



Zibo Containers (Pty) Ltd

MANUFACTURERS OF RIGID THERMO FORMED PLASTIC CONTAINERS



Terms & Conditions



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IN THESE CONDITIONS:

"The company" means the company from which the goods were purchased.

"The goods" means the goods indicated on any company forms, documents, price lists, quotations, delivery notes, orders and invoices.

"contract" means this agreement and if and when applicable, also a reference to an incidental credit agreement as envisaged in section 5 of Act 37 of 2005.

Price

The Company has the right to adjust prices from time to time. This will be communicated in writing to the address supplied on the credit application form or any written notice served on the Company. Any such change or notice of address served to the Company, will only be effective once confirmed in writing by the Company. The prices stated are exclusive of VAT. The company has the right from time to time, with notice to the Customer, to change the prices of its goods prior to delivery.

Payment

Payment is to be made free of bank exchange or any other set-off or deduction, 30 (thirty) days from the end of the month in which the goods were delivered according to the company's payment instructions issued from time to time, unless alternative arrangements have been made with the Company and the Company has agreed in writing thereto. In all cases where the Customer uses a postal, banking, electronic or similar such service to effect payment, such service shall be deemed to be the agent of the Customer. Should any amount not be paid by the Customer on due date, then the whole amount in respect of all purchases by the Customer ("the principal sum") shall become due, owing and payable irrespective of the date when the goods were purchased. The Customer shall be liable to pay interest in respect of amounts unpaid as at the due date at the compound rate of 2% per month on all overdue amounts, calculated and payable monthly in advance and should the said interest not be paid in full as aforesaid, the same shall be added to the principal sum, and the total shall form the principal debt ("the principal debt") which shall then bear interest in the manner as set out above. In all instances, any payment made shall be allocated firstly in reduction of costs as envisaged in clause 10, secondly in respect of interest and lastly in respect of capital. The customer shall not be entitled to claim set-off or deduction in respect of any payment due by the Customer to the Company for goods or service supplied. In the event of the Customer having more than one account, the Company may appropriate all payments made by the Customer to such accounts at its will and in its sole and absolute discretion. The Company shall without notice have the right to suspend deliveries and to exercise its rights in terms of clause 10. if any amount due by Customer is unpaid.

Credit Facilities

The Company reserves the right to withdraw any credit facilities at any time without prior notice and the nature and extent of such withdrawal shall at all times be at the Company's sole discretion. Despite the fact that the Company may grant the Customer a credit limit or a credit facility up to a certain amount, the Company reserves the right to decrease this amount at its sole discretion without notice. The credit limit shall not be deemed to be the limit of a customer's indebtedness to the Company.

Orders

Orders by the Customer for the Company's goods shall be made in writing to such address as may be nominated by the Company from time to time. Orders shall constitute irrevocable offers to purchase the goods in question and shall be capable of acceptance by the Company by the delivery of the goods or by written acceptance or confirmation of the order. The Customer shall provide the Company with an order number when placing any order with the Company. The Company is not obliged to accept any orders. At the discretion of the company, all orders processed in accordance with normal business practice, in terms of which acceptance by the Company of any order will be subject to authorization by the

Company's Credit Manager. Delivery of goods will be done within 14 (Fourteen) days from the date on which the Company received the written order.

