



Standard Terms and Conditions of Sale: BUSHTEC CREATIONS (PTY) LTD

1. Interpretation

In these conditions the following terms shall have the meanings shown:

“Buyer”	the party that purchases Products and /or Services from the Seller as described in the relevant written quotation, proposal or tender documentation;
“Buyer’s Related Parties”	the employees, agents, distributors, suppliers (other than the Seller), contractors or representatives of the Buyer and any of the Buyer’s customers for the Products and/or Services;
“Conditions”	the standard terms and conditions of sale set out in this document
“Contract”	the contract formed by the Buyer accepting the quotation/proposal/tender provided to it by the Seller and the placement of a legal and valid order for the purchase and sale of the Products and/or Services to which these Conditions form part;
“Event of Force Majeure”	any cause beyond the Seller’s reasonable control;
“Incoterms”	the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
“Local Regulations”	all laws and regulations applicable to or affecting the manufacture, sale, design, packaging or labeling of the Products and/or Services in any relevant territory or geographical region;
“Order”	any order from the Buyer which is accepted by the Seller in writing in respect of the sale or transfer of any Products or delivery of Services;
“Products”	the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions and the Contract;
“Quotation”	any quotation, proposal or tender by the Seller which is accepted by the Buyer in writing or by placement of an order in respect of the sale or transfer of any Products and/or Services;
“Seller”	Bushtec Creations (Pty) Ltd (BC), a company incorporated under the laws of South Africa with registration no 2005/003908/07 whose registered office is at Denel Business Park, Nellmapius Drive, Irene, Pretoria, South Africa.

“Seller’s Related Parties”	the employees, agents, distributors, suppliers, contractors or representatives of the Seller.
“Services”	the services which the Seller is to provide in accordance with these Conditions and the Contract.

Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

2. Basis of the Sale

- 2.1 The Seller sells and the Buyer shall purchase the Products in accordance with any Quotation/Proposal or Tender or any Order, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation or order is accepted or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed to in writing between the authorized representatives of the Buyer and the Seller.
- 2.3
 - (a) Any typographical, clerical or other error or omission in any quotation, Order, invoice or price list shall be subject to correction without any liability on the part of the Seller or any of the Seller’s Related Parties.
 - (b) Any typographical, clerical or other error or omission in any sales literature or other documentation or information issued by the Seller shall be subject to correction without any liability on the part of the Seller or any of the Seller’s Related Parties.

3. Orders and Specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Products within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 Subject to condition 2.3(a) above, the quantity, quality and description of and any specification for the Products shall be those set out in the Quotation/Proposal/ Tender or the Order.
- 3.4 The Seller reserves the right at any time and without notice to make any changes in the specification of the Products that are the subject of a Quotation or an Order:
 - (a) where such changes are required to conform with any applicable safety or other legal requirements; and/or
 - (b) at will provided that such changes do not materially affect the Products’ quality and purpose.
- 3.5 After Written acceptance by the Seller, no Quotation/Proposal/Tender or Order may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Products

- 4.1 The price of the Products shall be that as stated in the relevant Quotation/ Proposal/Tender or Order (as the case may be). All prices of the Products and/or Services quoted by the Seller shall be valid for the period set out in the relevant Quotation/Proposal/Tender or Order or, in the absence of which, for thirty (30) days only from the date of such Quotation/Proposal/Tender or Order.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Seller which is due to:
- (a) any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture); and/or
 - (b) any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer; and/or
 - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any Quotation/Proposal/Tender or Order (as the case may be), and unless otherwise agreed to in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Products otherwise than at the Seller's premises, the Buyer shall be liable to pay all the charges for transport, packaging and insurance incurred by the Seller in such regard as well as a handling charge equal to 10% of all such costs incurred.
- 4.4 The price is exclusive of any applicable duty, tax, value tax, or sales tax which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 The Buyer shall procure that the containers in which the Products are delivered to the Buyer are unloaded in a timely manner. The Buyer shall be liable for any costs, charges or expenses caused by any delay by the Buyer in unloading such containers.
- 4.6 Title to any containers for the Products shall not pass to the Buyer and if the Buyer takes possession of any such containers, the Seller shall be entitled to charge the Buyer for the replacement of such containers on a "new for old" basis.

