

GENERAL TERMS AND CONDITIONS OF SALE

January 2022



Ultimate Vacuum Solutions (Pty) Ltd

Contact: 066 294 1281

19 Newton Drive Meadowridge, Cape Town, 7806

www.ultimatevacuum.co.za

Reg: 2021/012081/07

Vat: 4680303080

1. DEFINITIONS

In these General Terms and Conditions of Sale:

"UVS" means Ultimate Vacuum Solutions (Pty) Ltd Limited, Registration number 2021/012081/07

"Business Day" means any day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa.

"Agreement / Terms" means these General Terms and Conditions of Sale and any subsequent agreement entered to.

"Purchase Price" means the price stipulated in Ultimate Vacuum Solutions (Pty) Ltd Quotation and Invoice, as determined in accordance with the provisions of clause 5.1.

"The Customer" means the person, entity, firm, close corporation, or company to whom the Products are sold; or to whom the Services are rendered.

"Order" means the written instruction placed by a customer to supply the Products or render the Services.

"Products" means the item/s which are sold and supplied to the Customer.

"Parties" means the Customer and Ultimate Vacuum Solutions (Pty) Ltd.

"Quotation" means the formal offer by Ultimate Vacuum Solutions (Pty) Ltd to the Customer to provide the Product/Services as set out in the Quotation, subject to the price, specifications and other terms stated in the Quotation.

"Services" means the inspection, repair and maintenance services which are provided to the Customer.

"Taxes" means any general sales tax, value added tax, duties including any similar tax which may be imposed on the Products/Services from time to time.

"VAT" means the South African Value Added Tax imposed in terms of the Value Added Tax Act, 89 of 1991 (as amended), including any similar tax which may be imposed in place thereof from time to time.

2. SCOPE

2.1 Any Order for the Products/Services implies the Customer's full and unconditional acceptance of these Terms.

2.2 These Terms shall apply to all Quotations and orders made by and purchase orders accepted by UVS. UVS obligations in terms of these Terms will be to manufacture and/or produce and/or supply the Product/Services in accordance with such designs, instructions, itemised details, plans, drawings, programs, and specifications ("the specifications"). UVS will not be responsible for the adequacy of, or the costs occasioned by inadequacy of any such specifications, and/or foundations or supporting such other work as may have been provided, prepared, or certified by or on behalf of the Customer.

2.3 Any changes in the Terms contained herein must specifically be agreed to in writing signed by a director of UVS before becoming binding on either party

3. OTHER PRINTED OR STANDARD CONDITIONS

3.1 The Parties agree that only these Terms shall apply to all agreements between the Customer and UVS, for the supply of the Products/Services and any document emanating from the Customer which contains printed or standard conditions will have been and shall be sent by the Customer and received by UVS on the understanding that they appear on the Customer's document merely because they are printed thereon, shall have no legal effect whatsoever and the Customer waives all and any rights which the Customer might have to rely on such conditions.

3.2 Any terms and conditions of Customer's order which are in any way inconsistent with or in addition to these Terms (except additional provisions specifying quantities and shipping instructions) shall not be binding on UVS shall not be applicable notwithstanding UVS' acceptance of Customer's purchase order. The Customer's issuance of a purchase order or instruction accepting the Quotation, shall constitute acceptance by Customer of said Quotation with the terms and conditions set out therein.

3.3 Unless otherwise specifically stipulated in writing in the Quotation, any terms and conditions forming part of the Customer enquiry or the Customer order, which deviates from these Terms shall be of no force and effect.

3.4 In the event that the Customer and UVS engage in negotiations over amendments or additions to these Terms, then these Terms, shall continue to govern the supply of the Product/Services until such negotiations are finalised and these Terms shall only be amended (if at all) by agreement in writing and signed by both parties, in accordance with clause 2.3 above.

