

STANDARD TERMS AND CONDITIONS**1 PARTIES**

This document sets out the contractual relationship between Maccafferri SA (Pty) Ltd t/a Maccafferri Africa, registration number 1957/000416/07 ("MA") and the person or entity ("Customer") which acquires goods and/or services ("Product") from MA.

2 AGREEMENT

- 2.1 The grant of credit by MA, if applicable, MA's tender, quote or other form of offer to sell Product to the Customer ("quote"), and this document set out the terms and conditions of contract that apply to all business conducted between MA and the Customer (collectively referred to as "this Agreement")
- 2.2 This Agreement shall supersede and take precedence over any contrary term contended for by the Customer, such as but not limited to terms included with purchase enquiries, purchase orders or confirmations of quotes.
- 2.3 Confirmation of MA's quote and/or engaging in business with MA by the Customer shall constitute a cancellation of any other terms and conditions.
- 2.4 The provisions of clauses 2.2 and 2.3 shall not apply to any customised terms and conditions which are recorded in writing and signed in handwriting by authorised representatives of MA and the Customer.

3 PRICE

- 3.1 Prices contained in MA's quote shall be valid for 30 (thirty) days from the date of the quote, unless otherwise specified.
- 3.2 In the event that a quote is accepted after 30 (thirty) days have lapsed from the date of the quote then MA reserves the right to decline the order and to submit a new quote.
- 3.3 The price to be paid by the Customer to MA for the Product shall be the price set out in the quote.
- 3.4 In the event that the quote or agreed price does not deal with VAT then the price quoted shall exclude VAT, which shall be paid by the Customer to MA in addition to the agreed price, at the applicable rate in accordance with the Value-Added Tax Act.
- 3.5 Unless otherwise stated in the quote, the quoted price includes a standard amount of lacing, binding and bracing wire for assembly of Product. Additional wire may be required and quantified depending on the type of structure constructed with the Product. The additional wire is for the Customer's account.

4 PAYMENT

- 4.1 Payment shall be made in accordance with any directions in that regard detailed in the quote, and failing such directions then by no later than the date scheduled for delivery, such that the amount due shall reflect as a credit on MA's bank statement before MA shall deliver the Product to the Customer.
- 4.2 Where credit is extended payment shall be made by not later than the last day which is not a Saturday, Sunday or public holiday ("Business Day") of the month following the month in which the invoice for the Product is issued, without demand, reduction or set off.
- 4.3 Should payment not be made on due date, then all discounts (if any) granted shall be reversed and all outstanding amounts owing shall fall due for payment immediately. Discounts granted will be clearly stated.
- 4.4 Any amount remaining unpaid after the due date shall bear interest, compounded monthly on the last day of each month, from the due date until it is paid, at the rate of 1% (one percent) per month or, if a lower or higher

maximum prescribed interest rate is stipulated in terms of the National Credit Act, then at that lower or higher rate.

- 4.5 All payments are to be made in monetary currency, without demand and free of exchange, deduction or set-off and at such place and by such means as MA may reasonably stipulate. Where payment is made by post the risk of loss arising from the use thereof shall rest with the Customer.
- 4.6 Should the Customer default in making any payment on its due date, MA shall have the right forthwith to cancel the sale in respect of Product bought but not yet delivered, always subject to MA's rights to damages, and MA shall have the right to retain all moneys paid by the Customer pending the determination of such damages and thereafter to set off the amount so retained against the amount owing.

5 DELIVERY

- 5.1 Unless otherwise recorded in the quote, the Product shall be made available for collection at MA's works on the date specified in writing by MA. MA shall load the Product onto the vehicle of the Customer's nominated transporter at MA's works. In this case delivery shall be deemed to have taken place as soon as the Product is loaded onto the vehicle.
- 5.2 If the quote records that MA will arrange for the transportation of the Product from MA's works to the Customer's nominated address then the cost of such transportation shall be included in the quoted costs and shall be at MA's risk. In this case delivery shall be deemed to have taken place as soon as the Product is offloaded at the delivery address.
- 5.3 If MA arranges for transportation of the Product, as envisaged in clause 5.2, the Customer shall be responsible for offloading the Product at the Customer's nominated address. A maximum time limit of 2 (two) hours shall be allowed for offloading. If the Product is not offloaded within the aforementioned time limit MA's transport shall be entitled to either wait for offloading to be completed with MA charging the Customer for the standing time, or to return the Product to its Premises and charge the Customer for failed delivery.
- 5.4 No liability shall attach to MA in respect of any direct, indirect or consequential losses arising from any delay in the delivery of the Product, irrespective of the cause of such delay.