5. Terms of Payment

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Products and/or Services on or at any time after the formation of a Contract for the sale of Products.
- 5.2 Unless otherwise agreed, the Buyer shall pay fifty percent (50%) of the full purchase price of the Products/Services as pre-payment/deposit upon placement of the order (without which the acceptance of the order by the seller will not be confirmed in writing) and the remaining outstanding balance in full prior to delivery of the Products. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment due under Contract on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- (a) cancel the Contract or suspend any delivery to the Buyer and/or cancel or suspend delivery under any other contract between the Buyer and the Seller for the supply of Products;

- (b) appropriate any payment made by the Buyer to such of the Products (or the Products supplied under any other Contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation to the Buyer); and
 - (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of two per cent (2%) per annum above the South African Reserve Bank prime lending rate from time to time accruing daily and compounded on the last business day in each month, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.4 The Buyer shall not be entitled by reason of any set-off, counterclaim, abatement or other similar deduction to withhold payment of any amounts due to the Seller.

6. Delivery

- 6.1 Delivery of the Products shall be made by the Buyer collecting the Products at the Seller's premises at any time after the Seller has notified the Buyer that the Products are ready for collection or, if some other place for delivery is agreed in writing between the Buyer and the Seller, by the Seller delivering the Products to the third party (as selected at the absolute discretion of the Seller) responsible for transporting the Products to such place.
- 6.2 Unless specifically agreed to by the Seller that the delivery of the products/ services will take place within or before a specific deadline any dates quoted for delivery of the Products/Services are approximate only and the Seller shall not be liable for any delay in delivery of the Products/Services howsoever caused. Time for delivery shall not be of the essence.
- 6.3 Where the Products are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the entire Contract as repudiated.
- 6.4 If the Buyer fails to take delivery of the Products or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- (a) store the Products until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.5 The Buyer shall comply with any legislation or regulations governing the importation of the Products into the country of destination and their re-sale and shall be responsible for the cost of such compliance and for the payment of any duties relating to such importation and/or re-sale.
- 6.6 The Buyer shall be responsible solely for ensuring that the Products satisfy the Local Regulations.

7. Risk and Property

- 7.1 Risk of damage to or loss of Products shall pass to the Buyer:
- (a) in the case of Products to be delivered at the Seller's premises, when the Buyer (or a party on its behalf) collects the Products from the Seller's premises; or
 - (b) in all other cases, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Products, when the Seller has tendered delivery of the Products.
- 7.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Conditions, ownership of the Products shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Products.
- 7.3 Unless otherwise agreed to in Par. 5.2 or until such time as ownership of the Products passes to the Buyer, the Buyer shall hold the Products as the Seller's fiduciary agent and Bailee and shall keep the Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Products in the ordinary course of this business, but shall account to the Seller for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as ownership of the Products passes to the Buyer (and provided the Products are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Products to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Products are stored and repossess the Products.
- 7.5 The Buyer shall not be entitled to pledge or in any way change by way of security for any indebtedness any of the Products which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Buyer's Material and/or Construction

In the event that the Buyer elects to provide any material and/or construct any part of a product, camp or facility interfacing with products or material supplied by the Seller, such provision and/or work shall be in accordance with the written instructions and/or specifications provided by the Seller, failing which the Seller shall be entitled to

- 8.1 require the buyer to comply with the written instructions and/or specifications provided before proceeding with delivery of the contracted products or services; or
- 8.2 if so instructed by the Buyer and agreed by the Seller, proceed with delivery of the products or services subject to the following conditions:
- The warranty provisions under these conditions will be null and void.
 - The Seller shall have no liability for any damage, loss, injuries or death.
 - The cost of any delays, alterations, additions or modifications required shall be for the account of the Buyer.

