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**CONDITIONS OF SALE**

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**1. APPLICATION**

- a) These terms and conditions shall apply to any contract for the sale of any goods by Gossamer Structures (Pty) Ltd whether that contract arises out of:
  - i. Any offer made by Gossamer Structures (Pty) Ltd and accepted by the Purchaser, or
  - ii. Any offer made by the Purchaser and accepted by Gossamer Structures (Pty) Ltd, including any offer made by the Purchaser in response to a quotation by Gossamer Structures (Pty) Ltd.
- b) No alteration or variation of these terms and conditions shall be binding on the parties, unless reduced to writing and signed by a member of Gossamer Structures (Pty) Ltd and by the purchaser.
- c) These conditions, together with the specific terms agreed to overleaf, constitute the entire contract between the parties and supersede all previous written and/or verbal agreements, representations, warranties, undertakings and/or promises of whatever nature which may have been made by or on behalf of either party.
- d) It is agreed between the parties that the Law of South Africa shall be the only law applicable to this contract.

**2. PAYMENT**

- a) The purchaser shall pay the contract price to the seller on presentation of invoice or at any later date agreed to overleaf –
  - i. Without any deduction or set-off;
  - ii. In South African currency, free of bank and other charges at such address in the Republic as the seller may require.
- b) If delivery is to take place in instalments, each instalment will be invoiced and paid for separately.
- c) Any amount not paid by the Purchaser to the seller on due date, will attract interest

at the rate of four (4) percentage points above prime rate until it is paid.

- d) The purchaser shall not be entitled for any reason whatsoever to withhold any payment due in terms of this agreement.

**3. DISCOUNTS**

- a) The contract price is strictly nett and not subject to any discount unless otherwise agreed to in writing.
- b) If any discount is agreed to in writing it shall only be applicable if the purchaser pays the balance due to the seller on the due date and shall only be calculated on the nett price of the goods sold.

**4. DELIVERY**

4.1 Where the seller has contracted to install the goods at the premises of the purchaser:

Delivery shall be made to the Purchaser at the purchaser's address reflected overleaf.

4.2 In all other instances, delivery shall be made by the seller to the purchaser at Gossamer Structures (Pty) Ltd.'s premises and should the seller, at the purchaser's request, agree to engage a carrier to transport the goods for the purchaser, then:

- a) The seller is authorized to engage a carrier on such terms and conditions as it deems fit;
- b) The Purchaser hereby indemnifies the seller against all demands and claims which may be made against it by the carrier so engaged and all liability which the seller may incur to the carrier arising out of the transport goods.
- c) The seller shall not be liable to the purchaser for any loss of or damage to the goods from any cause, which is beyond the reasonable control of the seller, while in transit.

4.3 Notwithstanding any other provision in the contract to the contrary Gossamer Structures (Pty) Ltd obligation to deliver

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the goods shall in all cases be subject to the following conditions precedent:

a) Whilst delivery times are given in good faith and Gossamer Structures (Pty) Ltd will use every endeavour to comply therewith, no responsibility can be accepted for any loss or damage incurred by the Client on account of any delay in delivery arising out of any circumstances beyond Gossamer Structures (Pty) Ltd.'s control, which circumstances will include, but in no way be limited to:

- i. any delays in the supply of goods by Gossamer Structures (Pty) Ltd.'s Suppliers which cannot be directly or indirectly attributed to them;
- ii. The Client not providing Gossamer Structures (Pty) Ltd with necessary information in order to determine the specifications of the goods / services required.
- iii. the Client or his/her/its employees not providing Gossamer Structures (Pty) Ltd with the adequate information, necessary in order to ensure that the goods meets its specific requirements. The Company reserves the right to amend the initial quotation, should the Client's original requirements change or upon inspection by us;
- iv. if the balance of the contract price payable on date of reservation is not paid on date of anticipated delivery to Gossamer Structures (Pty) Ltd.

b) Gossamer Structures (Pty) Ltd will communicate unavoidable delay in delivery.

4.4 Time shall not be the essence of the contract.

4.5 Should the purchaser fail to take the goods on the due date, then:

a) The risk of loss and/or damage to the goods shall immediately pass from the seller to the purchaser on due date.

b) The purchaser shall refund to the seller on demand the reasonable costs (including storage and insurance) of keeping the goods during the period of delay.

