

TERMS AND CONDITIONS OF SALE

- 1. Clause 1**
 - 1.1. In these standard terms and conditions of sale, reference to the "goods" means the items specified on the front of this invoice and reference to "sale" shall mean the sale of the 'goods' as herein before defined.
- 2. Clause 2**
 - 2.1. Orders are accepted subject to delivery when stock is available and CHC takes no responsibility for late delivery or non-delivery.
- 3. Clause 3**
 - 3.1. CHC'S ruling list price is subject to variation and the goods are sold at CHC'S ruling list price at the date of shipment by CHC.
 - 3.2. Any price stated is subject to a reasonable adjustment to take into account any increase in cost to CHC by virtue of foreign exchange fluctuations, currency regulations, changes in duties or changes in taxes, increases in cost or raw material, labour or transport or any other causes (whether or not of the same nature as the a foregoing) beyond the control of CHC.
 - 3.3. If the Customer is of the opinion that any such increase in price under sub-clause 3.2 is unreasonable, it may object to such increase by written notice given within 10 (TEN) days of the date of receipt of CHC's notice of the increase, whereupon CHC shall have the option:
 - 3.3.1. To provide customer with one or more certificates of a recognized firm of a public accountants selected by CHC vouching for the amount of the increase or such other amount as may be certified and to continue to supply customer at the adjusted price, or
 - 3.3.2. To cancel the sale immediately upon written notice to the customer.
- 4. Clause 4**
 - 4.1. If the price, freight allowance or terms of payment herein, or any price increase or change in freight allowance or terms of payment hereunder or CHC'S ability to make any such increase or change should be altered or prohibited by reason of any law, governmental decree, order or regulation, CHC may cancel the sale upon written notice.
- 5. Clause 5**
 - 5.1. At CHC'S option, deliveries may be effected by any subsidiary of CHC, and a reasonable charge therefore billed to the customer.
- 6. Clause 6**
 - 6.1. In the event of war, fire, flood, strike, labour trouble, accident, mechanical breakdown of machinery, or facilities, riot, act of government or authority, acts of God, or contingencies beyond the reasonable control of the party affected, interfering with the production, supply, transportation, or consumption of the goods covered by this contract, or with the supply of any raw materials in connection therewith, the quantity of goods provided for in this sale shall be reduced by the amount so affected without liability but the sale shall otherwise remain unchanged. If there is a dispute as to the quantities which are affected, CHC shall appoint an independent third party to adjudicate and such third party's decision shall be final and binding.
- 7. Clause 7**
 - 7.1. The goods sold hereunder will meet with the sales specification referred to on the face of this invoice and are sold "voetstoets".
 - 7.2. The customer shall inspect the goods for fitness for any particular purpose or otherwise, and any condition, term or warranty as to their quality or freedom from latent defect or their fitness for any purpose, whether arising under a statute or otherwise, is hereby excluded.
 - 7.3. Customer shall inspect the goods furnished hereunder immediately upon delivery. If any goods are rejected because of non-conformity to specifications, the customer shall only have the right to return same to CHC after inspection by CHC and receipt of definite delivery instruction from CHC (the "goods returned authorization document"), such inspection to be made and instruction given within 30 (THIRTY) days after notice of rejection from the customer.
 - 7.4. Either:
 - 7.4.1. Failing to give notice of any claim within 7 (SEVEN) days from the date of delivery, or
 - 7.4.2. Use of the goods furnished hereunder;shall be deemed to constitute an unqualified acceptance of such goods by customer and waiver of all claims against CHC in respect of such goods.
 - 7.5. CHC does not warrant the goods are free of infringement of any patents, nor that manufacture or the use of such goods in any country is free from infringement.
- 8. Clause 8**
 - 8.1. In the event of a breach of contract by CHC (whether due to negligence, intent or any other cause), it is agreed that the maximum damages recoverable from CHC shall be the contract price for the goods sold and in respect of which CHC is found to be in default. CHC shall not be under any liability for loss or injury to the customer whether direct or consequential.