6 OWNERSHIP AND RISK

- 6.1 Notwithstanding the delivery of any Product to the Customer, ownership shall not pass until MA has received payment in full, including interest if payment is made after due date.
- 6.2 MA shall be entitled to give notice to third parties of its reserved ownership of Product as it may, in its sole discretion, deem necessary.
- 6.3 The Customer shall immediately notify MA if any third party contests the ownership of Product or attempts to assert any proprietary right to any Product in which ownership remains vested in MA.
- 6.4 All Product, no matter how it is used, shall not accede to the land or become affixed to the other items, and is movable property and is severable.
- 6.5 The risk in the Product sold by MA to the Customer shall pass from MA to the Customer against delivery.

7 WARRANTY

- 7.1 The Product is sold subject to being installed in accordance with MA's Installation Guides. Deviation from the Installation Guides may result in mechanical damage, and in particular the PVC coating on certain Product. Damage may affect Product performance.
- 7.2 The installation of the Product must be carried out under supervision and design of an independent professional engineer appointed by the Customer. MA does not accept any liability arising as a result of incorrect installation.
- 7.3 All Product is sold on the condition that MA shall not be liable for defects other than strictly in accordance with this Agreement.
- 7.4 Subject to the following provisions in clauses 7.5, 7.6 and 7.7 MA warrants that the Product is guaranteed free from all defects in materials used and defects in manufacture for a period of (1) one year from date of delivery.
- 7.5 In respect of Product or parts thereof purchased from third parties, or Product or parts thereof not of its own manufacture, MA gives no greater warranty and accepts no greater liability than that given or accepted by and enforceable against the supplier or the manufacturer of the Product or part thereof and in respect of any such warranty MA shall discharge its obligation to the Customer by ceding to the Customer MA's rights against such supplier or manufacturer, such cession being subject to the consent of the supplier or manufacturer where such consent is required.
- 7.6 As the Product is used for a multiplicity of purposes and MA has no control over the method of their application or use, MA gives no warranty, express or implied in respect of fitness of its Product for any purpose.
- 7.7 MA does not under any circumstances give any warranty against defects in the Product arising through fair wear and tear, misuse, neglect or intentional or accidental damage.

8 CLAIMS

- 8.1 The Customer or the Customer's nominated transporter shall examine the Product when the Product is delivered. In the event that the Product is believed to be damaged or patently defective then the Customer or the Customer's nominated transporter shall be entitled to decline to accept delivery of the Product. In the event that the Customer or the Customer's nominated transporter accepts delivery then the Product shall be deemed to be free of damage or patent defects.
- 8.2 Claims for latently defective Product shall be made within seven (7) days after receipt by the Customer.
- 8.3 No latently defective Product claims shall be entertained unless:
- 8.3.1 a full report on the allegedly defective Product is provided to MA within a reasonable time of making the claim, which reasonable time shall be no longer than sixty (60) days after the date of the claim; and
- 8.3.2 the Customer provides such additional information as MA may reasonably require in order to evaluate the claim, which shall include but not be limited to providing MA with access to the allegedly defective Product, and, if circumstances allow, return of the Product to MA.
- 8.4 No claims will be considered by MA if the Product has been subject to any improper treatment or if the Product has been installed incorrectly.
- 8.5 In the absence of a claim in terms of this clause, the Product shall be deemed to have been delivered to the Customer in good order and in full compliance with the order placed.

9 RETURNS

- 9.1 Product specially made for the Customer shall not be accepted for return by MA and shall be clearly identified.
- 9.2 Subject to clause 9.1, if there is an alleged discrepancy in quantity or specifications between Product ordered and Product delivered, or if Product is ordered in error, then such Product may be returned at the Customer's expense and risk subject to the following conditions:

- 9.2.1 the Customer delivering to MA a written request that MA accept return of the Product, providing reasons, within ten (10) days of delivery;
- 9.2.2 MA's written consent to the return of the Product, which consent shall be in the discretion of MA;
- 9.2.3 Product shall be returned in a saleable condition within ten (10) days of MA's written consent;
- 9.2.4 No Product tendered for return after the ten (10) day time period referred to in clause 9.2.3 will be accepted by MA.

10 LIMITATION OF LIABILITY

- 10.1 Notwithstanding anything to the contrary, and in any event:
- 10.1.1 MA, its employees, agents or assigns shall not be liable to the Customer for any indirect, consequential, incidental or contingent loss or damages, including, but not limited to loss of profits, loss of use, loss of production, loss of contracts, loss of customers or loss of goodwill, or for any punitive damages of any nature arising out of a breach of contract, delict or any cause whatsoever.
- 10.1.2 the limit of MA's liability under all circumstances shall be to the replacement of the defective Product free of charge, which the Customer accepts as the limit of MA's liability to the Customer arising out of contract or delict or any cause whatsoever and regardless of negligence in any degree on the part of MA or those for whom it is vicariously liable.

