



# SOUTHERN PUMPS

## SOUTH AFRICA (PTY) LTD

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## TERMS & CONDITIONS

1. Any order resulting herefrom shall be subject to the conditions herein unless varied by the Creditor in writing, and these conditions will take precedence over any terms, conditions or stipulations contained in any of the debtor's documentation which may be in conflict herewith.
2. The debtor acknowledges that credit facilities are payable within (30) thirty days from date of statement, which date will be the last day of each succeeding month.
3. Credit facilities may be withdrawn by the Creditor without prior notice and the Creditor reserves the right to review the extent, nature and duration of such facilities at all times.
4. If any amount is not paid within the agreed term, the debtor shall be liable for interest at the maximum rate permitted in terms of the Usury Act, no. 73 of 1968, as amended. Interest shall be calculated monthly in advance, provided that if the interest is not paid as aforesaid, the interest shall be added to the principal sum of the whole amount shall form the principal debt which shall bear interest as aforesaid.
5. The signatory hereto binds himself as surety and co-principal debtor in solidum with the debtor in favor of the Creditor for the due payment of all amounts which may at any time be payable by the debtor to the Creditor from any cause use of action whatsoever and whether acquired by the Creditor by way of cession or otherwise. He further waives the benefits of excussion and division and of the legal exceptions non numeratae pecuniae and non causa debiti and acknowledges himself to be fully acquainted with the meanings of these terms. The terms and conditions of the application shall apply Mutatis Mutandis to this surety ship.
6. This surety is a continuing surety ship and shall remain of full force and effect notwithstanding any fluctuation in, or temporary extinction of the debtor's indebtedness to the Creditor. It may not be withdrawn, revoked or cancelled by the debtor without the Creditor's prior written consent. Any consensual cancellation or withdrawal of this surety ship by the debtor and the Creditor shall only be valid and effective if reduced to writing and signed by both parties thereto.
7. A certificate under the hand of any director or manager of the Creditor (whose appointment need not be proved) as to the existence and the amount of the debtor's indebtedness and the surety's indebtedness to the Creditor at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the debtor's indebtedness to the Creditor and the surety's indebtedness to the Creditor, shall be sufficient and satisfactory proof of the contents and correctness thereof for the purpose of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the debtor and /or the surety in any competent court and shall be valid as a liquid document for such purpose.
8. Any admission of liability by the debtor shall be binding upon the surety.
9. Notwithstanding any other provision to the contrary, the obligation to deliver goods shall in all cases be subject to the following conditions precedent:
  - 9.1 The availability to the Creditor of the goods ordered.
  - 9.2 Timeous receipt by the Creditor of any drawings, designs and specifications that may be required by the Creditor from the debtor provided that such drawings, designs and specifications shall be deemed to have been given to the Creditor for the purpose of description only and shall not form part of the contract.
  - 9.3 Time shall not be of the essence of the contract and delivery dates shall be treated as approximate only based on the latest information available to the Creditor. Under no circumstances shall the debtor be entitled to withdraw from or terminate the contract on account of any delay in delivery or have any claim of any nature whatsoever against the Creditor arising from late delivery.
  - 9.4 The Creditor shall be exempted from and shall not be liable under any circumstances whatsoever for any indirect or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the debtor may suffer as a result of any delay in delivery of the goods ordered.

