

## 4. AGREEMENT, CONSENT AND CESSION

### AGREEMENT OF TRADE

- The Customer agrees that (a) this Agreement represents the entire Agreement between the Customer and the Supplier and that alterations or additions to this Agreement may not be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of the Supplier; (b) this Agreement will govern all future contractual relationships between the parties, notwithstanding receipt or acknowledgement of the Customer's own order form or conditions; (c) this Agreement is applicable to all existing debts between the parties; (d) this Agreement is final and binding and is not subject to any suspensive or resolutive conditions; (e) any conflicting terms, conditions or alterations stipulated by the Customer are expressly excluded; (f) this agreement supersedes all previous terms, conditions or agreements without prejudice to any securities or guarantees held by the Supplier and (g) this agreement applies to all employees and subcontractors of the Supplier.
- This agreement, and any offers, orders or contracts of sale pursuant thereto, become binding only when accepted by the Supplier at its business address.
- The signatory hereby binds himself in his personal capacity as Shareholder (in the case of a company), Member (in the case of a close corporation) or Owner, Partner, or Proprietor, as co-principal debtor jointly and severally for the full amount due to the Supplier and agrees that this agreement will apply in the exact same way to him.
- The Customer acknowledges that it does not rely on any representations made by the Supplier in regard to its products and services, or qualities thereof, leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by the Supplier in respect of its products or services, whether orally or in writing, will not form part of the Agreement in any way unless agreed to in writing by the Supplier.
- The Customer agrees that neither the Supplier nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer.
- All quotations will remain valid for a period of 15 days from the date of the quotation, or until the date of issue of any new price list, whichever occurs first, or unless otherwise specified in writing by the Supplier.
- Delivery and performance times quoted are estimates and are not binding on the Supplier.
- All quotations are subject to the availability of input products or services and subject to correction of good faith errors by the Supplier, and the prices quoted are subject to any increases in the cost price, including currency fluctuations, to the Supplier before acceptance of the order.
- In the event of the Customer disputing the amount of the cost increase in Clause 8 above, the said amount may be certified by an independent auditor and such certificate shall be final and binding on the Customer.
- Notwithstanding the provisions of Clause 1 above, all orders or contracts of sale, or agreed variations thereto, whether oral or in writing, shall be binding and subject to this agreement and may not be cancelled by the Customer.
- The Customer undertakes to retain copies of all electronic or image media furnished to the Supplier. Media altered by the Supplier immediately becomes the Supplier's sole property.
- Proofs, pulls, samples, specimens, sketches, photographs or any representation, whether partial or total, of the finished product may be submitted to the Customer for approval. Acceptance of such proofs by the Customer, or any employee of the Customer, will bind the Customer, and the Supplier will not be liable for any errors contained in the approved copy.
- In the event of the Customer being unable or unwilling to view and accept final proofs, the Customer will be liable for the cost of the work produced. Any proof sent to the Customer may be deemed correct unless otherwise indicated by the Customer in writing within 24 hours of such proof being sent.
- The Customer is liable for the costs incurred in the event of the alteration, at its request, of any proofs other than the correction of Supplier's errors.
- The Customer shall pay for any preliminary work which is produced at his request whether experimentally or otherwise.
- Origination and preliminary work shall remain the property of the Supplier unless otherwise agreed upon, in writing, with the Customer.
- Standing matter, originals and printer's materials of any kind may be distributed, effaced, or disposed of immediately after the order has been executed unless written arrangements are made for the retention thereof. The Supplier may charge storage at the Supplier's standard rates for any goods retained.
- The Customer acknowledges all copyrights and shall not duplicate the Supplier's copyrighted material. Each infringement attempt shall render the full order value of such infringement immediately payable to the Supplier.
- The Supplier reserves the right to withhold production of any material it deems unsuitable or unlawful, in its sole discretion. The Supplier reserves the right to edit, revise or reject any material it deems untruthful, objectionable, illegal or in conflict with fair business practices. The Customer remains liable for the cost of work produced in the event of the Supplier exercising these rights.
- The Customer hereby indemnifies the Supplier against any claims, costs and expenses arising out of the infringement of copyright, patent, trade mark or design supplied by the Customer, or the printing of any illegal or defamatory material. Each party shall diligently protect the other's trade secrets and confidential information.
- It is the sole responsibility of the Customer to determine that the products or services ordered by it are suitable for the purposes of intended use. The Supplier gives no warranty, express or implied, concerning the suitability of the products supplied for any purposes whatsoever.
- The Supplier reserves the right, at its sole discretion, to provide alternative products at the prevailing prices to those ordered by the Customer should those products have been superseded, replaced or otherwise become unavailable.
- Products are sold voetstoots with no warranty against latent defects. All other guarantees, including common law guarantees, are hereby specifically excluded.
- Liability under clause 23 is restricted to the cost of repair or replacement of faulty products or services, or granting of a discount, at the sole discretion of the Supplier.
- The Supplier shall not be required to work to tolerances closer than those applicable to the materials obtained by it in the ordinary course of trade, or supplied to it by the Customer. The Supplier shall not be held liable for any variations in the standard, quality and performance of such materials.
- The Supplier shall not be liable for any defects resulting from it being required to expedite delivery ahead of the time needed for the proper production of the order.
