



# PERFORATED SHEET & SPECIALIZED FORMING

Company Reg No: 2020/670052/07

Contact Number: 083 447 2877

74 2<sup>nd</sup> Avenue

Sundra

Mpumalanga

2200

**THIS IS AN IMPORTANT DOCUMENT WHICH LIMITS YOUR RIGHTS. PLEASE READ IT CAREFULLY AND PAY CAREFUL ATTENTION TO CLAUSES IN BOLD OR ITALICISED TEXT.**

## **PERFORATED STEEL AND SPECIALIZED FORMING (PTY) LTD STANDARD TERMS AND CONDITIONS**

(AS AMENDED ON 30 AUGUST 2020)

### **1. INTERPRETATION**

1. The clause headings herein are for reference purposes only and shall not be used in the interpretation thereof.
2. Unless the context clearly indicates a contrary intention:-
  - 2.1. expressions which denote any one gender, shall include the other genders;
  - 2.2. a person shall include a natural person, company, partnership, firm, close corporation, company or any other legal personae;
  - 2.3. the singular shall include the plural and *vice versa*.
3. When any particular number of days is provided for the doing of any act or for any other purposes, the reckoning shall exclude the first day and shall include the last day and shall include all Saturdays, Sundays and public holidays which occur during the period.
4. Any other counterpart, whether documented or in electronic format, referenced in these terms and conditions shall be deemed to be incorporated herein and shall form an integral part of this agreement.
5. If any provision in a definition is a substantive provision conferring any right or imposing any obligation on any party, then notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in these terms and conditions.
6. In these terms and conditions, unless inconsistent with or otherwise indicated by the context, the following expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:-
  - 6.1. **"Agreement"** means any Agreement entered into between the Supplier and the Client;
  - 6.2. **"Business Day"** means any day of the week excluding Saturdays and Sundays and Public Holidays;
  - 6.3. **"the Client"** means any person or entity who contracts with the Supplier;
  - 6.4. **"Order"** means any order or instruction, written or oral given by the Client to the Supplier for Works, and shall include an amendment and/or variation to any Order;
  - 6.5. **"Public Holiday"** means any South African public holiday as published in the Government Gazette from time to time.

6.6. **“The Supplier”** means Perforated Steel and Specialized Forming (Pty) LTd whose chosen *domicilium citandi et executandi* for purposes of this Agreement is 74, 2<sup>nd</sup> Avenue, Sandra, Mpumalanga.

6.7. **“Terms and Conditions”** means these Terms and Conditions as amended from time to time hereafter;

## **2. THE GOODS AND SERVICES**

2.1. The Supplier will sell to the Client who will purchase, goods (the Goods) and/or services (the Services) described in the Quotations and/or tax invoices provided by the Supplier to the Client for the charges set out in the Quotations and/or tax invoices (the Charges) subject to these standard terms and conditions of sale of goods and services (the Terms and Conditions).

## **3. THE AGREEMENT AND ACCEPTANCE**

The Client agrees that:

3.1. these Terms and Conditions shall apply to every Order and Agreement entered into by and between the Supplier and the Client and shall regulate the parties' relationship and responsibilities to each other in respect of all sales of goods and services;

3.2. these Terms and Conditions are and will be final and binding upon the Client and is not subject to any suspensive or resolute terms and conditions;

3.3. these Terms and Conditions supersede, and replace all prior agreements, understandings and representations save for securities and guarantees held by the Supplier which shall continue to remain of force and effect, and remain binding on the Client;

3.4. these Terms and Conditions supersede the Client's own terms and conditions;

3.5. the Terms and Conditions attached to, contained in or referenced on any Order are expressly excluded from and are superseded by these Terms and Conditions.

3.6. the Quotations and/or tax invoices, where no Credit Application Form has been signed by the Client, are submitted to the Client subject to these Terms and Conditions and the Agreement comes into existence upon the Client accepting the Quotation and/or the Client's acceptance of the goods duly delivered whether such acceptance is verbally or in writing.

## **4. THE CHARGES**

4.1. The Client agrees to pay all applicable Charges specified in the Quotations and/or tax invoices and any customs or other duties, taxes, levies or fees imposed by any authority or forex fluctuation adjustments resulting from the Client's acquisitions under this agreement and any late payment fees.