Delivery

The Customer shall be liable for the cost of transportation of the goods from the Company premises to the Customer's delivery address, unless quoted or agreed otherwise and confirmed as such by the Company in writing. In the event that the Company transport the goods to the Customer, delivery and passing of the risk in the goods, shall be deemed to have taken place when the goods are off-loaded at the Customer's premises. The signature of any employee/agent of the Customer on a Company delivery note or invoice shall be prima facie proof of the proper delivery of the goods. In all cases where delivery to the Customer occurs by the carrier, the carrier shall be the Customer's agent, and delivery to such carrier by the Company shall be deemed to be delivery to the Customer. The signature of any employee/agent of the carrier shall be prima facie proof of proper delivery to the Customer. Delivery of the goods to any delivery address given by the Customer shall constitute proper delivery of the goods, despite the fact that such address may not have been the address or premises of the Customer. All goods transported to the Customer's delivery address shall be off-loaded by the Customer's employee. In the event that the Company's employees or the carrier's employees off-loaded the goods at the Customer's delivery address then such offloading shall be at the sole risk of the Customer who accepts responsibility for any damage of whatsoever nature caused as a result of or during such off-loading of the goods. Whilst every effort will be made to dispatch goods as advised, the Company does not guarantee dispatch on any specific date and shall not be liable for any damages for failure to effect delivery/dispatch timeously for any reason beyond the Company's reasonable control, including but not limited to, inability to secure transport, labour, power materials, equipment or supplies of by reason of an act of God, war, civil disturbance, riot, state emergency, strike, lockout or other labour disputes, fire, flood, drought or legislation. The Customer shall not be entitled to cancel any order by reason of such delay and the Company's right to recover all monies owing to it shall not be affected by failure to effect timeous delivery. In the event that the Company makes delivery to the Customer in instalments, each instalment shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery of any instalment shall not affect the balance of the contract or entitle the customer to cancel the contract. When goods are delivered in instalments, invoices relating to separate deliveries shall be paid 30 days from date of statement and no payment shall be postponed until such time as all the goods ordered have been delivered. Should the Company, at the Customer's request agree to engage a carrier to transport goods to the Customer, such carrier shall be Customer's agent and the Company shall engage the carrier on such terms and conditions as it deems fit and the Customer indemnifies the Company against all demands and claims which may be made against it by the carrier so engaged and all liability which the Company may incur to the carrier arising out of the transportation of the goods. If the Customer fails to take delivery of the goods ordered, or in any way delays the delivery of the goods ordered, then the risk in the goods shall immediately pass to the Customer and the Customer shall be liable to pay the Company for the reasonable costs of storing, insuring and handling the goods, until delivery takes place upon demand. Short deliveries of goods damaged in transit must be reported to the Company head office immediately. Kindly refer to 7.2 for the detailed procedure in this regard. The Customer shall be barred from lodging any claim in respect of discrepancies between goods charged and goods delivered, unless the Customer has specified on the delivery note, the nature of the discrepancy.

Sampling

The Customer shall be entitled to sample the goods it has ordered at the Company premises before dispatch of the goods, according to methods determined by the Company.

Errors, Shortages and Returns

The Company shall not be liable for goods lost or damaged as a result of containers whether returnable or not, becoming damaged after delivery. The Company manufactures the goods within ISO9001 and BRC (British Retail Consortium) standards and it is therefore imperative that the Customer shall inform the Company of any defects and/or shortages immediately upon receipt, by telephone or fax, which shall be confirmed in writing within seven (7) days of receipt of the goods. Should the Customer fail to comply with these requirements, the customer shall have no claim whatsoever against the Company with regards thereto. Subject to clause 8.3 any goods delivered by the Company to the Customer in error shall only be considered for credit by the Company if they are: Returned undamaged by the Customer within seven (7) days of receipt thereof. In their original packaging and have not been unpacked or used in part and not defaced by price labels or other markings. The relevant invoice or delivery note must be quoted in respect of any goods returned by the Customer to the Company for credit. The Company shall not be liable for consequential damage or defects to the goods. Once the Customer utilises the goods supplied by the Company, the Customer agrees to have found the goods in good order and hence accept full responsibility for the use of the goods for whatever reason or purpose he might choose. Though the Company manufactures within ISO9001 standards, the Customer accepts the fact that the process of thermoforming produce similar but not identical products and therefore understands that small variations may occur.