- The Supplier shall not be responsible for imperfections in the work due to defects in, or the unsuitability of, material or equipment not supplied by the Supplier. Extra costs incurred through the use of defective materials or equipment supplied shall be for the Customer's account.
- The Customer agrees to pay all costs resulting from any acts, omissions or requests of the Customer including disbursements, suspension of work, modification of requirements, reprints, failure or delay in giving particular requisite to enable work to proceed on schedule, or requirements that work be completed earlier than previously agreed.
- The Supplier shall not be responsible for Customer's material wasted in the course of production.
- Customer's property and property supplied to the Supplier will be retained at the Customer's risk.
- The Supplier shall not be liable for any damage arising from any misuse, abuse or neglect of products or services under any circumstances whatsoever.
- Any order is subject to cancellation by the Supplier due to Acts of God, or from any cause beyond the control of the Supplier, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.
- Delivery of products or services to the Customer shall take place at the place of business of the Supplier.
- The completed product will be despatched or must be collected by the Customer when ready and the Customer shall not refuse or delay to take delivery.
- The Customer agrees that an over-supply or under-supply not in excess of 10% (ten per cent) of the products ordered may be produced, and that it shall be liable for payment of all quantities so supplied.
- The Supplier shall be entitled in its sole discretion to split the delivery or performance of the products or services ordered in the quantities and on the dates it decides.
- The Supplier shall be entitled to invoice each delivery or performance separately when executed.
- The Customer agrees to establish, immediately upon delivery, that the products and services appearing on the Supplier's delivery note, Tax Invoice or other documentation, correctly represents the products, or services, and prices agreed to, and are free of defects.
- Where products or services are delivered prior to the issue of a Tax Invoice, the Customer agrees to, immediately upon receipt of the Tax Invoice, establish that it correctly represents the delivered products or services and prices agreed to.
- The Customer hereby confirms that the goods or services detailed on the Tax Invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery / performance has already taken place, that the goods or services 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.
- Any delivery note, invoice or waybill (copy or original) signed by the Customer or a third party engaged to transport the products, and held by the Supplier, shall be conclusive proof that delivery was made to the Customer.
- The Customer shall return any defective moveable products to the premises of the Supplier at the Customer's own cost and packed in the original or suitable packaging.
- Claims under this Agreement shall only be valid if the Customer has, within 3 days of the alleged breach or defect occurring, given the Supplier 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 Tax Invoice.
- If the Supplier agrees to engage a third party to transport products on the Customer's behalf, it does so on terms deemed fit by the Supplier. The Customer indemnifies the Supplier against any claims arising from such agreement.
- The risk of damage to, or destruction or theft of its products shall pass to the Customer on delivery of any order placed in terms of this Agreement and the Customer undertakes to comprehensively insure the products until paid for in full. The Supplier may recover insurance premiums from the Customer for products insured on the Customer's behalf.
- All products supplied by the Supplier remain the property of the Supplier until such products have been fully paid for whether such products are attached to other property or not.
- The Customer agrees that the amount contained in a Tax Invoice issued by the Supplier shall be due unconditionally (a) cash on order, or (b) if the Customer is a Credit Approved Customer, then within the granted credit period as specified on the Credit Application, or not later than the end of the month in which a Tax Invoice has been issued by the Supplier.
- The Customer agrees to pay the full amount on the Tax Invoice at the Business Address of the Supplier or at such other place that the Supplier may designate in writing.
- The risk of payment by cheque through the post, or by electronic funds transfer, rests with the Customer.
- The Customer has no right to withhold payment for any reason whatsoever and agrees that any extension of time given for payment shall be valid only if reduced to writing and signed by the Customer and a duly authorised representative of the Supplier.
- The Customer is not entitled to set off any amount due to the Customer by the Supplier against its indebtedness to the Supplier.
- All discounts shall be forfeited if payment in full is not made on the due date.
- The Customer agrees that the amount due and payable to the Supplier may be determined and proven by a certificate issued and signed by an independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
- Any printout of computer evidence tendered by any party shall be admissible evidence and the parties shall not object to the admissibility of such evidence purely on grounds that such evidence is computer evidence, or that the requirements of the Computer Evidence Act have not been met.
- The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 48 above in the case of a Credit Approved Customer, the Supplier is entitled to: (i) immediately institute action against the Customer at the sole expense of the Customer; or (ii) cancel the agreement and take possession of any products delivered to the Customer and claim damages, or (iii) at its sole discretion, refer the dispute to the Printing Industries Federation of South Africa whose decision will be final and binding on all parties. These remedies are without prejudice to any other right the Supplier may be entitled to in terms of this agreement, or in law. The Supplier reserves its right to stop supply immediately on cancellation or on non-payment.
- In the event of cancellation, the Supplier is entitled to cease producing any unmade balance of a contract, and to recover any loss sustained thereby from the Customer.
- A Credit Approved Customer will forthwith lose this approval when payment is not made in accordance with the conditions of clause 48 and all amounts then outstanding shall immediately become due and payable.
- The Customer agrees that interest shall be payable to the Supplier at the maximum legal