## **5. CREDIT FACILITIES**

**5.1.**By signing the Credit Application Form, the Client and Surety consent to the Supplier conducting a Credit Check on it and its principals.

**5.2.**The Supplier shall be entitled to withdraw credit facilities from the Client at any time immediately on written notice to the Client.

**5.3.**The Supplier shall be entitled to adjust the Client's credit limit either way, in accordance with the Client's conduct of the account or any other commercial reason, which adjustment shall take immediate effect on written notice to the Client.

## **6. OWN MATERIALS**

**6.1.**In the event that the Client supplies their own materials for the completion of the works, such Client shall include addition material to account for a 10% scrap ratio on completing the works.

**6.2.**The Client remains liable and/or responsible for the replacement of any materials damaged during the completion of the works (running of the job), irrespective of the cause thereof.

## **7. PAYMENT**

**7.1.**In the event that the Client has a credit facility, the Charges are due and payable on 30 days from date of statement by EFT into the bank account of the Supplier, the details of which are set out in the Suppliers statement, tax invoices and quotations.

**7.2.**In the event that the Client has a cash on delivery account, the Charges are due and payable immediately upon receipt of the tax invoice from the Supplier, by way of EFT into the bank account of the Supplier, the details of which are set out in the Suppliers statement, tax invoices and quotations.

**7.3.**Notwithstanding that risk in the goods passes to Client on delivery, the Supplier remains the owner of the Goods until such time payment for the Goods is received in full.

**7.4.**The Client undertakes to inform the landlord of the premises or any third party at whose premises the Goods are kept or installed, that the Supplier is the owner of the Goods while any amount remains owing in respect of the Goods.

**7.5.**Any and all Charges set out in the Quotation are exclusive of Value Added Tax and any tax, duties, levies, fees or forex fluctuation adjustments.

**7.6.**all overdue amounts shall bear interest at 2% per calendar month or such other rate as may be lawfully permitted by law or regulation, whichever is the higher, calculated from the date the debt falls due to the Supplier to the date of settlement in full by the Client, compounded and calculated monthly.

**7.7.**A certificate of indebtedness signed by a director and/or credit manager and/or debtors clerk of the Supplier shall be prima facie proof of the Client's indebtedness to the Supplier.

**7.8.**The Supplier is entitled to appropriate any payments received from the Client in its sole and absolute discretion.

- 7.9.**All payments must be made free of deduction or set off and the Client may not withhold payment for any reason whatsoever.
- 7.10.**Failure to pay any Charges will entitle the Supplier to withhold delivery or cancel the order of any other goods purchased by the Client but not yet delivered, and/or suspend the provision of any services under this Agreement or another, by written notice to the Client without incurring any liability for any loss or damage incurred by such delay, cancellation or suspension. Charges will continue to accrue in respect of Services during any suspension or delay.
- 7.11.**If the Client terminates the Agreement without cause or the Supplier terminates the Agreement for material breach or the Client is placed into provisional or final liquidation or sequestration, or goes into Business Rescue or administration proceedings, the Client will become immediately liable for all Charges for the remaining term of the Agreement and any additional costs the Supplier reasonably incurs because of the early termination such as costs relating to sub-contracts or relocation.

## **8. DELIVERY**

- 8.1.**Given the nature of the Supplier's business and the potential for delays caused by factors beyond the Supplier's control, time shall not be of the essence in relation to the Supplier's performance of its obligations in terms of this Agreement.
- 8.2.**To the extent that any time period for delivery is provided for in the Quotation and/or tax invoices, that time period is an estimation only and not a material term of the Agreement and the Supplier's failure to deliver in that time period shall not entitle the Client to cancel the Agreement or claim any damages from the Supplier caused by such delay.
- 8.3.**The Supplier may deliver the Goods in instalments.
- 8.4.**The Client acknowledges and accepts that the Supplier may have to order the Goods from abroad and transport arrangements and customs may delay delivery. The Supplier shall not be liable for any damages whatsoever suffered by the Client as a result of such delay.
- 8.5.**The Client shall be liable for any expenses incurred, loss or damage suffered by the Supplier due to any delay in delivery caused by the Client. This clause shall not apply to agreements in which the Client enjoys the protection of the Consumer Protection Act (CPA), unless the Client has failed to make payment of an amount and the National Credit Act applies to the agreement, in which case, this clause shall operate against the Client.
- 8.6.**The Supplier shall provide kerbside delivery only and offloading and rigging the Goods into position is the responsibility of the Client, unless otherwise stipulated in the Quotations and/or tax invoice(s).
- 8.7.**The Supplier will confirm the date and time for delivery of the Goods and/or Services, 3 days prior to the actual delivery date.