4. ADDRESS FOR LEGAL NOTICES

4.1. UVS elects the address below as the delivery address where all notices, including legal notices and other communications must be delivered for the purposes of this Agreement:

- 19 Newton Drive Meadowridge, Cape Town, 7806
- Email: info@ultimatevacuum.co.za

4.2. The Customer elects the addresses as reflected on the Quotation and Invoice as the delivery address where all notices, including accounts and statements, legal notices and other communications must be delivered for the purposes of this Agreement.

4.3. Either of the Parties may change their addresses to another physical address and/or email address, by way of a notice to the other Party to this Agreement, provided that such a notice is received by the addressee, at least 7 (Seven) calendar days prior to such a change taking effect.

5. PRICE, TAXES AND QUOTATIONS

Unless otherwise specifically stated in writing in each particular instance:

5.1 The Purchase Price to be paid by the Customer for the Product/Services shall be set out in the Quotation, and is based on the costs of materials, transport, labour, exchange rates, import duties, ruling at the date of Quotation, and any variations in such costs or rates occurring between the date of Quotation and the date of completion of the Product/Services, shall be for the account of the Customer and shall be determined by UVS.

5.2 The Customer shall pay to UVS a deposit in the amount as determined by UVS in its Quotation and UVS shall be entitled to delay the provision of the Product/Services until such deposit has been paid. UVS shall be entitled to allocate such deposit towards payment of the purchase Price or part thereof and UVS shall be entitled to retain the deposit paid to it by the Customer in the event of the Customer being in breach of the provisions of this Agreement, as a pre-estimate of the damages suffered by UVS.

5.3 If the Product/Services or any part thereof are to be imported, the Purchase Price will be based on the exchange rate, freight, insurance premiums, lighterage, landing charges, port dues, custom duties, railage at the date of Quotation, or as specifically agreed to in writing by the parties. Should these rates have varied between the date of Quotation and the date upon which the charges are incurred, the Purchase Price shall be varied by the amount of the increase or decrease in such charges.

6. DELIVERY, RISK AND OWNERSHIP

6.1. Unless otherwise stipulated in the Quotation, delivery shall be ex-works (UVS premises in Cape town, South Africa) and the Purchase Price is based on ex-works, as defined in the ICC-Inco Terms 2020, and exclusive of VAT, Taxes, or any other taxation payable in terms of any applicable statute or otherwise, packaging, loading, freight, unloading or insurance during transport.

6.2. The risk in and to the Product/Services will pass to the Customer on delivery and claims for non-delivery or for shortages or damage upon receipt of the Product/Services must be made in writing by the Customer, within 7 (seven) days of the relevant consignment note or receipt of the product/services as the case may be, failing which UVS shall have no liability in respect of such claims.

6.3. Should the Customer fail or refuse to take delivery of the Product/Services in accordance with the delivery program, or if no delivery program is specified, when delivery is tendered by UVS, the Customer shall be liable for all such costs as may be incurred by UVS in consequence thereof.

6.4. The indicated delivery times provided by UVS to the Customer are estimated guidelines only, and delays shall not entitle the Customer to cancel the sale, refuse or return the Products or claim damages.

6.5. Ownership of the Products remains with UVS, notwithstanding delivery, until such time as the Customer has made full payment to UVS in respect of the Products.

6.6. UVS shall not be liable for delays in delivery or performance, due to (i) a cause beyond its reasonable control, or (ii) an act of God, act of the Customer, act of civil or military authority, Governmental priority, strike or other labour disturbance, flood, epidemic, war, riot, delay in transportation, or (iii) inability on account of a cause beyond the reasonable control of UVS to obtain necessary materials, components, services or facilities or in the event of electricity supply interruptions. UVS will notify the Customer promptly of any material delay excused by this clause and will specify the revised delivery date as soon as practicable. In the event of any such delay, there will be no termination and the date of delivery of performance shall be extended for the duration of the above force majeure event.

6.7. The Customer agrees that the signature of any agent, contractor, subcontractor, or employee of the Customer on UVS' official delivery note/invoice/waybill, or the delivery note of any authorised independent carrier will constitute valid delivery of the goods purchased.