9. Product and Camp or Facility Installation Warranty

- 9.1 The seller hereby warrants products delivered and the camp or facility installation to be free from defects in material and workmanship in accordance with the technological standards applicable at the time of final delivery for a period of 12 (twelve) months from the date of delivery.
- 9.2 In the event of any defect in material or workmanship the seller undertakes:
- (a) To repair or replace at his own cost and without charge to the Buyer, the material or workmanship. The decision of the Seller as to whether the defective material should be repaired or replaced and the place where the guarantee is to be executed shall be at the sole discretion of the Seller.
 - (b) The aforementioned undertaking is given subject to the following qualifications:
 - (i) No claim under this warranty will be entertained and no replacement or repair will be effected unless it is reported to the Seller following discovery, but within 48 hours of such discovery.
 - (ii) Any products, components or material replaced shall become the property of the Seller.
- 9.3 This warranty shall lapse, and the Seller shall not be obliged to give effect hereto in the event of the Buyer failing to properly maintain the products and/or any camp or facility installation.
- 9.4 This warranty shall not apply if the damage:
- (a) is the result of natural wear and tear
 - (b) is attributed to negligence or improper treatment
 - (c) is deemed to have resulted from modifications of and alterations to the products or camp installation of whatever nature, with the exception of such modifications and alterations explicitly authorized by the Seller.
 - (c) is caused by abnormal or extreme atmospheric or environmental conditions
 - (d) or is caused as the result of an accident.
- 9.5 Buyer's Obligation
- (a) The Buyer must comply with the written instructions given by the Seller in regard to the use, care and maintenance of the products or camp installation.
 - (b) The Buyer should formally report any product or service failure to the Seller within 48 hours of such failure occurring.
 - (c) The Buyer must take all reasonable steps to minimize damage to the products/camp installation in the event of any defect or failure.
 - (d) The Buyer must supply as much as possible information regarding the failure or malfunction, the circumstances concerning the failure or malfunction and, where possible, provide clear digital photographs of the damage or malfunctioning product or component to the Seller.
 - (e) In the event of the Seller requesting a physical inspection of the failed product the Buyer will be obliged to return such product or component to the premises of the Seller in South Africa (or any other location instructed by the Seller) so as to allow such physical inspection.

- (f) The Buyer will not instruct or affect any repair to any damaged or malfunctioning system, product or component without the distinct approval or instruction from the Seller
- (g) In the event of it being necessary to carry out emergency repair work on any system, product or component as a matter of urgency, in circumstances which make it impossible for the Buyer to first obtain authorization from the Seller to do so, such circumstances will have to be meticulously documented and supported by digital photographs and be presented to the Seller for consideration.
- (h) Failure by the Buyer to comply with his obligation as set out herein shall entitle the Seller to cancel this warranty and in such event the Purchaser shall not be entitled to any refund.

10. Liability for Information Provided

- 10.1 Any advice or recommendation regarding the storage, application, construction or use of the Products (the "information") given by the Seller or any of the Seller's Related Parties to the Buyer or to any of the Buyer's Related Parties are provided from sources that the Seller considers are reliable or are expressions of opinion. Whilst the Seller has made every effort to ensure the accuracy completeness and appropriateness of the information, the Information is provided 'as is' and the seller disclaims to the fullest extent permitted by law, on behalf of itself and any of the Seller's Related Parties any and all representation and warranties, (including, but not limited to, those relating to merchantability, non-infringement, title or fitness for a particular purpose or use or their being of satisfactory quality beyond the 12 months' guarantee set out in Condition 12.3), express or implied relating to any of the products or services mentioned in the information.
- 10.2 To the fullest extent permitted by law, under no circumstances, including but not limited to negligence, shall the Seller or any of the Seller's Related Parties be liable (even if it has been advised specially of the possibility of any loss) for any direct, indirect, incidental or consequential loss whatsoever (howsoever caused) arising from the use of the Information.
- 10.3 At the sole and absolute discretion of the Seller, the information is subject to change at any time without notice.

11. Insolvency of Buyer

- 11.1 This condition applies if:
 - (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation or an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or
 - (b) the Buyer ceases, or threatens to cease, to carry on business; or
 - (c) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this condition applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract without any liability to the Buyer, and if the Products have been delivered but not paid for, without prejudice to any other rights of the Seller under these Conditions, the price shall become immediately due and payable notwithstanding any previous agreement of arrangement to the contrary.