**OUR REPUTATION IS OUR BEST GUARANTEE OF QUALITY**

10. Ownership in the goods sold and delivered to the debtor on account shall pass to the debtor only when all amounts due by the debtor to the Creditor has been paid notwithstanding delivery of the goods to the debtor. Risk in and to the goods shall however pass to the debtor on delivery.
11. The debtor agrees and acknowledges that in the event of –
  - 11.1 The debtor breaching any condition contained in these conditions;
  - 11.2 The debtor failing to pay any amount due and payable on due date;
  - 11.3 The debtor suffering any civil judgment to be taken or entered against it;
  - 11.4 The debtor causing a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936, as amended;
  - 11.5 The debtor passing away;
  - 11.6 The debtor's estate being placed under any order of provisional or final sequestration, provisional or final winding up, or provisional or final judicial management, as the case may be; then the Creditor shall, without detracting from any other remedies which may be available to it, be entitled to summarily cancel the sale of the goods to the debtor without notice to the debtor, and to rely on the provisions of Clause 9 and to re-possess those goods sold and delivered by the Creditor to the debtor, or to claim specific performance of all of the debtor's obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to the Creditor's right to claim damages.
12. Should the Creditor agree to accept the return of any goods for credit, the debtor shall be liable to pay the Creditor a handling charge of not less than 10% on the invoiced price of the goods so returned.
13. In the event of the Creditor instructing attorneys to collect from the debtor an amount owing to the Creditor, the debtor agrees to pay all costs on the scale as between attorney and own client, including collection commission and tracing charges.
14. The debtor consents to the jurisdiction of the Magistrates' Court in terms of Section 45 of the Magistrates' Court Act, No. 32 of 1944, as amended having jurisdiction under Section 28 of the said Act, notwithstanding that the claim exceeds the normal jurisdiction of the Magistrate' Court. The Creditor shall, in its discretion, be entitled to proceed against the debtor in any other Court if competent jurisdiction, notwithstanding the foregoing.
15. The debtor nominates as it's domicilium citandi et executandi the address reflected on the face hereof under the heading registered office/business physical address, and the surety nominates as his domicilium citandi et executandi the address reflected on the face hereof alongside his name for service upon them of all notices and processes in connection with any claim for any sum due to the Creditor arising out of the credit granted by the Creditor to the debtor.
16. No relaxation or indulgence granted to the debtor by the Creditor, at any time, shall be deemed to be a waiver of any of the Creditor's rights in terms hereof, and such relaxation or indulgence shall not be deemed as a novation of any of the terms and conditions set out herein, or create any estoppel against the Creditor.
17. The debtor shall be liable for and undertakes to pay the stamp duty applicable to this deed.
18. It is a condition of each sale that the goods are sold voetstoots and without any warranties whatsoever. In addition the debtor shall be precluded from raising any complaints or disputing liability to the Creditor in any way unless it shall have notified the Creditor of its complaints or grounds of dispute in writing 7 days of receipt of the goods in question. Notwithstanding the timeous raising of a complaint or dispute of liability by the debtor, the debtor shall, under no circumstances be entitled to withhold payment in respect of the goods from the Creditor pending the resolution of such dispute or complaint. Subject to the foregoing, the Creditor shall, in it's discretion, be entitled to either remedy any failure by adjusting, repairing or replacing the goods in question, or refunding the whole or part (as the case may be) of the contract price paid to it by the debtor in respect of such goods.
19. Should the debtor have any complaint of whatsoever nature concerning any of the goods which are not manufactured by the Creditor, it shall be entitled to require the Creditor to cede to it any rights which the Creditor may have against the supplier of those goods but shall have no other claim against the Creditor in respect of the matter complained of. The debtor shall not be entitled to withhold payment from the Creditor in respect of such goods for any reason whatsoever.
20. When the Creditor is required to manufacture or supply goods to the debtors' specification and/or drawings, or carries out work according to the debtor's instructions, or those of its nominees, the Creditor accepts no responsibility for the efficiency or workability of goods so manufactured or work so carried out.
21. Save as otherwise specifically provided for herein, the Creditor shall not be liable to the debtor or any other person for any indirect or consequential damages of any nature whatsoever and whether in the contemplation of the parties or not which the debtor may suffer as a result of any breach by the Creditor of any of it's obligations under these conditions or out of any other court whatsoever. The debtor hereby indemnifies the Creditor against any claim which may be made against the Creditor by any other person in respect of any matter for which the liability of the Creditor is excluded in terms of the foregoing.
22. Any agreement purporting to vary the terms of this agreement, or any consensual cancellation, shall not be valid unless reduced to writing and signed by the debtor and the Creditor
23. In these conditions, words importing one gender shall include the other gender, and words importing the singular, shall include the plural (and vice versa)