6.8. Each delivery is considered as a separate contract and the price thereof is payable accordingly.

6.9. Delivery shall be deemed to have taken place against signature of UVS delivery note, proof of posting if the goods are posted to the Customer or delivery to the South African Transport Services or Road Carrier if the goods are railed or transported by UVS. The Post Office/South African Transport Services or Road Carrier shall act as the agent of the Customer.

7. CERTIFICATE OF OUTSTANDING BALANCE

A certificate given by a manager, director, or officer of UVS, whose authority need not be proved, shall be considered prima facie evidence of the amount including interest due and shall entitle UVS to enter judgement against the Customer and to obtain summary judgment or provisional sentence, as the case may be.

8. PAYMENT

8.1. The Customer shall make payment for the Products/Services in currency and on the payment, date as stipulated in the Quotation or Invoice. All payments are to be made by electronic bank transfer to the bank account designated by UVS, free of any deduction, cost, or exchange.

8.2. Should the Customer fail to make payment of any amount to UVS by the due date, interest shall accrue on the outstanding amount at the rate of 2% (Two Percent) per month, alternatively at the maximum interest rate permissible in terms of the National Credit Act No. 34 of 2005.

8.3. Any other conditions of payment are subject to the prior written approval of UVS, in no case shall the Customer be entitled to set off or deduct any amount from any payment due to UVS, for Products/Services, unless with the prior written consent of UVS.

8.4. UVS is entitled to appropriate any payment received from or on behalf of the Customer to any indebtedness of the Customer to UVS from whatever cause arising.

8.5. UVS shall be entitled to refuse to accept any Order from the Customer, if any payment by the Customer to UVS, for any Products/Services ordered is overdue, unless the Customer at UVS' request makes upfront payment of the purchase price of the Products/Services ordered.

8.6. UVS, reserves the right to cancel or suspend further deliveries of Products/Services ordered and reserves the right to demand upfront cash payment before any delivery of Products/Services, if any payment by the Customer to UVS, for any Products/Services ordered is overdue or if UVS has cause-to-believe the Customer's credit or financial condition is unstable or has deteriorated.

9. BREACH

9.1. In the event that the Customer defaults in making any payment to UVS that has become due and owing, then the full outstanding balance (whether due or not) may at the option of UVS, immediately become due and payable.

9.2. The Customer acknowledges and agrees that in the event that the Customer fails to make payment within the period stipulated in the Quotation or Invoice, UVS is hereby irrevocably authorised by the Customer to enter upon the Customer's premises or any other premises where the Products may be found and is hereby authorized to take possession of the relevant Products supplied by it and in such event, the Customer hereby irrevocably authorises Ultimate Vacuum Solutions' representative to enter its premises and take possession of such Products on behalf of UVS. The Customer further hereby agrees that it will be responsible for all costs incurred for the recovery of the Products should the Customer fail to make any payment.

9.3. The Customer acknowledges and agrees to pay all UVS' legal costs on the scale between attorney and own client, should it be necessary for UVS to incur any legal costs in order to enforce any of its rights which it may have pertaining to the supply of the Products/Services to the Customer or to defend any action instituted against it by the Customer arising from the purchase of the Products by the Customer.

10. INSPECTION AND RETURNS

10.1. The Customer immediately must notify UVS or UVS' appointed distributor in writing of any visible defect and/or damage in the Products on receipt of such Product.

10.2. UVS shall at its sole discretion either replace at its expense the defective and/or damaged Products or repair the defective and/or damaged Products.

11. VALIDITY OF ORDERS

11.1. The Customer agrees that it shall be prohibited from denying the validity of any Order:

11.1.1. Where an official Order has not been supplied but the Customer has elected to place the Order by telephone or has sent a representative to UVS to place the Order.

11.1.3. Where the Customer fails to notify UVS in writing that the Customer's representative who previously had authority to place Orders, no longer has such authority.