12. Limitation of Liability and Exclusions of Damages

- 12.1 The Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 12.2 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products, if the delay or failure was due to an Event of Force Majeure.
- 12.3 Provided that the Products are assembled and used under the guidance of the Buyer's own experts and in accordance with best practice, the Products are guaranteed against defects in materials or workmanship for 12 months from the date of purchase (unless explicitly otherwise agreed to between the Seller and the Buyer in writing). Save to the extent necessary for the above guarantee, no warranty is given as to the Products' fitness for purpose, safety or durability and all implied terms as to the quality of the Products excluded. It is acknowledged that the reason for this exclusion is that the Seller is not responsible for the configuration and assembly of the Products and that the Buyer is advised to rely on its own expertise when assessing the effectiveness of the Products for their purpose. Any Product found to be defective in respect of materials or the Seller's manufacturing process shall be replaced, free of charge, for collection by the Buyer (or on its behalf) ex-works from the Seller's premises in Irene, South Africa or the factory in Ladysmith, South Africa.
- 12.4 In the event of agreement between the Seller and the Buyer that the Seller would assemble and install the products to deliver a turn-key camp to the Buyer the installed products as well as the fitness for purpose, safety and durability of such camp is guaranteed against defects in materials, faulty workmanship and functionality of design and installation for 12 months from the date of delivery. Any Product or installation found to be defective in respect of materials or the Seller's manufacturing or assembly and installation process shall be replaced or remedied, free of charge by the Seller. In the event of defective products or material such products/material shall be replaced free of charge, for collection by the Buyer (or on its behalf) ex-works from the Seller's premises in Irene, South Africa or the factory in Ladysmith, South Africa. In the event of faulty design or installation the Seller shall remedy such faulty design/installation to the extent possible by design review and remedial repair/reinstallation.
- 12.5 Subject to and without prejudice to the rights of the Buyer pursuant to condition above, to the fullest extent permitted by law, the total liability of the Seller under or in connection with any Contract whether in contract, or in tort, (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the aggregate amount paid by the Buyer for the Products under such Contract.
- 12.6 The selection, configuration and installation of any of the Products at site is not the responsibility of the Seller or any of the Seller's Related Parties (unless the seller has specifically contracted to render such service) and, to the fullest extent permitted by law, such parties shall not be liable for any failure of any of the Products that is caused by improper installation.
- 12.7 Nothing in these conditions excludes or limits the liability of the Seller:
- (a) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability;
 - (b) for fraud or fraudulent misrepresentation.

13. General

- 13.1 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 13.3 The Contract constitutes the entire agreement and understanding of the parties respect to the subject matter of the Contract and supersedes any previous agreement between the parties relating to the subject matter of the Contract.
- 13.4 The Buyer and the Seller acknowledge and agree that in entering into the Contract they do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract provided that nothing in this Condition shall, however, operate to limit or exclude any right or liability arising out of fraud or fraudulent misrepresentation.
- 13.5 The Contract may be an overarching contract, each counterpart of which shall be deemed to be an original, and which together shall constitute one and the same Contract. Unless otherwise provided in the Contract, the Contract shall become effective and be dated (and each counterpart shall be dated) on the date on which the Contract (or a counterpart of the Contract) is signed by the last parties to execute the Contract or, as the case may be, a counterpart thereof.
- 13.6 Save as expressly provided in the Contract, no amendment or variation of the Contract shall be effective unless in writing and signed by a duly authorized representative of each of the parties to it.
- 13.7 The Buyer shall not without the prior written consent of the Seller assign, transfer, charge or deal in any other manner with the Contract or its rights under it or part of it, or purport to do any of the same, nor sub-contract nor appoint sub-agents or delegates of any or all of its obligations under the Contract.
- 13.8 Each party warrants to the other that it has the right, power and authority and has taken all action necessary to execute and deliver, and to exercise their rights and perform their obligations under these Conditions.
- 13.9 Without prejudice to sub-condition 13.8 above, the Buyer warrants to the Seller on a continuing basis that entering into the Contract will not constitute a breach of any law relevant to the Buyer or the Contract.
- 13.10 The Contract is not intended to and shall not be construed to create any agency or joint venture or partnership relationship between the parties.
- 13.11 Any notice required to be given pursuant to the Contract shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to the address of the relevant party set out in the Contract or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post). Notice given under the Contract shall not be validly served if send by facsimile or e-mail. The Seller's physical address for service is Denel Business Park, Nellmapius Drive, Irene, Centurion, South Africa and its postal address is PO Box 9859, Centurion, 0046 Republic of South Africa for the attention of the Chief Executive Officer.
- 13.12 The Contract shall be governed by and construed in accordance with South African Law and each party hereby irrevocably submits to the exclusive jurisdiction of the South African Courts.