**8.8.**The Client is responsible for obtaining all necessary permissions to allow the Supplier to perform any obligation under this Agreement and authorises the Supplier to obtain such permission on their behalf at the Client's cost. Such authorisation shall not oblige the Supplier to obtain the permission, which obligation remains that of the Client.

## **9. LIMITATION OF LIABILITY**

9.1. The Supplier shall not be liable for:

9.1.1. Any indirect or consequential loss or damage;

9.1.2. Any loss of profit, loss of business or goodwill;

9.1.3. Any defect which may occur in any prior installation to which the Goods may be connected;

9.1.4. Any defect caused by incorrect installation not carried out by the Supplier or lack of or poor maintenance of the Goods by the Client;

9.1.5. Any negligent act or omission by any of its employees, sub-contractors, agents or representatives.

## **10. WARRANTIES**

**10.1.**The Supplier warrants that it provides Services using commercially reasonable care and skill.

**10.2.**The Supplier shall replace or repair, the election of which shall be at the Supplier's sole and absolute discretion, defective Goods supplied by the Supplier or any part for a period of 7 days from the date of delivery of the Goods or the date of invoice, whichever is the earlier.

10.3. The Supplier shall not be liable to repair or replace any Goods or part thereof unless it is satisfied that:

10.3.1. the Goods have been used, installed, operated and maintained in accordance with good engineering practice and /or any instruction or advice given by the Supplier; and /or

10.3.2. a defect is not attributable to misuse, modification, misapplication, improper or inadequate storage of the Goods or any part thereof after delivery.

10.4. Notwithstanding any timeous notification of any defect, the Client shall not be entitled to withhold payment of the Charges or any part thereof.

10.5. These warranties are the exclusive warranties from the Supplier and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.

## **11. INDEMNITY**

**11.1.**The Client hereby indemnifies the Supplier and holds it harmless against all and any loss and/or destruction, and/or damage to person and/or property (whether direct or indirect, actual or

consequential), injury and/or loss of life and/or limb, costs and expenses, suffered or sustained by it whilst on, or in transit to the Client's site, in the course of, and/or consequent upon the performance by it of any of its obligations to the Client, as well as against all and any claims,

demands and actions by any person/s whomsoever for losses and/or damages to person and/or property (direct or indirect, actual or consequential), injury and/or loss of life and/or limb and/or otherwise suffered or sustained as a result of any reckless or willful act or omission by the Supplier, its employees, agents and representatives in their performance of any obligation incumbent upon them pursuant to any order.

**11.2.** This indemnity shall extend to include all costs and expenses paid by the Supplier to their attorneys (on an attorney and client scale) in contesting or defending any such action.

## **12. BREACH AND TERMINATION**

**12.1.** In the event of the Client breaching any term of this Agreement and failing to remedy such breach within 7 days of receipt of written notice requiring it to do so, the Supplier shall be entitled to cancel the Agreement and claim all amounts owed to it in terms of the Agreement.

**12.2.** Should the Client resolve voluntarily to begin business rescue proceedings or any business rescue proceedings commenced against them as contemplated by the Companies Act 71 of 2008, then the Supplier would be entitled to claim specific performance or to cancel the Agreement, in both instances without prejudice to any claim for damages, and in the event of cancellation the Supplier would be entitled to enter on any premises of the Client and their clients where the Goods are situated and retake possession of the Goods.

## **13. DOMICILIUM**

**13.1.** The Client selects their physical address as recorded in the Credit Application Form to which this document is referred.