11.1.4. Where an authorised person presents an original or copy of the Customer's official documentation against which Products/Services are supplied.

Ultimate Vacuum Solutions (Pty) Ltd

Director: J. Russell (Managing Director)

19 Newton Drive, Meadowridge, Cape Town, 7806.

Tel (+27) 66 294 1281 | www.ultimatevacuum.co.za | Reg # 2021/012081/07 | VAT# 4680303080

Initials: _____ 1



12. ORDER CANCELLATION

The Customer may cancel or reschedule a Product/Service without penalty if the cancellation is more than 20 Business Days from the Confirmed Delivery Date (as specified in the Quotation or the Customer's Order); cancellations within 10-20 Business Days of a Confirmed Delivery Date must be approved in writing by an UVS director and may be subject to a 20% cancellation charge and less than 10 Business Days from a Confirmed Delivery Date must be approved in writing by an UVS director and may be subject to a 50% cancellation charge.

13. WARRANTIES AND INDEMNITIES

13.1. In no event shall UVS be liable towards the Customer for any other indirect, incidental, or consequential losses or damages including but not limited to loss of income, loss of business opportunities or loss of profits howsoever arising.

13.2. The Customer hereby indemnifies and holds UVS harmless from any claim, liability, cost, expense, or penalty suffered or incurred as a result of the Customer not installing or using the Products in accordance with Ultimate Vacuum Solutions' instructions.

13.3. UVS shall not be liable to the Customer for any claim, liability, cost, expense, or penalty suffered or incurred as a result of the Customer failing to maintain or service the Products in accordance with Ultimate Vacuum Solutions' instructions or having repairs, maintenance or servicing carried out on the Products by any party other than by UVS or a third party approved by UVS in writing.

14. LIABILITY

14.1. UVS undertakes to use its best endeavours to supply the Products in accordance with such delivery dates, as are specifically agreed upon by the Parties upon placing of an Order, and in the event that the Products are not supplied in accordance with such delivery date, or within any extensions or revisions of such delivery date and UVS shall have no liabilities for late delivery.

14.2. Notwithstanding anything to the contrary contained in this Agreement or elsewhere, the liability of UVS, howsoever arising out of this Agreement or in delict or by operation of statute or otherwise, shall not extend beyond the obligations specifically assumed in terms of this clause and UVS.

14.2.1. Shall not incur or accept any responsibility for equipment or materials furnished by or on behalf of the Customer to UVS for purposes of manufacturing and/or producing the Products.

14.2.2. In respect of "bought out" or proprietary items not of UVS' own manufacture, UVS gives no greater warranty and accepts no greater liability than is given or accepted by and enforceable against the supplier/manufacturer thereof.

14.2.3. Gives no warranties in respect of the Products used or for any defects arising thereto, through the fair wear and tear or neglect thereof.

14.2.4. Shall in no event be liable for the Customer's loss of profit, loss of use, loss of production, loss of contracts, loss of custom, loss of goodwill, or any special, indirect, or consequential damages of whatsoever nature and howsoever arising.

14.3. Notwithstanding anything to the contrary contained in this Agreement or elsewhere, UVS shall not be liable in terms of this Agreement or in delict or by operation of statute or otherwise in the event that:

14.3.1. The Customer makes any modification to the Products without obtaining the prior written consent of UVS.

14.3.2. The Customer deactivates any of the systems, operations, components, or functions installed on the Products without obtaining the prior written consent of UVS.

14.3.3. The Products are used by the Customer in such manner or form which is contrary to the design specifications for such Products.

15. REPAIRS AND MAINTENANCE

15.1. Should the Products require repairs or maintenance, then the Customer shall notify UVS thereof, and communicate the reasons there for, in writing.

15.2. The Customer shall arrange, at its cost, for either a representative of UVS to travel to Customer for such repairs or maintenance which will be done on-site where the Product has been installed or to send the Product to a UVS appointed workshop for such repairs or maintenance which will be done off the Customers site. The cost of such repairs or maintenance shall be set out in a separate Quotation.