4.6 If delivery is to be made in instalments then the provisions of this clause (5) shall apply to each instalment individually.

**5. RISK**

The risk in and to the goods shall pass from the seller to the purchaser upon delivery. Where delivery takes place as described in clause 4.1 delivery shall be deemed to have been completed for purposes of the passing of risk when the seller has installed the goods and successfully completed the post-installation trial run. Where delivery takes place as described in clause 4.2 risk shall pass to the purchaser when the seller physically hands the goods to the carrier.

**6. OWNERSHIP**

Ownership of the goods shall pass from the seller to the purchaser when full payment of the purchase price is made. Where delivery takes place in instalments, ownership of the goods forming part of a particular instalment shall pass when full payment for that instalment is made. The purchaser shall not be entitled to cede, assign or delegate any of its rights and/or obligations in terms of this contract without the prior written consent of the seller.

**7. INSURANCE**

The purchaser shall keep the goods insured for the full contract price thereof until such time as ownership passes from the seller to the purchaser. The purchaser shall provide proof of such insurance to the seller.

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**8. EXCLUSIONS**

- a) The seller shall be deemed exempted from and shall not be liable under any circumstances whatever for:
  - i. Any direct or consequential damages of any nature or any loss of profit or special damages of any nature, and whether in the contemplation of the parties or not, which the purchaser may suffer as a result of any breach by the seller of its obligations under the contract; unless such damage caused is within the reasonable control of Gossamer Structures (Pty) Ltd.
  - ii. Any negligence, including but not restricted to gross negligence, on its part or that of its servants or agents in carrying out any of its obligations under the contract, unless such negligence could reasonably have been prevented by Gossamer Structures (Pty) Ltd.
  - iii. Any claim for any alleged shortage in delivery or failure of the goods to comply with the contract, unless written notice of the claim is received by the seller within seven (7) days after receipt of the goods by the purchaser.
- b) The purchaser shall not have any claim of any nature against the seller for any failure by the seller to carry out any of its obligations under the contract as a result of uncertain event, including but not limited to any strike, lock-out, shortage of labour or materials, delays in transport, accidents of any kind, any fault or delay by any sub-contractor or supplier, political or civil disturbances, the elements, any act of any State or Government or any other authority, or any other cause whatever beyond the seller's reasonable control.

**9. COPYING**

The purchaser recognizes that the goods have been designed and built through expenditure of substantial experience, expertise, time and money by the seller and

undertakes not to make drawings of the goods or of any portions thereof, or permit others to do so, and not to duplicate or conspire in the duplications of the goods or of any portions thereof.

**10. PAYMENT POLICY**

Gossamer Structures (Pty) Ltd reserves the right to suspend delivery of any order in the event that payment for such orders is not made on time. In the circumstances where payment is outstanding for a period exceeding 30 days from date of statement, Gossamer Structures (Pty) Ltd will charge interest at a rate not exceeding 2% per month or as per the maximum rate determined by the National Credit Act from time to time on overdue payments.

All accounts older than 30 days will be handed over for collection and will the client be liable to pay all legal fees with regard to collection of such outstanding amounts on a fees scale as determined by the court of law / tribunal where the collection matter will be adjudicated.

The Client hereby agrees to the jurisdiction of the Magistrates Court of Somerset West, South Africa in the event that any outstanding amount is handed over for collection, although such Magistrate Court may normally not have jurisdiction in the matter.

**11. CANCELLATION**

- a) The seller may cancel the contract, or if the seller is to deliver in instalments, the seller may elect to cancel the entire contract or only that part of the contract which pertains to undelivered instalments, if the purchaser:
  - i. Commits a breach of any terms or conditions of the contract and fails to rectify such breach within seven (7) calendar days of receiving written notice from the seller by telefax, hand delivered letter or letter sent by