**13.2.** Any written notice, notification, statement, demand, request, consent or other communication in writing shall be sent via email to the email address for either party set out in the Credit Application.

**13.3.** All notices and communications sent via email shall be deemed to have been received by the recipient at the date and time set out therein.

## **14. GOOD FAITH**

**14.1.** In the Execution of the Agreement, the Client undertakes to observe the utmost good faith and warrants in its dealings with the Supplier that it shall not do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interest of the Supplier.

## **15. EXCLUSIVITY AND NON-VARIATION**

**15.1.** These Terms and Conditions constitutes the entire agreement between the Supplier and the Client and no variation, amendment, consensual cancellation or otherwise shall be of any force or effect unless agreed to in writing and signed by both the Supplier and the Client.

## **16. NO NOVATION**

16.1.No indulgence, latitude, extension of time or the like granted by the Supplier to the Client shall in any way whatsoever constitute a novation or waiver of any rights which the Supplier may have against the Client nor may it operate as an estoppel against the Supplier.

## **17. SOUTH AFRICAN LAWS APPLICABLE**

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

## **18. CERTIFICATE OF INDEBTEDNESS**

18.1.The Client confirms that a certificate signed by the any director and/or credit controller and/or debtors clerk of the Supplier, whose designation it shall not be necessary to prove, showing the amount owing by the Client to the Supplier shall be sufficient proof that the said amount is due, owing and unpaid and shall be satisfactory proof of what is contained therein for the purpose of any action (whether by way of provisional sentence, summary judgment or otherwise) proof of the debt on insolvency or for any purpose whatsoever. Where the quantum of the Supplier's claim is thereafter disputed by the Client, the Client shall bear the onus of proving that such amount is not owing and/or due and/or payable.

## **19. EXTENDED CREDIT FACILITIES FOR CLIENT**

19.1.Should the Client request extended credit facilities, it undertakes to make such application in proper form to the Supplier including to provide all such information as the Supplier may request to enable it to consider and decide upon such request.

## **20. NOTICE OF CHANGE OF CIRCUMSTANCES OF CLIENT**

20.1.The Client agrees to notify the Supplier in writing within 7 (seven) days of any event occurring, or information becoming known or available to it, which reasonably considered, would materially affect a Supplier in assessing the risk relative to granting credit facilities to the Client.

20.2.The Client shall inform the Supplier of any change in ownership of the Client's business or any transaction where shares or members' interest in excess of 25% (twenty-five percent) of the issued share capital of the Company or members interest, changes hands.

## **21. COSTS**

21.1.In the event that the Supplier should institute legal action against the Client, the Client shall be liable for all costs and expenses incurred on the scale as between attorney and client, including collection commission.

## **22. ADDRESS**

22.1.The Client undertakes to notify the Supplier in writing of any change of address of its principal place of business and/or registered office, where applicable.

## **23. CESSION, ASSIGNMENT**

23.1.The Client shall not be entitled in any manner whatsoever to cede its rights, delegate its obligations and/or assign its rights and obligations, under these terms and conditions without the prior written consent of the Supplier.

## **24. SEVERABILITY**

24.1. The provisions contained in these terms and conditions are severable, the one from the other. In the event that any one or more of the terms contained herein should be found to be invalid or unenforceable, to the extent of the invalidity or unenforceability that term shall be severed from the rest of these terms and conditions which shall continue to be of full force and effect.

24.2. If a court finds that any provision of these terms and conditions are invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

## **25. ARBITRATION**

25.1. Save as otherwise provided in these terms and conditions and, in the event that a dispute should arise between the parties, the Supplier shall be entitled to require, by written notice to the Client, that the dispute be submitted to arbitration in terms of this clause.

25.2. Subject to the provisions of this clause, arbitration shall be held under the provisions of the arbitration laws of the time in force in the Republic of South Africa, provided that the arbitrator shall be a practising attorney of not less than 10 (ten) years standing, agreed upon by the parties, or failing agreement within five days after the date on which the arbitration is demanded, appointed by the Chairperson of the Legal Practice Council.

25.3. The arbitration shall be held at Sandton, or any other agreed place, at a venue and in accordance with formalities and/or procedures determined by the arbitrator, and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities and/or procedures, pleadings and/or discovery, or strict rules of evidence.