15.3. No Fault Found charges: All Products received by UVS that undergo analysis and testing will be charged at full price as per Ultimate Vacuum Solutions' Quotation, whether or not a problem can be found. It is the Customer's responsibility to verify a problem exists with the part before sending it to UVS for repair.

15.4. UVS shall evaluate the Products and provide the Customer with a Quotation for the repairs or maintenance required within a reasonable time of receipt thereof and shall complete the repairs or maintenance within the period specified in the Quotation for the repairs or maintenance required, after having received payment of the amount quoted. If UVS cannot affect the necessary repairs or maintenance UVS will send the products either to an approved service workshop or a workshop that can affect the repairs.

15.5. If UVS repairs the Products or any component of the Products, and within Six (6) months after that repair, any failure, defect, or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, UVS will repair the Products at their cost. This warranty on repairs is void if the Customer has subjected the Products, their parts, or components to misuse or abuse and it further does not apply to ordinary wear and tear, or if any of the circumstances listed in clause 14.3 above are applicable.

15.6. If UVS repairs the Products or any component of the Products, and within Three (3) months after that repair, any failure, defect, or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, UVS will replace the Products or refund the Purchase Price paid for the Products. This warranty on repairs is void if the Customer has subjected the Products, their parts, or components to misuse or abuse and it further does not apply to ordinary wear and tear, or if any of the circumstances listed in clause 14.3 above are applicable.

16. CESSION, ASSIGNMENT & WAIVER

16.1. The Customer may not cede, delegate, or assign any of its rights or obligations hereunder without the written consent of UVS.

16.2. UVS shall be entitled to cede, delegate, or assign any of its rights or obligations in terms of these Terms, without the Customer's consent.

17. GENERAL

17.1. These Terms constitute the entire agreement between the Parties with regards to the order, sale, supply, delivery, installation and payment of Products and the rendering of the Services.

17.2. No variation, amendment or addition to these Terms and Conditions, including this clause, will be of any force and effect unless agreed to by the Parties in writing.

17.3. No relaxation or indulgence including the acceptance of late payments by UVS shall be deemed to be a waiver by UVS of any of its rights to enforce strict compliance by the Customer of any of its obligations in terms hereof, nor shall such relaxation or indulgence be a novation of any of the Terms of this Agreement, nor shall it form a defence of estoppel against UVS.

17.4. Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other is reasonably knows to be confidential.

17.5. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions, undertaking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of these Terms.

17.6. In the event of a conflict between the provisions of these Terms and any Order, the provisions of these Terms shall prevail.

17.7. If any clause or term of these Terms should be invalid, unenforceable, defective, or illegal for any reason whatsoever, then the remaining terms and provisions of these Terms shall be deemed to be severable therefrom and shall continue to be of force and effect unless such invalidity, unenforceability or defect or illegality goes to the root of these Terms.

17.8. All legal costs including costs between an attorney and his own client charges and disbursements incurred by any Party enforcing or defending any of the provisions of these Terms, and costs and disbursements incurred in tracing the Defaulting Party and in collecting or endeavouring to collect all or any amounts payable by the Defaulting Party hereunder or otherwise, and all collection commissions, including any VAT, Taxes on such costs, charges, disbursements, collections or fees, shall be for the account of the Defaulting Party and shall be payable on demand.

17.9. These Terms shall be governed by and construed in accordance with the laws of the Republic of South Africa. Notwithstanding the amount which may at any time be owing by the Customer to UVS, the parties do hereby consent, in terms of Section 45 of the Magistrates Court Act (No 32 of 1944 as amended), to the Jurisdiction of the Magistrate's Court for the determination of any action or proceeding which may be brought by UVS against the Customer arising out of any transaction between the parties, it being recorded that UVS shall be entitled, but not obliged, to bring any action or proceeding in the said court.

