

SCHMOLZ+BICKENBACH SOUTH AFRICA (Pty) Ltd

TERMS AND CONDITIONS OF SALES

A. TENDER	Quotations given by the Seller are subject to written confirmation by Seller after receipt of an order from the Purchaser. The order shall contain the quantity of the goods so ordered, the requested delivery time and any other information that the Seller may require from time to time. Quotations given by the Seller are valid for 14 (fourteen) days, subject however to there being no increase of any costs to be borne by the Seller. Thereafter the Seller may keep open a quotation, but such may, at the discretion of the Seller still be subject to alteration without notice.		(a) If the Purchaser fails to report any defects to the Seller in writing within 14 days same has manifested itself. (b) If the Purchaser fails to fulfill any of his obligations in terms of this Agreement. (c) If the Purchaser fails to grant to the Seller adequate time and opportunity to carry out all work which the Seller may deem necessary. (d) If the defect is due to misuse of the goods, negligence, gross or otherwise by the Purchaser, and the occurrence of chemical and electro chemical influences on the goods beyond the Seller's control. (e) If any repairs or alteration were carried out by the Purchaser or third parties to the goods.
B. PRICES	All quoted prices are exclusive of V.A.T. Quotations are further based on the information supplied by the Purchaser and the Seller shall only quote on the information so supplied. Prices quoted are based upon rates of Foreign Exchange, Shipping, Freight, Insurance, Duties, Coastal and Railage / Cartage charges ruling at date of quotation. Any variation between such rates and those that the Seller is obliged to pay on the date of receipt of an order will be for the Purchaser's account.	H. LIMITATION OF LIABILITY	The Seller specifically excludes any warranty or guarantee of whatever nature in connection with heat-treatment done and same shall be done by the Seller at the exclusive risk of the Purchaser. Save as set out above, the Purchaser waives any claims of whatever nature he has or may acquire against the Seller whether flowing directly or indirectly from any agreements between the parties. Any claim against the Seller attributable to the negligence or fault of the Seller shall be limited to the amount of the invoice. The Seller shall not be liable for any direct or indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by either party or any third party, whether in an action in contract or tort, even if the other party has been advised of the possibility of such damages. Neither the Seller or any of his employees, agents or servants shall be liable for any loss or damage, whether general, special, consequential or otherwise arising out and whether due to acts, omissions, negligence (gross or otherwise), of employees or agent or servants of the Seller or other persons for whom the Seller is, in law, liable in discharging the Seller's obligation in terms hereof. Save as otherwise contained herein, no guarantees, representatives, or warranties of any nature whatever have been given by the Seller or any other person purporting to act on his behalf.
C. PAYMENT	Terms: From date of delivery, payable by the Purchaser within 30 days less 2 ½ % or 60 days at confirmed order amount (i.e. nett) except invoices specifically marked "nett". Payment shall not be set-off against or withheld on account of any claims that the Purchaser may or may not have against the Seller, unless the Seller consents thereto in writing. Should the Purchaser fail to make full payment timeously, the Seller shall have the right to cancel this Agreement and shall be entitled to take possession of any goods delivered to the Purchaser. The Purchaser shall on demand by the Seller return the goods. Any damage to the goods, loss thereof, or failure to return the goods in the condition as they were delivered, shall be for the account of the Purchaser. Amounts not paid within 60 days of statement shall bear interest at prime overdraft rate charged by the Seller's bankers from time to time, plus 1 ½ % per annum compounded monthly in arrears.	I. CANCELLATION	Notwithstanding anything herein before contained, should the Purchaser breach any of the terms and conditions of the contract (whether material or not) and fail to remedy such breach within 10 days of dispatch of a written notice requiring him to do so, or should a Provisional Order of Sequestration of Liquidation or should Default Judgement be obtained against the Purchaser, the Seller shall have the right, notwithstanding any previous waiver, to claim payment of the full balance then owing by the Purchaser or to cancel the Agreement, retain all monies paid by the Purchaser as pre-determined damages and / or take repossession of all goods delivered without prejudice to any claim for damages of whatever nature that the Seller may have in law.