11 CUSTOMER'S DESIGNS

MA accepts no responsibility for the custody of Customer's designs, specifications, drawings, templates, samples or other similar materials which will not be returned unless requested in writing within thirty (30) days of the date of receipt of the order to which they relate.

12 BREACH

- 12.1 In the event of either party breaching any of its obligations under this Agreement and failing to remedy such breach within a period of ten (10) days of receipt of written notice from the aggrieved party calling on it to do so, the aggrieved party shall, without prejudice to any of its other rights in law, be entitled in its discretion to claim specific performance or to cancel this Agreement by written notice to the defaulting party, and, in either event, to claim such damages as it may have suffered.
- 12.2 MA shall be entitled to cancel any contract in respect of the sale or supply of any Product and recover all amounts then due together with interest, damages and costs should the Customer at any time:
- 12.2.1 default in making any payment by due date for payment;
- 12.2.2 commit any act of insolvency, be or become insolvent, attempt to compromise with its creditors, pass a resolution or contemplate passing a resolution placing the Customer in business rescue, or be the subject of insolvency proceedings;
- 12.2.3 do or suffer to be done any act or thing which may prejudice the rights of MA;
- 12.2.4 make any misrepresentation or commit any acts of fraudulent or dishonest nature against MA or affecting MA's rights.
- 12.3 MA shall have the right to retain all money paid by the Customer pending determination of any damages claim and thereafter to set-off the amount so retained against the amount owing.
- 12.4 A certificate signed by any director or manager in the accounts department of MA setting out the amount owing including interest and the rate of interest, by the Customer at any time, shall constitute rebuttable evidence of the amount owing to MA.

13 DELIVERY OF LEGAL DOCUMENTS

- 13.1 For the purposes of delivery of legal documents, including legal process, and contractual and statutory notices, the Customer chooses delivery by hand, by post, by fax or by email, and chooses the addresses, including email addresses, and fax numbers, that the Customer:

- 13.1.1 inserts in any credit application form completed by or on behalf of the Customer;
- 13.1.2 records on its letterhead and other business documents;
- 13.1.3 uses as its principal place of business;
- 13.1.4 records as its registered address;
- 13.1.5 uses to send communications to MA.
- 13.2 Any notice delivered in terms of this Agreement shall, if delivered by hand, be deemed to have been duly delivered on the date of delivery and, if sent by post, be deemed to have been delivered five (5) days after posting and if sent by fax or email, be deemed to have been delivered on the day that the fax or email is sent.
- 13.3 A written notice or communication which has been actually received by the Customer will be regarded as delivered despite the fact that it was not dispatched to a chosen address.

14 JURISDICTION

The Customer consents in terms of Section 45(1) of the Magistrates' Court Act, No. 32 of 1944, as amended, in respect of any proceedings which may be instituted against it by MA, to the jurisdiction of any Magistrates' Court which at the time of such proceedings has jurisdiction over it in terms of Section 28(1) of the said Magistrates' Court Act. Notwithstanding the foregoing the Customer specifically agrees that MA may in its discretion disregard the foregoing consent to jurisdiction and institute any proceedings in the High Court having jurisdiction.

15 GENERAL

- 15.1 No person other than a director or Executive of MA has any authority to contract on MA's behalf on terms or conditions other than those contained herein.
- 15.2 No variation of this Agreement shall be binding upon MA unless reduced to writing and signed in handwriting by a director or Executive of MA.
- 15.3 No relaxation or indulgence which MA may grant to the Customer shall constitute a waiver of its right to enforce strict compliance with this Agreement.
- 15.4 Advice, recommendations or opinions by representatives of MA are given and expressed in good faith and shall not constitute representations of any description, and shall not give rise to any claim against MA.
- 15.5 Descriptions, illustrations and examples contained in any catalogue, brochure, advertisement or price list are published for general information and do not constitute representations and do not form part of any estimate or contract or part of this Agreement, which shall constitute the sole and only agreement between the parties.
- 15.6 Neither party shall cede any or all of their rights or obligations under this Agreement, without the prior written consent of the other party.
- 15.7 Any costs, including attorney and own client costs, Value-Added Tax and collection commission, incurred by a party arising out of a breach by any other party shall be borne by the party in breach.
- 15.8 Where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day. Days that fall on Saturdays, Sundays and public holidays in the Republic of South Africa shall be excluded in the calculation of a time period referred to in this Contract.
- 15.9 Where the day upon or by which any act is required to be performed is a Saturday, Sunday or public holiday in the Republic of South Africa, the parties shall be deemed to have intended such act to be performed upon or by the first Business Day thereafter.
- 15.10 If any provisions of this Contract are held to be invalid under any legal or other requirement then such provisions shall to that extent be deemed omitted, and the validity and enforceability of the remainder of this Contract shall not be affected.