18. ARBITRATION

18.1. Save as otherwise expressly provided in these terms and conditions, should any dispute arise between any of the parties in regard to these terms or any transaction concluded between the parties, UVS shall be entitled, but not obliged, to insist that such dispute shall be decided by arbitration in the manner set out herein. 18.2. The arbitrator shall be appointed by the parties, and failing an agreement reached by the parties, shall be nominated by the Arbitration Foundation of Southern Africa ("AFSA").

18.3. The arbitration shall be held at Cape Town, South Africa.

18.4. The arbitration shall be held in accordance with the Rules of AFSA, or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and otherwise subject as aforesaid of the Arbitration Act 42 of 1965 of the Republic of South Africa and any statutory modification or re-enactment thereof.

18.5. The arbitrator shall be entitled to:

18.5.1. Investigate or cause to be investigated any matter, fact, or thing which he/she considers necessary or desirable in connection with any matter referred to him/her for decision.

18.5.2. Decide the matters submitted to him/her according to what he considers just and equitable in all the circumstances, having regard to the purpose of these terms and conditions.

18.5.3. Make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he/she in his/her discretion may deem fit and appropriate.

18.6. The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within thirty days after it has been so demanded and the decision of the arbitrator shall be final and binding on the Parties.

18.7. Notwithstanding anything to the contrary contained herein, UVS shall, in its sole discretion, not be precluded from obtaining relief from a court of competent jurisdiction.

19. ACCEPTANCE OF ELECTRONICALLY GENERATED SUPPORTING DOCUMENTS

19.1. THE APPLICANT agrees to accept the receipt of electronic format statements, tax invoices, shipment documents (proof of delivery), credit and debit notes from UVS, which will be transmitted via email, and the following conditions thereto as required by South African Revenue Services and in terms of the provisions of the Value-Added Tax Act for the issuing of tax invoices, credit, and debit notes:

19.1.1. Electronic documents (tax invoices, credit, and debit notes) will be transmitted and issued to the Customer in 128bit encrypted PDF file format.

19.1.2. Both the Customer and UVS shall retain the electronic documents in its original encrypted format for a period of five years from the date of the delivery to which it relates.

19.1.3. The transmitted electronic document will constitute the original statement, tax invoice, credit, or debit note. No other tax invoice, credit or debit note will be issued in respect of any specific delivery, unless as a copy of the original document.

19.2. Should the Customer have a valid reason to dispute an entry raised on the tax invoice, it shall do so within 14 (fourteen) days of the date of UVS's invoice to the Customer, failing which such entry shall be deemed to be correct and payable.

20. CHANGE OF ADDRESS

The Customer undertakes to notify UVS in writing within 7 (seven) days of any change of address.

21. CHANGE OF OWNERSHIP

The Customer undertakes to notify UVS, in writing, within twenty days of any change in ownership of the Customer business, or should the Customer be a company, of its share transactions whereby the majority shareholding is affected. The Customer acknowledges that immediately upon any change of Ownership in the Customer any outstanding amount whether due or not shall be deemed to be forthwith payable by the Customer to UVS.

22. CONSENT TO SHARING INFORMATION AND RETENTION PERIODS

22.1. For the purposes of making credit risk management decisions and preventing fraud, the Customer hereby warrants that UVS has consent to: -

22.1.1. Carry out a credit enquiry on the Customer and the Directors/Members/Partners/Trustees/Principals of the Customer from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors (trade references) of the Customer in terms of this agreement.

22.1.2. UVS may transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of the Customer of how the Customer has performed in meeting his/her/its obligations in terms of this agreement.

22.1.3. If the Customer fails to meet his/her/its commitments to UVS, UVS may record the Customer non-performance with credit bureaus, credit information agents, credit insurance companies or other creditors of the Customer.

22.2. To the extent that UVS is required to collect, process, and share the Customer's personal information by UVS' staff, representatives, and sub-contractors, UVS shall make every effort to protect and secure such information. The Customer is entitled at any time to request access to the information so collected, processed, and shared.