D. PATENTS AND DRAWINGS	The Purchaser warrants that execution of orders does not infringe any intellectual property rights of third parties, especially patent, trademark and sample rights. The Seller shall not be responsible for loss of or damage to drawings, samples, patterns, etc. given by the Purchaser to the Seller. The Seller shall return such drawings, samples and patterns etc. to the Purchaser upon request after completion of the Agreement. The Seller shall have the right to destroy the Purchaser's samples, if return thereof is not requested and samples etc. are not used for 3 years, without notice to the Purchaser. Papers supplementing the Seller's quotation such as illustrations, drawings, data on weights and dimensions are to be regarded as approximate only and not binding unless expressly stated by the Seller in writing. Drawings shall remain the Seller's exclusive property. The Purchaser shall not acquire any right, express or implied to any trademarks, service marks, trade names, trade dress or device (the Company Marks), or the copyrights, commercial symbols, goodwill, or other forms of intellectual or commercial property of the Seller or its Affiliated Entities to the goods and shall not use such property or rights.	J. SCOPE	Any terms and conditions not contained herein shall not be binding on the parties unless same have been reduced to writing and signed by both parties.
E. DELIVERY	Dates of delivery are approximate only and the Purchaser shall not be entitled to cancel the contract nor have any claim of whatever nature against the Seller arising out of or flowing from delays in delivery, howsoever caused unless the contrary has been agreed upon between the parties in writing. Notwithstanding any such contrary agreement the Seller shall be entitled to a reasonable extension of time to cover delays, caused by fire, strike, tempest, Act of God, accident, malicious acts of a third party, civil or military authorities, insurrections or riots, railway embargoes, lock out, breakdown of machinery, delay in delivery of materials by any third party beyond the Seller's control. The Seller has the right to affect part-deliveries. Quantity differences of 10 % shall be accepted by the Purchaser. Goods with minor faults shall not be rejected. The determination as to whether the fault is minor or major is in the sole discretion of the Seller. Delivery shall be deemed to have been made where the goods are dispatched ex factory or store. Should delivery be delayed by reasons beyond the Seller's control, such as special requirements of the Purchaser's, e.g. inspection, shipment by specific shipping lines or vessels, special documentation instructions etc., the Purchaser will be liable to pay storage charges to be calculated on time and volume of the material stored. Storage charges are also applicable for orders where materials have been taken into stock at Purchaser's request for a specified time if and when the time limit is exceeded. If for any reasons beyond the Sellers control goods cannot be cleared at Port of arrival, all expenses resulting therefrom such as penalties, demurrage, storage charges, etc. shall be for the Purchaser's account.	K. DOMICILIUM CITANDI ET EXECUTANDI AND NOTICE	The parties hereby choose as their <i>domicilium citandi et executandi</i> for the due service of any notices or of any process concerned with any legal proceedings arising from the agreement, the physical address indicated for both parties on the front of this invoice / delivery note (whichever is applicable).
F. RISK	The Purchaser shall assume title and risk of loss to the goods upon delivery.	L. JURISDICTION	If any dispute or difference of any kind whatsoever shall arise between the Seller and the Purchaser in connection with, or arising out of the enforcement or cancellation of the Agreement, the Witwatersrand Local Division Supreme Court of South Africa shall have exclusive jurisdiction, provided that where the amount involved falls within the jurisdiction of the Magistrate's Court, the parties shall also have an election to proceed in the Magistrate's Court Johannesburg. No other Courts shall have jurisdiction to hear any claims or disputes.
G. PERFORMANCE AND GUARANTEE	The Seller guarantees quality and workmanship under normal use and service in so far as he will make good defects if the material is clearly found to be faulty to the extent that it cannot be put to intended use, either by repairing the material free of charge, or by taking it back at the invoice price or by supplying new material in the condition originally specified, free of charge ex works or storage against the return of the goods rejected. The Purchaser shall not return goods for any reason without the Seller's prior written consent. The above warranty shall not be applicable if any one or more of all the following events occur:	M. APPLICABLE	Regardless of the place of execution, performance or domicile of the parties, this Agreement and all notifications and amendments thereof shall be governed by and construed under and in accordance with the laws of South Africa.