25.4. The arbitrator shall be entitled:-

25.4.1. to investigate or cause to be investigated any matter, fact or thing which he/she considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of either part to the dispute, and the right to take copies or make extracts therefrom and the right to have them produced and/or delivered at any reasonable place required by him/her for the aforesaid purpose;

25.4.2. to interview and question under oath, any representative of either of the parties;

25.4.3. to decide the dispute according to what he/she considers just and equitable in the circumstances;

25.4.4. to make such award, including an award for costs, specific performance, an interdict, damages or a penalty or otherwise as he/she in his/her discretion deems fit and appropriate, provided that should the arbitrator fail to make an award with regards to costs, the costs shall be borne equally by the parties.

25.5. The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within thirty days after it has been so demanded.

25.6. Immediately after the arbitrator has been agreed upon or nominated in terms of this clause either party shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.

25.7. Any award made by the arbitrator:-

25.7.1. shall be in writing and shall include reasons therefore;

25.7.2. shall be final and binding;

25.7.3. will be carried into effect; and

25.7.4. may be made an order of any Court to whose jurisdiction the parties to the dispute are subject.

25.8. This clause constitutes an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or to claim in any such proceedings that it is not bound by this clause.

25.9. This clause shall not preclude any party from obtaining relief by way of motion proceedings on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.

25.10. This clause shall be severable from the rest of these terms and conditions and shall remain effective notwithstanding that these terms and conditions shall for any reason whatsoever, be terminated.

## **26. CESSION OF BOOK DEBT**

26.1. Simultaneously with entering into any Agreement with the Supplier, the Client is deemed to have ceded as security for its indebtedness to the Supplier, its successors in title and assigns, arising out of the credit facilities advanced/to be advanced to it and/or outstanding funds in respect of the sale of goods and services, all right, title and interest in and to its debtors (accounts receivable), past, present and future, to the Supplier.

26.2. The Client hereby warrants that it has:-

26.2.1. not entered into any agreement restricting or excluding the transferability of the claims that form the object of this cession;

26.2.2. has no knowledge of any counterclaims that may extinguish the claims that form the object of this cession;

26.2.3. not, prior to this cession, ceded the claims that form the object of this cession to any other person or concern, but if it should so happen that the cedent is in breach of this, then this cession shall operate as a cession of the Client's reversionary rights, including all rights of action against the prior cessionary.

26.3. During such time as the cession which is the subject matter of these terms and conditions remains of force and effect, the Client agrees that it will:-

26.3.1. upon demand deliver, cede, transfer or negotiate to the Supplier all or such of the bills of exchange, promissory notes, cheques, documents of title or other securities referred to in terms hereof as may be demanded, duly endorsed, ceded, transferred or negotiated in such form as shall render the Supplier the absolute owner thereof entitled in the Supplier's own name to enforce payment thereof;

26.3.2. make available for inspection by the Supplier or the Supplier's authorised agent at any time during normal business hours all books of account, receipts and other books, papers and correspondence relating to the said book debts and the Client's dealings with the debtors in respect of the indebtedness of each of them to the Client in the said business and to take possession of such books and records (of whatsoever nature) to give effect to the terms of this cession;

26.3.3.give the Supplier all such information concerning the said debtors as may be reasonably required by the Supplier to enable the Supplier to recover the amount owing by each of them.

26.4.The Supplier authorises the Client to collect the said claims in the Client's own name provided the said claims are collected on behalf of the Supplier and provided further that the Supplier shall at any time be entitled to terminate the Client's right to collect such claims as at any time.

## **27. GENERAL**

**27.1.**Any reproduction of the Agreement made by reliable means shall be considered an original.

**27.2.**If there is a conflict in this Agreement these terms and conditions will prevail over the Quotation and/or tax invoice.

**27.3.**The Customer consents to the jurisdiction of the Magistrates Court notwithstanding the value of the claim or matter in dispute.

**27.4.**Any reference to days shall be business days.

**27.5.**Any clause of these Terms and Conditions being ruled null and void shall not affect the validity of the rest of the clauses of this Agreement.