interest rate prescribed in terms of the Usury Act on any amounts in arrears, and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.

60. The Customer shall be liable to the Supplier for all legal expenses incurred by the Supplier on the attorney-and-own client scale in the event of (a) any default by the Customer or (b) any litigation in regard to the breach, validity, or 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 the Supplier may demand.
61. The Customer shall pay three thousand Rand into court or furnish sufficient security in lieu of costs in any action instituted by or against the Customer.
62. The Customer agrees that the Supplier will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Court or in terms of Rule 47 of the Supreme Court Act 59 of 1959 as amended.
63. The Customer expressly agrees that any debt owed to the Supplier by the Customer shall become prescribed only after the passing of a period of ten years from the date the debt falls due.
64. The Customer irrevocably authorises the Supplier to enter its premises to repossess any products delivered, without court order, and indemnifies the Supplier completely against any damage whatsoever, relating to the removal of repossessed products.
65. The Customer is not entitled to sell or dispose of any products unpaid for without the prior written consent of the Supplier. The Customer shall not allow the products to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of the Supplier in the products.
66. Any item delivered to the Supplier shall serve as a pledge in favour of the Supplier for present and past debts and the Supplier shall be entitled to retain or realise such pledges as it deems expedient at the value as determined in clause 77. The sworn or realised value of pledged products will be offset against the Customer's debts and any excess balance will be paid to the Customer.
67. The Supplier is entitled to exercise a lien over any of the Customer's property in its possession until all outstanding debts have been paid.
68. The Customer hereby cedes and assigns unto and in favour of the Supplier all its rights, title, and interest in and to all debts which are now, or which may in future, become owing to it by any party or parties as security for the payment by it of all amounts which are now or may from time to time in the future, become owing by it to the Supplier from any cause of indebtedness howsoever arising. The customer agrees that on request by the Supplier, it shall be obliged to hand over to the Supplier all books of account, contracts, invoices, and documents, and the like, which it may require for the purpose of ascertaining the amounts due to it and for the purposes of the recovery of payment.
69. If any products supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (confusio or commixtio), the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of products in ownership to the Supplier.
70. The Customer, or any agent acting on its behalf, on whose behalf or at whose instance any services are rendered hereby indemnifies the Supplier and all of its employees against any liability which the Supplier may incur to any other person as a result of the production of any material produced.
71. The Customer hereby consents to the storage and use by the Supplier of (a) the personal information that it has provided to the Supplier for establishing its credit rating, and (b) the subsequent conduct of the Customers account, and to the Supplier disclosing such information to credit control companies, banks and other institutions involved in rating