Ownership & Risk

Notwithstanding that the risk in and to all goods sold by the Company to the Customer shall pass on delivery, ownership in all goods sold and delivered shall remain vested in the Company until the full purchase price has been paid and in the event of a breach of these terms and conditions by the Customer or if the Customer is sequestrated or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgement granted against it within seven (7) days of the date of judgement or changes the structure of its ownership, the Company shall be entitled to take possession of the goods without prejudice to any further rights vested in the Company. Goods in the possession of the Customer bearing the Company name, trademarks and labels shall be deemed to be those for which payment has not yet been made and should any breach of these terms occur, may be repossessed by the Company in terms of Para 10. The Customer shall fully insure the goods purchased from the Company against loss or damage, until the full purchase price has been paid by the Customer for such goods. Pending payment to the Company for goods purchased, all benefits in terms of the insurance policy relating to the insurance of such goods are ceded to the Company. The Customer shall inform the Landlord of the premises and/or all material creditors of the Customer at which the goods are kept that such goods are the sole and absolute property of the Company until such time as the full purchase price has been paid to the Company by the Customer.

Returnable Containers and Pallets

The Company has the right to package and deliver goods in returnable containers and/or pallets. Such containers remain the property of the Company at all times, despite the fact that the Customer agrees to pay a deposit for the containers at the Company's quoted rate. Deposits for the containers and pallets are payable at the same time as the goods packaged in the containers are paid for, and the cost thereof shall be listed as separate price on the relevant Company documentation. Deposits for pallets shall be refunded to the Customer by the Company after the pallets have been delivered to the Company, and the Customer may not deduct the deposit paid in respect of containers from any amounts owing to the Company. In the order to insure continuity of supply of certain Products which are packed in returnable containers, the Company undertakes to refund the price charged subject to a discretionary handling fee to the Customer for such returnable containers provided that: The returnable containers have been used by the Customer for the clothing of products or materials other than those delivered to the Purchaser in the said container; and The returnable containers are returned at the Customer's cost in good and usable condition, without undue delay and in any event by not later than 4 (four) months after the delivery thereof to the factory or store from which they were dispatched to the Customer, or If the Company has undertaken to collect such returnable containers, such containers shall be loaded by the Customer or its employees on the Company's vehicles at the sole risk of the Customer who shall be responsible for damage of whatsoever nature caused as a result of, or during such loading operations. If the Customer requires the loading of the containers to be affected by the Company's employees or requires assistance from the Company's employees in loading the containers then such loading shall be at the risk of the Customer who shall be responsible for all damage of whatsoever nature caused as a result of or during such loading. Although the Company will endeavour to arrange for the collection of the returnable containers, the onus is on the Customer to return such containers, at his/her cost.

Legal Proceedings

Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and construed under and in accordance with the laws of the Republic of South Africa. The Company shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought by it exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such court. A certificate issued and signed by any director or manager of the Company, whose authority need not be proven, in respect of any indebtedness of the Customer to the Company at any time or in respect of interest payable by the Customer, including but without limiting the generality shall be prima facie proof of the facts set out therein for purposes of any legal proceedings to be instituted by the company against the customer. The Customer's physical address as given on the first page of this document, shall be recognized as the Customer's domicillium citandi et exacutandi (domicillium) for all purposes in terms of this agreement whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature. The parties hereby consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) having jurisdiction under section 28 of the said act, notwithstanding that a claim by the Seller exceeds the normal jurisdiction of the Magistrates' Court as to the amount. The Seller shall in its discretion be entitled to proceed against the Purchaser in any other Court of competent jurisdiction, notwithstanding the foregoing. The Customer shall pay all legal costs, including attorney/own client costs, tracing agent's fees and collection charges which the Company may incur in taking any steps pursuant to any breach of these conditions by the Customer.

Arbitration

The Company has the sole option to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall bind both Company and Customer.

The arbitration must be a person agreed upon by the parties or failing agreement, an arbitrator must be appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of SA.

Negotiable instruments

Acceptance of a negotiable instrument by the Company shall not be deemed to be a waiver of the Company's rights under the agreement in relation to cheques furnished by the Customer to the Company, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonoured.

