard, are latently, patently, or otherwise defective and a claim lies against Macs in respect of such goods, then Macs at its own option decide either to:-
- 7.3.1 Replace the defective goods;
- 7.3.2 Reimburse the Customer in respect of the purchase price of the goods, or;
- 7.3.3 require the customer to accept the goods at a reduced purchase price to be agreed, provided that if the parties are unable to agree on the amount of the reduction, that question shall be submitted to be resolved by an independent person agreed upon between Macs and the Customer, and failing such an agreement, appointed by the President for the time being of the Law Society of the Northern Provinces, and that person's decision shall be final and binding upon Macs and the Customer.
- 7.4 Any decision of Macs in terms of 7.3 shall be notified to the customer in writing.
- 7.5 if so required by Macs, The Customer shall be obliged to return the defective goods to Macs at the customers own expense.
- 7.6 Macs shall not be liable under any circumstances for any damages whatever of any nature whether directs or indirect, consequential or otherwise arising out of any contract with a Customer and in any event the liability of Macs to the Customer shall be limited to that provided for in 7.3 and subject to 7.7 hereunder.
- 7.7 No claim under this agreement shall arise unless the Customer has, within 7 days of the alleged breach of defect occurring, given Macs 30 days written notice by prepaid registered post to rectify any defect or breach of agreement, to be valid, claims must be supported by the original delivery note or invoice.
- 7.8 All Macs warranty terms and conditions must have been complied with.

## 8. Ownership & Risk

- 8.1 Ownership in the Goods shall not pass to the Customer until they have been paid for in full.
- 8.2 The risk of damage or destruction or theft of goods shall pass to the Customer on tender of delivery and the Customer undertakes to comprehensively insure the goods until paid for in full and Macs shall remain the lawful owner of such goods and hold a lien over any material thing to which services was rendered upon (which lien shall automatically revive if possession was lost at any time if possession is obtained once again by Macs) until payment has taken place by the Customer in full, without any set of taking place of any kind whatsoever.
- 8.3 The Customer shall insure the Goods against loss and damage, to the satisfaction of Macs, until the Goods have been paid for in full.
- 8.4 Until the Goods have been paid for in full, the Customer shall not encumber the Goods or purport to transfer ownership in the Goods to any third party and shall advise third parties of Macs' rights in the Goods.
- 8.5 The Customer authorizes Macs to enter its premises to repossess, pursuant to clause 10.1.2, any Goods delivered and indemnifies Macs and holds it harmless against any damage whatsoever relating to the removal of such Goods.
- 8.6 Where ownership in the Goods sought to be repossessed has passed to the Customer or to a third party by operation of law, the Customer shall or shall procure the re-transfer of such Goods to Macs.

## 9. Warranty

- 9.1 Macs warrants that the Goods shall meet the standards set by the South African Bureau of Standards, provided that the Goods are not tampered with or stored or used outside Macs' specifications.
- 9.2 All other warranties, whether express or implied, including any warranty that the Goods are fit for a particular purpose, including the purpose for which they were ordered, are hereby specifically excluded.
- 9.3 Macs' liability for any breach of this warranty shall be limited to the repair or replacement of the Goods.

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