- credit. The Customer agrees that the Supplier will not be held liable for the good faith disclosure of any of this information to such a third party and that further specific consent need not be obtained for the transfer of such information to such third party.
72. The Customer agrees to the Standard Rates of the Supplier for any products supplied or services rendered, which rates may be obtained on request.
73. Any document shall be deemed duly presented to and accepted by the Customer (i) within 3 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or (ii) within 24 hours of being faxed to any of the Customer's fax numbers, or any director, member's or owner's fax numbers; or (iii) within 24 hours of being e-mailed to any of the Customer's e-mail addresses, or any director, member's or owner's e-mail addresses; or (iv) on being delivered by hand to the Customer or any director, member or owner of the Customer; or (v) within 48 hours if sent by overnight courier; and (vi) within 7 days of being sent by surface mail.
74. Any order is subject to cancellation by the Supplier if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or if judgement is recorded against the Customer or any of its principals.
75. The Customer agrees that the Supplier will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 32 or 74 occur.
76. In the event of the Customer being in arrears with any payment or in breach of any term of this agreement, the Supplier is entitled to cancel all contracts with immediate effect.
77. In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the products at the time of repossession and (b) all other costs incurred in the repossession of the products. The value of repossessed or retained pledged products 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 products are not recovered for any reason whatsoever, the value shall be deemed to be nil.
78. The Customer agrees that any indulgence whatsoever by the Supplier will not affect the terms of this agreement or any of the rights of the Supplier and any such indulgence shall not constitute a waiver by the Supplier in respect of any of its rights herein. The Supplier will not be estopped from exercising its rights in terms of this Agreement under any circumstances whatsoever.
79. The Supplier shall not be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever.
80. The Customer chooses its address for legal execution as its physical or business address or the physical addresses of any Director (in the case of a company), Member (in the case of a close corporation) or of the Owner(s) or Partner(s).
81. The Customer undertakes to inform the Supplier, in writing, within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address, or 14 days prior to selling or alienating the Customer's business. Failure to do so will constitute a material breach of this agreement. Upon receipt of such written notification, the Supplier reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.
82. The invalidity of any part of this Agreement shall not affect the validity of any other part.
83. In this agreement any reference to natural persons includes legal persons and vice versa and references to any gender includes references to the other gender and vice versa.
84. The Customer hereby consents that the Supplier shall have the right to institute any legal action in either the Magistrate's Court or the High Court at its sole discretion.
85. This Agreement and its interpretation is subject to South African law and the Customer consents to the exclusive jurisdiction of the South African Courts referred to in 84.

I/We, the undersigned 1) \_\_\_\_\_ 2) \_\_\_\_\_

in my/our capacity as 1) \_\_\_\_\_ 2) \_\_\_\_\_

and being an authorised representative(s) of the Customer, hereby declares/declare as follows:

The information in this application is true and correct, and I/we undertake to notify in writing, any change of details shown herein, including change of ownership, name, or address, within seven days of the change.

I/We have received a copy of this Agreement of Trade as approved by the Printing Industries Federation of South Africa. We agree that all business between us (whether under quotation, order, contract of sale, or otherwise) shall be in terms of the said Agreement and /or those terms contained herein, whichever one is authoritative.

I/We am/are authorised to sign this document.

There are \_\_\_\_\_ ( ) separate sheets attached to this document.

The Undersigned accept/s the Agreement of Trade. The Customer acknowledges that any amount due for goods or services will be due unconditionally within the credit period granted from the date of a tax invoice issued by the Supplier. The Customer hereby declares that cheques will not be issued in payment unless there are sufficient funds available and that such funds will remain available in order that all cheque payments will be honoured and that under no circumstances will payment of any cheque be stopped.

The signatory/ies hereby binds himself/herself as co-principal debtor jointly and severally.

Signed at \_\_\_\_\_ On the \_\_\_\_\_ Day of \_\_\_\_\_ 20 \_\_\_\_\_

1) \_\_\_\_\_

Signature

2) \_\_\_\_\_

Signature

**FOR OFFICE USE**

References checked by \_\_\_\_\_ / /

Account approved by \_\_\_\_\_ / /

Documents received \_\_\_\_\_ / /

\_\_\_\_\_ / /

Notes \_\_\_\_\_

Account number \_\_\_\_\_

Sales representative \_\_\_\_\_

Terms \_\_\_\_\_ Credit limit R \_\_\_\_\_

Processed by \_\_\_\_\_ / /

Customer notified by \_\_\_\_\_ / /