Returned Goods

Goods sold by the Company are not returnable save at the option of the Company. Should the Company in its absolute discretion elect to accept the return of any goods, the following will apply – (please refer to 8.3 above) All goods returned must be complete, clean, saleable and undamaged and, where applicable, in their original packaging. The value of the credit for goods returned will be calculated at the invoice value when the goods were purchased, less 15% handling charge. The Credit Control Department must be noticed of relevant invoice, packing slip and batch number before any claim will be considered. All goods are to be returned at the Customer's expense within fourteen (14) days after receipt thereof and the risk in the goods remains with the Customer until the goods are received by the Company.

Warranties and Indemnity

Unless specifically stated otherwise, all goods supplied will be to the Company's stated specifications. The Company disclaims all liability to the Customer in connection with the Company's performance or the Customer's use of the goods supplied and in no event will the Company be liable to the Customer for delectable, special, indirect or consequential damages including but not limited to, loss of profits. The Company will not incur any liability of whatsoever nature to the Customer or any third party for the accuracy and/or efficiency of the designs or specifications of the goods, either in respect of new or repeat orders placed by the Customer.

Any advice or opinion given by the Company's employees is for the customers benefit only and the Company accepts no responsibility for any damages that the Customer may occur as a result of the Customer relying upon such advice. The Customer indemnifies the Company for any claims of third parties, arising out of the supply of the goods by the Customer to the third party from any cause whatsoever and however arising.

For and on behalf of Zibo Containers (Pty) Ltd:

Stock Holding

Goods produced by the Company will be either produced to a written order placed with the Company, or will be a stock item in which case the goods will be available ex stock. Orders for goods listed as "produced to order" is irrevocable and cannot be cancelled by the customer. Goods indicated as stock items are available ex stock, 14 (Fourteen) days after receiving of the written order, unless otherwise agreed and confirmed in writing by the Company.

General

This contract represents the entire agreement between the Company and the Customer and shall govern all future contractual relationships between the Company and the Customer and shall also be applicable to all debts which the Customer may owe to the Company prior to the Customer's signature hereto. No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of the Company. No agreement whether consensual or unilateral or bilateral purporting to obligate the Company to sign a written agreement to amend alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of the Company. No warranties, representations or guarantees have been made by the Company or on its behalf, which may have induced the Customer to sign this document. No relaxation or indulgence which the Company may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of the Company's rights in terms of any contract. The Customer shall not cede its rights nor assign its obligations. The Company shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this application for credit facilities including all terms and conditions to any third party without prior notice to the Customer.

Any written notice to the Company shall be addressed to its Managing Director. The Customer undertakes to notify the Company within a period of seven (7) days of any change of address or any changes in the information as set out in this agreement. The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement. Each of the terms herein, shall be a separate and divisible term and if any such term

becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.

Disclosure of personal Information

The Customer understands that the personal information given in this credit application form is to be used by the Company for the purposes of assessing his creditworthiness. The Customer confirms that the information given by him in his credit application form is accurate and complete. The Customer further agrees to update the information supplied, as and when necessary. In order to ensure the accuracy of the above information, failing which the Company will not be liable for any inaccuracies. The Company has the Customer's consent at all times to contact and request information from any persons, credit bureau's or businesses, including those mentioned in the credit application form and to obtain any information relevant to the Customer's credit assessment, including but not limited to, information regarding the amount purchases from suppliers per month, length of time Customer has dealt with such supplies, type of goods and services purchased and manner and time of payment. The Customer agrees and understands that information given in confidence to the Company by a third party on the Customer will not be disclosed to the Customer. The Customer hereby consents to and authorizes the Company at all times to furnish credit information concerning the Customer's dealings with the Company to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Company.

Signatories

Each person signing this agreement for and behalf of a Party hereto, warrants in his /her personal capacity that he/she is duly authorised by such party to do so.