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- prepaid registered mail (which registered letter the purchaser shall be deemed to have received on the second day after the date of posting thereof, unless the purchaser proves otherwise), to correct such breach; or
- ii. Fails to pay the amount payable in terms of any instalment delivery on the date of such delivery; or
  - iii. Commits any act of insolvency, or attempts to compromise with any of its creditors or if its estate is provisionally or financially sequestrated, liquidated or surrendered, or if the equipment is seized under a legal process issued against the purchaser by any party.
- b) The seller's rights in terms of (a) shall not be exhaustive and shall be in addition to any other rights it may have whether under die agreement or otherwise.
- c) No relaxation which the seller may have permitted on any one occasion in regard to the carrying out of the purchaser's obligations shall prejudice or be regarded as a waiver of the seller's rights to enforce those obligations of any subsequent occasion.
- d) Upon the termination of the contract for any reason whatever:
- i. All amounts then owed by the purchaser to Gossamer Structures (Pty) Ltd in terms of the contract shall become due and payable forthwith;
  - ii. The seller may retake possession of any goods in respect of which ownership has not passed.

### 12. JURISDICTION

- a) If the purchaser is a resident or carries on business in the Republic then the seller shall be entitled to institute any proceedings against the purchaser, arising out of the contract, in any Magistrates Court having jurisdiction over the purchaser even if the cause of action in question exceeds the jurisdiction of the Court.
- b) Subject to (c), if the purchaser is not a resident of and does not carry on

business in the Republic, then the purchaser consents and submits to the jurisdiction of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa, and all courts of Appeal therefrom for all purposes arising out of the contract.

- c) In the event of the seller instructing its attorneys to take steps to enforce any of its rights under the contract, the purchaser shall be liable to pay to the seller all legal costs incurred by the seller on the scale as between attorney and client, including the cost of litigation, collection commission and other fees and charges reasonably incurred.

### 13. INTERPRETATION

The headings in these conditions are for convenience only and are not to be taken into account for the purpose of interpreting the contract.

### 14. CHANGE OF LAWS

In the event that any change in any law, regulation, ordinance, or similar official decree renders any part of this agreement illegal or null and void, either party may terminate this agreement forthwith.

### 15. DIVISIBILITY

The terms and conditions of the contract are divisible and should any term or condition or part thereof be legally unenforceable, such term, condition, or part thereof shall be deemed to be as though it wasn't written and the exclusion thereof from the contract shall not affect the remaining terms, conditions of parts thereof.

### 16. WARRANTY

The seller warrants that the goods will be constructed in accordance with normal Gossamer Structures (Pty) Ltd methods of manufacture and in terms of agreed specifications. The goods are warranted to

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be free from defects in material and workmanship for a period of six (6) months or 500 000 cartons (singles), whichever first occurs, from the date of delivery, and the seller agrees to replace, free of charge, any part or parts which fail through defect in material or workmanship, within such period. All equipment forming part of the goods but not manufactured by the seller, is limited in warranty and quarantine to the warranty and/or guarantee of its manufacturer and will expire on the date such warranty and/or guarantee in favour of the seller expires. The purchaser shall give to the seller, during the warranty period, written notice by hand delivered letter, prepaid registered mail or telefax of any alleged defect and the seller will, at its option, repair or replace the defective goods or parts thereof free of charge.

Equipment replaced under the warranty shall have the same warranty as new equipment.

No warranty is made in respect of

- a) Failures not reported to the seller within the warranty period;
- b) Failures or damage due to misapplication, lack of proper maintenance, abuse, improper installation or abnormal conditions or temperature, moisture, dirt or corrosive matter, etc.
- c) Failure due to operation, either intentional or otherwise, beyond the stated capacities for which the goods were qualified by Gossamer Structures (Pty) Ltd or in an otherwise improper matter (e.g. using glue not tested and approved by Gossamer Structures (Pty) Ltd.)
- d) Any goods which have been altered by anyone other than the authorized representative of the seller.
- e) Damage to goods caused by the purchaser or by anyone acting on his behalf in an attempt to correct any alleged defect(s) in the goods.

**17. GENERAL DUTY OF PURCHASER REGARDING USE AT WORK OF THE GOODS**

The purchaser hereby undertakes to take all steps prescribed in the operating manual of the goods, which manual shall be deemed to incorporate all the provisions contained in manuals pertaining to components forming part of the goods but manufactured by a third party. The parties agree that if the purchaser adheres to these prescriptions, the goods will be safe and without risks to health when properly used.