- 9. Clause 9**
 - 9.1. Notwithstanding delivery of the goods sold, ownership in the goods shall remain with CHC until such time as customer has paid the purchase price in full. Notwithstanding retention of ownership in any case, risk in the goods shall pass to customer on delivery and as if ownership has been passed to customer.
- 10. Clause 10**
 - 10.1. Any technical assistance or advice given by any employee of CHC has been given in good faith. CHC cannot be held liable in the event of such assistance or advice being misinterpreted or being in any way or form incorrect, invalid or mistaken.
- 11. Clause 11**
 - 11.1. If the goods sold in terms of this contract are sold to customer for resale purposes, the CHC trademark must be maintained by customer unless authorized by CHC in writing to dispense with such trademark and, conversely, if the goods are sold for conversion, or manufacture of any other product, customer may not continue to use the CHC trademark in respect of any resulting product.
- 12. Clause 12**
 - 12.1. This contract is not transferable nor assignable by the customer.
- 13. Clause 13**
 - 13.1. CHC'S failure to exercise any of its rights under this contract upon any occasion shall not waive CHC'S right to exercise the same on another occasion.
- 14. Clause 14**
 - 14.1. The relationship between the customer and CHC shall in all respects be governed by the law of the Republic of South Africa.
 - 14.2. In the event of CHC wishing to enforce any of its rights against the customer, CHC, shall be entitled, in its sole discretion:
 - 14.2.1. to proceed against the customer in any Magistrate's court having jurisdiction notwithstanding that the amount in dispute might otherwise be outside jurisdiction of such court; or
 - 14.2.2. to proceed against the customer in any High Court having jurisdiction notwithstanding that the amount in dispute might be within the jurisdiction of the magistrates courts; or
 - 14.2.3. to proceed to arbitration in Johannesburg in accordance with the Arbitration Foundation of South Africa ("AFSA") rules for commercial arbitration, on written demand by CHC that the dispute be submitted to arbitration. Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration, but administered by the attorneys of the parties, before an arbitrator appointed by agreement between the parties or failing agreement within 10 (ten) business days of the demand for arbitration, then any party shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be accepted by and appointed as the arbitrator by the parties. In the event of the attorneys of the parties failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties.
 - 14.2.3.1. Any party may
 - 14.2.3.1.1. appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration; or
 - 14.2.3.1.2. apply to any court having jurisdiction over the other party, to have any arbitration award made an order of that court.
 - 14.2.3.2. Any arbitration in terms of this clause shall be conducted in camera and the parties shall treat as confidential and not disclose to any third party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of all the parties.
 - 14.2.3.3. The parties agree that the written demand by CHC in terms of this clause that the dispute or difference be submitted to arbitration, is deemed to be a legal process for the purpose of interrupting extinctive prescription.
 - 14.3. In any of the events in 14.2 above, CHC shall be entitled to recover its costs on demand, on the scale as between attorney and own client, including tracing agents fees and counsels costs, as on brief, as charged to CHC by its attorneys in High Court matters.
- 15. Clause 15**
 - 15.1. The goods sold or delivered by CHC are sold and delivered on these terms and conditions, and where credit has been extended, then as read with the terms and conditions contained in CHC'S credit application. Every order given to CHC shall constitute an agreement to be bound by such terms and conditions unless otherwise agreed in writing and signed by or on behalf of each party, expressly authorised.
- 16. Clause 16**
 - 16.1. No terms or conditions contained in any other documents issued by customer shall be valid or binding upon CHC unless expressly accepted by CHC in writing and specifically referencing any clauses herein that are modified or changed hereby.
- 17. Clause 17**
 - 17.1. No employee, save for a director, has any authority to contract on behalf of CHC on any terms and conditions other than those contained in this document (and where applicable, the terms of the credit application form). No variation of these terms shall be binding upon CHC unless reduced to writing and signed by a director of CHC expressly authorised.
- 18. Clause 18**
 - 18.1. Notwithstanding that these terms and conditions have been drafted by CHC, the contra proferentum and eiusdem generis rules shall not be enforceable against CHC in respect hereof.